आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'SMC' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 883/JP/2017
निर्धारण वर्ष/Assessment Year :2009-10

Sh. Kirodi Mal S/o Sh. Prabhati R/o- Village- Dalalpur, Post-Shahpur, Distt.- Alwar	बनाम Vs.	ITO Ward-1(1), Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BGLPM 4153 Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Javed Khan, Adv.
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 14/06/2022
उदघोषणा की तारीख/Date of Pronouncement: 13/07/2022

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal)- 22, Alwar [Here in after referred as Ld. CIT(A)] for the assessment year 2009-10 dated 11.09.2017 which in turn arises from the order passed by the assessing officer passed under Section 147/144 of the Income tax Act, 1961 (in short 'the Act') dated 23.12.2016.

2. This appeal was disposed off by an order dated 10.10.2019. The appeal of the assessee was dismissed for want of prosecution. In that appeal filed by the assessee there was a delay of 18 days and the bench has condoned the delay. The relevant extract from the order of ITAT dated 10.10.2019 is as under:-

> "6. Having considered the cause of delay explained by the assessee in the application for condonation of delay as well as affidavit, I am satisfied that the assessee was having a reasonable cause for not filing the appeal in time and accordingly, the delay of 18 days in filing the appeal is condoned."

3. The assessee has filed a Miscellaneous Application (MA) against the order dated 10.10.2019 passed in ITA No. 883/JP/2017.

4. The ld. AR appeared on behalf of the assessee, in response to the MA submitted that the reasons as to why the assessee or the AR of the assessee could not remain present on that day. The bench has decided the MA of the assessee on 22.10.2020. The relevant extract of Miscellaneous Application whereby the appeal of the assessee was recalled and the relevant observation in a Miscellaneous Application is as under:-

> "4. We have heard the ld AR as well as the ld. DR and carefully perused the reasons explained by the assessee in the application as well as in supporting affidavit. The assessee has stated on oath in the affidavit that weekly cause list of the Tribunal for the week 11.09.2019 to 13.09.2019 and 16.09.2019 to 20.09.2019 was circulated 06/09/2019. In the said Cause-list, it was clearly declared that, the SMC Bench shall not be functioning on 11.09.2019 to 13.09.2019. Therefore, there was no reason for the counsel to appear before the

Tribunal in view of the advance information circulated by the registry that the Bench shall not sit on the date of hearing. Hence, the ld AR has pleaded that the impugned order may be recalled and the appeal of the assessee may be decided on merits.
5. On the other hand, the ld DR has objected to the Misc. application filed by the assessee and submitted that despite repeated notices sent to the assessee, none had appeared which shows that the assessee was not taking the proceedings seriously after filing the present appeal.
6. Having considered the rival submissions as well as relevant material on record we are satisfied with the explanation of the assessee for nonappearance on behalf of the assessee on 13/09/2019. Since the appeal of the assessee was dismissed for non-prosecution and was not decided on merit, accordingly, in the interest of justice we recall the impugned order and restore the appeal of the assessee at its original number and stage. The registry is directed to fix the appeal as per regular hearing and in this regard, notice may be sent to both the parties at the earliest.
7. In the result, this Misc. application is allowed."

5. In terms of the above stated facts, the appeal of the assessee taken up for hearing after issue of notice to both the parties and was heard on 14.06.2022. The assessee has taken following grounds in this appeal;

"1. On the facts and in the circumstances of the case. Ld. AO has grossly erred in passing the impugned re-assessment order u/s 147/144 of the Income Tax Act, 1961 inasmuch as the notice u/s 148 was issued beyond the time limit prescribed u/s 149 of the Act. Therefore, the impugned reassessment order as well as the order of Ld. CIT(A) confirming the same deserve to be held bad in law and be quashed.

1.1 That, the Ld. CIT(A) has grossly erred in confirming the action of Ld. AO in issuing notice u/s 148 beyond the prescribed time limit and completing the reassessment on the basis of such illegal notice, thus rendering the entire reassessment proceedings invalid. However, this ground of appeal alongwith supporting contentions raised by assessee was completely brushed aside by the Ld. CIT(A). Thus, the order of Ld. AO as well as Ld. CIT(A) deserve to be quashed.

1.2 That, the Ld. CIT(A) has grossly erred in mechanically confirming the impugned reassessment order of Ld. AO, by ignoring the fact that the reassessment had been done without taking requisite statutory sanction u/s 151 of the Income Tax Act, 1961. The Ld. C1T(A) has

ignored this ground and contention of assessee. Thus, the orders of Ld. AO as well as Ld. CIT(A) deserve to be held bad in law and be quashed.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 10,76,000/- out of the addition of Rs. 37,00,000/- made by the Ld. AO u/s 68 of the Income Tax Act, 1961 by holding the cash deposits in the bank account of assessee as unexplained, by completely ignoring the fact that the source of the deposits was duly explained by the assessee to have been made out of the agricultural land sold by the mother of assessee, which fact was duly supported by complete evidences. Thus, the addition of Rs. 10,76,000/- sustained by the Ld. CIT(A) deserves to be deleted.

2.1 That, the Ld. CIT(A) has further erred in sustaining the impugned addition of Rs. 10,76,000/- by completely ignoring the evidences in the shape of affidavit of assessee's mother, agreement to sale, sale deed, statements of purchasers recorded u/s 131 of the Act, wherein they have admitted to have purchased agricultural land from assessee's mother and admitted to have paid total consideration of Rs. 48.00 lacs to the assessee's mother. Thus, the addition of Rs.10,76,000/- sustained by the Ld. CIT(A) deserves to be deleted.

2.2 That, the Ld. CIT(A) has further erred in upholding the addition of Rs. 10,76,000/- solely on the ground that the persons who have purchased the land from assessee could prove the source of funds in their hands only to the extent of Rs. 26.24 lacs, which is completely in violation of the settled law that the assessee is not required to prove source of source. Thus, the addition of Rs. 10,76,000/- sustained by the Ld. CIT(A) deserves to be deleted.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

6. The fact as culled out from the records is that the assessee is an individual and is agriculturist residing in a remote village of Alwar district. Agriculture activity is the only source of income of the assessee. Hence, the assessee is not required to and does not file the return of income. That, during the year under appeal, the mother of assessee Smt. Kamla Devi had sold certain portion of

her agriculture land for a total consideration of Rs. 48,00,000/- vide sale deed dated 14.11.2008 (APB 18-26) out of which she had received Rs. 5,00,000/- as advance, in cash, at the time of execution of agreement to sale dated 30.07.2008 (APB 13-17), whereas the remaining consideration of Rs. 43,00,000/-, in cash, was received at the time of execution of the sale deed dated 14.11.2008.

6.1 That, the mother of assessee Smt. Kamla Devi had no bank account of her own, therefore, the cash amount so received upon sale of agriculture land had to be deposited in the bank account of assessee. Out of the total consideration, an amount of Rs. 36,40,000/- was deposited by the assessee in his account maintained with Punjab National Bank on 15.11.2008. A copy of the relevant portion of the bank statement of assessee reflecting the said deposits is at Paper Book Page No. 29-31. Rest of the amount was kept with the mother of assessee to be utilized for livelihood and expenditures etc.

6.2 That, out of the amount deposited in the manner mentioned above, an amount of Rs. 1,00,000/- was withdrawn for self on 16.12.2008 and an amount of Rs. 3,58,000/- was debited towards the Kisan Credit Card loan. Out of the remaining amount lying in the bank account of the assessee, on 16.12.2008 he got opened to Fixed Deposit (FD) Accounts – one in the name of his mother Smt. Kamla Devi and another in the name of his father Shri Prabhati Ram. He transferred an amount of Rs. 15,00,000/- on 16.12.2008,

each in the accounts of his mother and father. Thus, a total amount of Rs. 30,00,000/- was deposited by him in the fixed deposits accounts of his parents.

6.3 That, the Assessing Officer received AIR information about the deposit of Rs. 37,00,000/- made by assessee in his bank account in the manner mentioned above. Thereafter, he initiated reassessment proceedings and issued notice u/s 148 of the Income tax act, 1961. The said notice u/s 148 was claimed to be issued on 28.03.2016 and served upon assessee on 01.04.2016, however the issuance of the notice within the time limit specified u/s 149 of the Act, and also the receipt thereof is also disputed by the assessee.

6.4 That, during the course of assessment proceedings it was submitted before the Ld. AO that the cash deposit of Rs. 37,00,000/- has been made out of the sale consideration received from the sale of agriculture land and the same is the source of cash deposits. Further, it was also submitted before the learned AO that notice u/s 148 was not received within the prescribed time limit.

7. However, the submissions of the assessee were ignored by the Ld. AO and he proceeded to complete the assessment u/s 144 read with section 147 of the Income tax Act,1961. Vide the Assessment Order 23.12.2016, the Assessing Officer made an addition of Rs. 37,01,688/- by treating the cash deposits of Rs.

37,00,000/- plus interest thereon of Rs. 1,688/- as income of the assessee.

8. Aggrieved by the aforesaid Assessment Order, the assessee preferred an appeal before Ld. CIT (A). Before the learned CIT(A), the assessee filed all the evidences / documents in support of his contentions as additional evidence under Rule 46A of the Income Tax Rules, 1963.

9. That, upon the application of the assessee under Rule 46A, the learned CIT(A) forwarded all the evidences to the Ld. AO for his comments thereon. During the course of remand proceedings, the assessee submitted that the cash deposits in his bank account have been made out of the proceeds of sale of agriculture land by his mother. Further, the evidences in support thereof such as Agreement of sale, Registered sale deed, Bank accounts statements of assessee, Bank statements of Fixed deposits account of assessee parents and the affidavit of assessee's mother Smt. Kamla Devi deposing all the above-mentioned facts on oath. Thereafter, the learned AO issued summons u/s 131 to the purchasers of the agriculture land who had purchased the agriculture land from assessee's mother. In response to the summons, the purchasers i.e. Satya Veer Yadav and Shri Surendra Yadav attended the office of the Ld. AO and got their statements recorded. In their statements, Shri Satyaveer Yadav and Shri. Surendra Yadav admitted that they had purchased the agriculture land from the assessee's mother. Upon this, the

learned AO proceeded to scrutinize the source of funds in the hands of these two purchasers. In response, it was submitted by them that they had already sold their own agriculture lands to various persons and out of the sale consideration so received, they have purchased the agriculture land from the assessee's mother. To substantiate the same, they also produced copy of four agreements to sale and sale deeds.

10. That, the Ld. AO thereafter submitted his remand report dated 03.08.2017, wherein he admitted that the agreement as well as sale deeds along with bank statements and FD account statements of his parents along with affidavit of assessee's mother were submitted before him. He further admitted that the persons who had purchased the agriculture land from the assessee mother had in fact appeared before him in response to summons u/s 131 and tendered their statements wherein they have admitted purchasing of agriculture land from the assessee's mother. In the remand report, the Ld. AO further admits that the purchasers i.e. Shri. Satyaveer Yadav and Shri. Surendra Yadav had substantiated the availability of source of funds in their hands. In their statements, it was submitted by these purchasers that they had sold their own agriculture land for Rs. 56,00,000/- and this was substantiated by the agreement to sale also. However, completely brushed aside all these evidences and testimonies, and observed that as per the registered sale deeds produced by the purchasers, the funds available in the hands of purchasers was only to the tune of Rs. 26,24,000/-.

11. That, in response to the remand report the assessee has submitted his reply dated 28.08.2017 wherein it was submitted that the source of cash deposits has been proved by the assessee by way of producing ample evidences and which stands substantiated by the statements of purchasers of agriculture land. It was also submitted that the source of source is not required to be proved by law. Further, if the statements of those purchasers were being relied upon to draw adverse inference against the assessee, an opportunity to cross examine them must have been allowed which was not done by the Ld. AO.

12. However, the Ld. CIT(A) vide his impugned order dated 11.09.2017 sustained the additions of Rs. 10,76,000/- out of the total additions of 37,00,000/- by holding that the assessee has explained only Rs. 26.24 lacs and rest of the addition is required to be sustained.

13. Aggrieved by the order of Ld. CIT(A), the assessee has preferred this appeal before us.

14. During the course of hearing the ld. AR of the assessee relied upon the written submission which is reproduced here in below:

> GROUND OF APPEAL NO. 1& 1.1:
>
> It is submitted that, the Ld. AO claims to have issued the notice u/s 148 of Income tax Act, 1961 on 28.03.2016 and received by assessee on 01.04.2016. However no evidence to such effect was placed on record

or referred to in the assessment order. Before the Ld. AO it was submitted that the notice u/s 148 was not received in the prescribed time limit and therefore is bad in law. However, this objection has not at all been dealt with by the Ld. AO. Further, detailed submissions were made before Ld. CIT(A) on this issue. The attention of the Ld. CIT(A) was specifically drawn to the established law that mere claim of issuance u/s 148 before the expiry of limitation is not sufficient but the Assessing Officer has to prove that he had despatched the notice before the limitation expired, such that it had gone out of his hands for delivery to the postal authorities. However, no such evidence is available on record which can establish that the notice was issued within the prescribed time limit. Also, the Ld. AO has not even dealt with this objection raised before him.

5.3 I have gone through the assessment order as well as submissions made by the appellant. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayer (Asst. CIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd. 291 ITR 500 (SC) In determining whether commencement of reassessment proceedings is valid, the court has only to see whether there is prima facie some material on the basis of which the Department opened the case. The sufficiency or correctness of the material is not a thing to be considered at this stage as held by the Supreme Court in the case of Raymond Woollen Mills Ltd. Vs. ITO 236 ITR 34 (SC), Great Arts P. Ltd. Vs ITO 257 ITR 639 (Delhi). The assessee cannot challenge sufficiency of belief – ITO Vs. LakhmaniMewal Das 103 ITR 437 (SC).
In the instant case, the assessee had not filed any return of income for the year under consideration. The AO has in his possession credible information that an amount of Rs. 37 lakhs was deposited in cash in his bank account.
In view of the factual matrix of the case, I find no infirmity in issuance of notice under section 148 of the Act. Accordingly, the action of the A.O is upheld and the appellant's ground of appeal on this issue is dismissed.

Thus it can be seen that, the Ld. CIT(A) has not even entertained this objectionof assessee in correct perspective and has summarily dismissed this ground of appeal without proper adjudication.

Kind attention of the Hon'ble bench is invited to the judgement of Hon'ble Gujarat High court in the case of Kanu Bhai M patel (HUF) V. Hiren Bhatt &ors. reported in (2011) 334 ITR 25 (GUJ), wherein it has been held as under:

15. The expression "issue" has been defined in Black's Law Dictionary to mean "To send forth; to emit; to promulgate; as, an officer issues orders, process issues from court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like, the term is ordinarily construed as importing delivery to the proper person, or to the proper officer for service etc."
(15.1) In P. RamanathanAiyer's Law Lexicon the word "issue" has been defined as follows:
Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit; egress or passage out (Worcester Dict.); the ultimate result or end.
As a verb, "To issue" means to send out, to send out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively: to put into circulation; to emit; to go out (Burrill); to go forth as a authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)
Issue of Process. Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer's hands for service, at the time it becomes a perfected process.
Any process may be considered "issued" if made out and placed in the hands of a person authorised to serve it, and with a bona fide intent to have it served.

16. Thus, the expression to issue in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in Section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03.2010, whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under Section 149 of the Act. The date of issue would be

the date on which the same were handed over for service to the proper officer, which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the Petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the Speed Post Centre only on 07.04.2010, the date of issue of the said notices would be 07.04.2010 and not 31.03.2010, as contended on behalf of the revenue. In the circumstances, impugned the notices under Section 148 in relation to assessment year 2003-04, having been issued on 07.04.2010 which is clearly beyond the period of six years from the end of the relevant assessment year, are clearly barred by limitation and as such, cannot be sustained.

17. As regards the contention that the Petitioners have not filed objections against the reasons recorded for reopening assessment under Section 147 as laid down in the decision of the apex court in the case of GKN Driveshafts Ltd. (supra), in the light of the facts which have come on record, no useful purpose would have been served by asking the Petitioner to first undertake the said exercise. The decision of the apex court is required to be applied after considering the facts and circumstances of each case. In a given case, considering the facts and circumstances, the Court may not find it necessary to ask an Assessee to first undertake the exercise of filing objections and thereafter to approach the Court.

Thus, in light of the above it is submitted that the Ld,. AO bears the burden of proving the issuance of notice within limitation. However, the Ld. AO in instance case has failed to prove that the notice was issued within the prescribed time limit. Hence the notice u/s 148 is clearly bad in law and therefore the entire assessment proceedings based on such notice deserve to be quashed.

Therefore it is humbly prayed that the notice u/s 148 may please be held bad in law and the assessment order 23.12.2016 may please be quashed.

GROUND OF APPEAL NO. 1.2:

Under this ground of appeal,the assessee has challenged the reopening of assessment on the ground that the requisite statutory

sanction provided for u/s 151 of Income tax Act, 1961 was not obtained by the Ld. AO.

In this regard is submitted that the Ld. AO before issuing the notice u/s 148 did not obtain proper sanction as mandated by law. As per Section 151 of the Income tax Act, 1961, the Assessing Officer cannot issue a notice u/s 148 after the expiry of 4 years from the end of the assessment year unless the principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for issuance of such notice and accordingly grants sanction to the assessing officer. In the instance case however, the learned AO in his assessment order has nowhere specified as to whether he had obtained the requisite sanctioned u/s 151 or not. Further, this plea regarding approval u/s 151 was raised before the Ld. CIT(A) however the Ld. CIT(A) failed to adjudicate upon this issue.

For a quick reference, the provisions of section 151 produced as under:

> **Sanction for issue of notice.**
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> **151.** (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.
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> (2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.
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> (3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

A bare perusal of the above provisions would show that this requirements of obtaining prior sanction from the higher authorities is clearly mandatory. The provision specifies that -"no notice shall be issued" – unless the prior sanction is obtained. Thus, the issuance of notice in the absence of such an approval is strictly prohibited. Kind attention of the Hon'ble bench is invited to the judgement of Hon'ble Delhi High court in the case of CIT v. Spl's Siddhartha ltd. reported in (2012) 345 ITR 223 (DELHI) wherein it was held as under:

5. It is clear that the Additional CIT did not apply his mind or gave any sanction. Instead, he requested Commissioner to accord the approval. It, thus, cannot be said that it is an irregularity curable under Section 292B of the Act.

6. It is relevant to point out that sub-Section (1) and sub-Section 2 of Section 151 of the Act are two independent provisions. The definition of Joint Commissioner is contained in Section 2(28C) and the definition of Commissioner given in Section 2(16), which are as under:

Joint Commissioner means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-Section (1) of Section 117.
Commissioner" means a person appointed to be a Commissioner of Income Tax under sub-Section(1) of Section 117.

7. Section 116 of the Act also defines the Income Tax Authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If powers conferred on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. It was so held in the following decisions:

(i) CIT Vs. Naveen Khanna (dated 18.11.2009 in ITA No.21/2009 (DHC).
(ii) State of Bihar Vs. J.A.C. Saldanna&Ors. MANU/SC/0253/1979 : AIR (1980) SC 326.
(iii) State of Gujarat Vs. ShantilalMangaldas, AIR (1969) SCN 634.

8. Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now sell-settled. In Sheo Narain Jaiswal &Ors. Vs. ITO, 176 ITR 35 (Pat.), it was held:

Where the Assessing Officer does not himself exercise his jurisdiction under Section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the condition precedent.

9. The Apex Court in the case of AnirudhSinhji Karan SinhjiJadeja Vs. State of Gujarat, MANU/SC/0473/1995 : (1995) 5 SCC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

10. We are, therefore, of the opinion that the Tribunal has rightly decided the legal aspect, keeping in view well-established principles of law laid down in catena of judgments including that of the Supreme Court

Thus, in view of the above, the settled legal position in this regard remains that in the absence of requisite approval u/s 151, the entire reassessment proceedings are bad in law and are required to be quashed being without jurisdiction. In the present case, the Ld. AO did not obtain the requisite approval and thus the entire assessment proceedings are therefore without jurisdiction and deserve to be held as such.

GROUND OF APPEAL NO. 2 TO 2.2:

Under these grounds of appeal the assessee has challenged the action of Ld.CIT(A) in sustaining the addition of 10,76,000/- out of the addition of Rs. 37,00,000/- made by the Ld. AO.

In this regard it is submitted that before the lower authorities the assessee has established with support of proper evidences that the cash deposits of Rs. 37,00,000/- was made by him out of the proceeds of agriculture land belonging to his mother Smt. Kamla Devi and the aforesaid amount was thereafter transferred to the FD accounts of his parents. During the course of remand proceedings, the Ld. AO had verified and examined the agreement to sale and sale deed executed in respect of the aforementionedagriculture land. Further, he had also verified and examined the bank statements of assessee and his parents as well as the affidavit of assessee's mother wherein she had categorically deposed on oath that she had sold her agriculture land and received a total consideration of 48,00,000/- out of such sale. In the affidavit she has deposed the following:

a) That she is an old and illiterate lady and did not have any bank account of her own therefore she handed over an amount of Rs. 37,00,000/- to her son Kirodi mal.

b) That, Kirodi mal deposited the amount of Rs. 37,00,000/- in his bank account and thereafter opened bank accounts in the name of her self and her husband.
c) That, thereafter Kirodimal transferred an amount of Rs. 15,00,000/- each into the accounts of herself and her husband.
d) That, Kirodimal bas made a payment of Rs. 3,58,000/- towards bank loan on Kisan Credit Card (KCC).
e) That, the entire amount after maturity has been returned by her son to herself after withdrawing the same from the bank.

f) That, this entire amount deposited in the bank account of her son is my own income and my son Kirodi mal has nothing to do with it.

After having scrutinised all the above mentioned evidences, the Ld. AO during the remand proceedings issued summons u/s 131 to the purchaser of the land Shri Surya veer Yadav and Shri Surendra Yadav, who duly complied with the same and appeared before the Ld. AO. The Ld. AO recorded their statements, wherein they categorically admitted and confirmed that they had purchased the land from assessee's

mother and had paid Rs. 48,00,000/- as consideration thereof. Further they had stated that the amount so paid to assessee's mother was derived out of the sale of agriculture lands owned by them.

Not only this, they also produced copy of the sale deeds vide which they had sold their lands. Thus, the assessee had clearly established the source of cash deposits. The explanation of the assessee was duly substantiated bvy the documentary evidences as well as the oral testimonies of third parties (purchasers of land) given to the Ld. AO u/s 131 of the Act. The Ld. CIT(A) has sustained the addition of Rs. 10,76,000/- merely on the ground that the third parties (purchasers of the land) could not established the source of payment of Entire amount of Rs. 48,00,000/-, but only Rs. 26.24 lacs. Thus, the Ld. CIT(A) has sustained the addition of Rs. 10,76,000/- merely on the ground that the source of funds in the hands of the source of assessee could not be proved to that extent.

In this regard it is submitted that the burden cast on an assessee is only to the extent of proving the source of cash credits. In the instance case, both the Ld. AO as well as Ld. CIT(A) have admitted that the assessee has established the source of deposits made in his bank account. Thus, the assessee has discharged the burden cast upon him. It is well settled law that what is required to be proved is only the source of cash credits in the hands of assessee. It is neither required in law nor possible practically to prove source of source. Once the source of funds is proved to the satisfaction of the authorities then source of source cannot be questioned from assessee. If the availability of funds in the hands of third party is to be examined then that can be done only by opening the assessment in the case of that party only. In a number of judgements. it has been held that the assessee is not required to prove the source of source.

Reliance is placed on the following case laws:

[2010] 189 Taxman 141 (Rajasthan)
Labh Chand Bohrav.Income-tax Officer
Section 68 of the Income-tax Act, 1961 Cash credits - Whether where amounts found as cash credits in assessee's account books had been advanced by lenders by account payee cheques: identity of creditors had been established; their confirmations were available and they had also confirmed credits by making statements on oath, it could be said

that assessee had discharged burden of proving identity and genuineness of transaction; so far as creditors' capacity to advance money to assessee was concerned, it was not a matter which would require assessee to establish, as that would amount to calling upon him to establish source of source - Held, yes

159 ITR 78 (SC) Orissa Corpn. (P) Ltd

When the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor.

Hon'ble Bombay High Court in the case of Pr. CIT vs M/s Paradise Inland Shipping Pvt. Ltd. tax appeal No. 66 OF 2016has categorically held that "once the Assessee has produced documentary evidence to establish the existence of such companies, the burden would shift on the Revenue to establish their case.

187 Taxman 338 Aravali Trading Co. Vs. ITO (Raj.)

Assessment year 1993-94 Whether once existence of persons in whose names credits are found in books of assessee is proved and such persons own such credits with assessee, assessee is not required to prove sources from which creditors could have acquired money to be deposited with it - Held, yes - Whether merely because depositors' explanation about sources wherefrom they acquired money is not acceptable to Assessing Officer, it cannot be presumed that deposits made by such creditors are moneys of assessee itself Held. yes - Whether in order to fasten liability on assessee by including such credits as its incomes from unexplained sources, a nexus has to be established by revenue that sources of creditors' deposit flow from assessee - Held, yes.

57 ITR 532 (SC) P. Seetharamamma
87 ITR 349 (SC) Daulat Ram Rawatmull

It was held that the fact, that as assessee was not able to satisfy the Authority as to the source of the source, from which the creditor of assessee derive the money would not justify the addition being made in respect of such credit in the hands of assessee

CIT Vs. Heerala Chagan Lal 257,ITR 281 (Raj.)
Cash Credits- Finding by Tribunal that identity of creditor had been established- Amount representing cash credits not includible in total income of assessee-Income Tax Act, 1961.

SheonNarainMoharilal Vs ACIT 24 TW 318 (ITAT, Jaipur)
No addition of cash credit can be made simply on the basis of presumption in the absence of any contrary evidence.

Sideway Investment Pvt. Ltd. V/s DCIT 24 TW 146 (ITAT, Jaipur)
Establishing the identity of the creditor, proving the genuineness of the transaction and the source of the credit appearing in the books of creditor is sufficient to discharge the onus for explaining the genuineness of the cash credit.

CIT VS. Kishori Lal Construction Ltd. [2010] 5 taxmann.com 60 (Delhi)

The onus cast on the assessee stands discharged where the assessee is able to establish the three ingredients of section 68 i.e. (a) the identity of the creditor, (b) the genuineness of the transaction, and (c) creditworthiness of the creditor.

43 DTR 449 Tulip Hotels (P) Ltd. Vs. Dy. CIT (Mumbai 'E') (TM)
Burden of proof and genuineness Assessee having duly established the identity of the creditor. his creditworthiness and also genuineness of the transaction, the addition under s. 68 towards unexplained credit is liable to be deleted.

PRAYER

Thus, in light of the facts & circumstances of the case, submission made and the case-laws cited it is humbly prayed that the assessment order as well as the appellate order of Ld. CIT(A) be quashed and the addition of Rs. 10,76,000/- be directed to be deleted.

All of which is submitted respectfully."

15. The ld. AR of the assessee based on the earlier hearing filed another submission. The extract of the submission additional submission made is as under:-

"In this regard it is submitted that the captioned appeal was heard by the Hon'ble Bench on 10.03.2021 through Video Conferencing. During the course of hearing, a fresh issue was raised by the Hon'ble Bench as to "whether the consideration of Rs. 48.00 lacs claimed by the assessee as the actual sale consideration received upon sale of agriculture land, as appearing in the agreement to sale dated 30.07.2008 and, as admitted by the buyers themselves to have paid Rs. 48 lakhs as consideration for purchase of agriculture land - should be accepted as actual total consideration received from sale of agriculture land given the fact that the Sale deed dated 14.11.2008 mentions the consideration at a lower amount of Rs. 10,62,500/-?" It is submitted that this issue was never raised by or before the authorities below in as much as the CIT(A) had admitted the fact of sale of agriculture land by the mother of assessee and also admitted/accepted the fact of assessee having received an amount of Rs. 26.24 lakhs.

During the course of arguments, it was submitted by the counsel for appellant that the aforesaid issue raised by the Hon'ble bench stands covered in favour of assessee by the Judgement of the various benches of Hon'ble ITAT itself and also the Judgement of Hon'ble Allahabad High Court. Therefore, liberty was sought by the counsel for appellant to submit before the Hon'ble Bench and place on record the aforesaid a Judgements covering the said issue, upon which the Hon'ble Bench directed the counsel to supply copies of the said Judgements.

The judgements being relied upon by the appellant and brief synopsis is as under:

1. Bhawani Singh Rathore v. ITO (ITA no. 521/JP/2014 - dated 09.10.2017) (Copy enclosed - at pages 1 to 13)

"2.4 I have heard the rival contentions and perused the materials available on record. The AO has made the addition of Rs.12,84,330/- by holding the same as unexplained investment

in the acquisition of land purchased by assessee in auction which was confirmed by ld. CIT(A). Before the bench, the AR of the assessee contended that during the year under appeal assessee has sold a piece of agriculture land for a total consideration of Rs. 25 lacs, however, the sale deed was registered wherein the sale consideration was stated at Rs. 12,15,670/- (PBP-21-22) and accordingly the AO has made the addition of differential amount of Rs. 12,84,330/- by holding the same as unexplained. In confirmation of the fact, during the course of hearing the AR of the assessee draw the attention of the Bench to one document "Likhawat" available in the paper book page No. 24 & 25 wherein it has been categorically mentioned that the said piece of land was sold by the assessee for a total consideration of Rs. 25 lacs which document is signed by the assessee as well as by all the buyers namely Sis Madan Lal Sharma, Gyarsa Ram, Shyo Ram and Ramavtar. This agreement (Likhawat) was also witnessed by two persons namely Shri Moola Ram and Shri Banwari Lal (PBP 24-25). The assessee had also filed the affidavits of Banwari Lal and Moola Ram (PBP 27-28), the witnesses wherein they have accepted that in their presence the deal of sale of agriculture land was executed for a total consideration of Rs. 25 lacs and the same was handed over by the buyers to the assessee in their presence when this document (Likhawat) was prepared which they have signed in the capacity of witness. All these documents were brought to the notice of ld. CIT(A) as additional evidences during the course of appellate proceedings and remand report was sought by the ld CIT(A) and after considering the remand report, ld. CIT(A) rejected the claim of the assessee. On the other hand, the ld. DR during the course of hearing filed the statements of the buyers Shri Ramavtar, Gyarsa Ram, Madan Lal and argued that all the buyers have denied of making payment of Rs. 25 lacs to the assessee and stated that the land was purchased them at the price on which the sale deed was registered i.e. Rs. 12,15,670/ and the Likhawat submitted by the assessee is nothing but an afterthought. In rejoinder, the ld.AR stated that in the statements recorded before the AO, the buyers have denied the payment of Rs. 25 lacs, due to the fact that source of the same was not declared and therefore their statements cannot be relied upon being biased and would affect their personal tax liability. After considering the facts and the

documents placed before the Bench, it is undisputed fact that the assessee has sold the land however, the sole issue is the actual amount of sale consideration received by the assessee, which as per the lower authorities and as noted in registered sale deed was of Rs.12,15,670/- and according to assessee was Rs. 25 lacs based on the "Likhawat" made prior to the registration of the sale deed. The buyers except denving the payment of Rs. 25 lacs made to the assessee as per "Likhawat" had failed to produce any further corroborative evidence to support their contention that they have made the payment of Rs.12,15,670/- only as written in the registered sale deed. Contrary to this, the assessee has not only produced the original copy of the Likhawat but also filed the affidavits of the witnesses namely Shri Moola Ram and Shri Banwari Lal IPB 27-281 wherein they have categorically accepted that Rs. 25 lacs were paid by the buyers to the assessee in their presence for which they had been the witness in terms of the Likhawat dated 10.07.2006 produced before the Bench. Considering these facts, I am of the considered view that the land was sold by the assessee for a total consideration of Rs. 25 lacs which was utilized by him for making payment towards the purchase of land in auction. Accordingly, the addition of Rs. 12,84,330/- is directed to be deleted. Thus ground of appeal No.1 and 1.1 of the assessee are allowed."

2. Commissioner of Income Tax v. Intezar Ali Allahabad High Court - (2013) 38 taxmann.com 103 (Allahabad) dated 24.07.2013.

8. The ITAT considered the submissions and found that the evidence led in the light of the explanation submitted by the assessee, source of deposit in question in the bank is sale of land by him. The reasons shown by the authorities below for deposit and the explanation of assessee are wholly arbitrary. The assessee had explained that the land was sold for Rs.1.20 crores out of which Rs.20 lacs was paid in advance and remaining sale consideration was paid to him at the time of registration of sale deed. Out of which Rs.93 lacs was paid in cash and Rs.7 lacs by demand draft. In this manner total amount of Rs.1,20,00,000/- was paid. The amount of Rs.22,40,000/- is shown in the sale deed out of which Rs.20 lacs was paid in advance pertaining to the financial year 2006-07. The appellate

authority thereafter accepted the explanation of the assessee and recorded its findings as follows:

> "Besides Shri Gulzar and Shri Gaffar who were shown as witnesses in the sale deed had also stated that at the time of registry, the purchasers had in their presence made the payment of Rs.1,00,00,000/- to the assessee i.e. Rs.7,00,000/- by DD and Rs.93,00,000/- in cash and that the bank manager had collected the money from the assessee. The bank manager, of the concern branch. of Syndicate Bank in his statement has also supported this fact that an amount of Rs.90,00,000/- was deposited by the assessee to his branch with this information that it was out of the sale receipt of the land sold by him. It is a prevalent practice in the land transaction that real sale consideration is not shown in the sale deed. There was also sufficient reason for the purchasers to conceal actual sale consideration in the sale deed to evade tax and stamp duty since it is paid by the purchasers only.
>
> Ignoring the above documents, circumstantial evidence and the prevalent practice in the land transaction, we are of the view that the authorities below were not justified in doubting the explanation of the assessee for the source of deposit in question mainly on the basis that the registered sale deed signed by the assessee himself shows a sale value consideration of only Rs.22,20,000/- and that there is no full proof evidence on record that the purchasers had given total consideration of Rs.1,20,00,000/-. There was also nothing on record to suggest either that assessee was having any other source of income which has been given more weightage by the authority below than the explanation of the assessee that the source of the deposit in question was sale receipt of the land sold by him as the selling of land and deposit made out of the sale receipt made on the same day, when sale deed was registered has not been disputed. We thus find that preponderance of probability is more in favour of the explanation of the assessee.
>
> In its remand report which was furnished before the ld. CIT (A) on the submission of the assessee made before

him, the AO has also failed to contradict the explanation furnished by the assessee with some positive evidence. On the basis of documents, explanation of the assessee and others and the prevalent practice in the land transaction it can be safely inferred that whatever the assessee had explained about the source of the deposit cannot be doubted especially in absence of contrary material on record.

We thus while setting aside orders of the authorities below in this regard, direct the AO to delete the addition in question made at Rs.77,80,000/- on account of income from undisclosed sources. The grounds involving the assessee are thus allowed."

9. We have gone through the orders passed by the A.O., CIT (A) and ITAT and find that the questions of law as raised do not arise for consideration in as much as findings recorded by ITAT are findings of fact, which do not call for consideration or reconsideration of this Court.

10. We may observe here that the assessee as an honest citizen not only made a complaint to the registering authority that the sale deed has been registered at a value much below the amount, which he has actually received, he deposited the entire amount in the bank and voluntarily filed return. There was no material whatsoever or any circumstance, which could have suggested that this amount was received by him from any other source. The deposition of witness of the sale deed, the Bank Manager and the evidence filed with regard to valuation of the property was more than sufficient to discharge the burden, which the A.O. had unreasonably placed on the assessee. The A.O. in disbelieving the evidence has not given any reasons whatsoever to discard the statement of the witnesses, deposit of the entire sale consideration in bank and the deposition of the Bank Manager. The assessee had not only deposited the entire amount in the bank but also informed the registering authority of the deficiency of the stamp in the sale deed.

11. We further notice the observations made in the order of the Tribunal that in the case of Mohd. Raisuddin, one of the

purchaser, the A.O. had accepted that he was the owner of the money i.e. Rs.97,80,000/- and accordingly addition of Rs.77,80,000/- was made in his hand on substantial basis as his income during the year for which a copy of the assessment order was filed on record.

12. The income tax appeal is dismissed.

13. Before parting with the case we may observe here that from the facts and circumstances on the record that in the present case the Income Tax Officer did not act in bonafide manner. The assessee led substantial evidence to establish that the amount treated to be undisclosed income by the A.O. was the sale consideration of sale of his agricultural land, which he had deposited in the bank and had voluntarily filed return disclosing his income. Overwhelming evidence led by him was discarded without giving any reasons at all. The assessment was framed only on the ipse dixit of the A.O., which gives us reason to believe that he had exceeded his authority with some ill will or with ulterior motive.

14. We, therefore, find it appropriate to direct the Registrar General of the Court to forward a copy of this judgment to the Chairman of the Central Board of Direct Taxes to cause an enquiry into the conduct and motives of Shri Yaduvansh Yadav, Income Tax Officer, Ward-1, Hapur in framing the assessment and raising demand of income tax against the petitioner.

3. Income Tax Officer v. Abraham Varghese Charuvli - ITAT Cochin Bench - (2017) 88 taxmann.com 817 (Cochin - Trib) - dated 26.04.2017

7.3 As mentioned earlier, the assessee is an aged person, who had settled down in his native place. He was engaged in agricultural activities on his retirement and there is nothing on record to suggest that the assessee alongwith his wife were in a position to generate unaccounted income of Rs.39 lakhs other than on-money on account of sale of agricultural land. The payment of on-money is an unfortunate practice in most part of our country, and none can deny this factual situation. It is the case of the assessee that the buyers were insisting on reducing the sale consideration to be disclosed in the sale deed for the

purpose of reducing stamp duty payment. This contention of the assessee cannot be totally brushed aside. I also place reliance on the order of the Cochin Bench of the Tribunal in the case of Dr. Koshy George (supra), wherein it was held by the Tribunal that any surplus money arising to an assessee on sale of agricultural land would partake the character of agricultural income itself.

4. Income Tax Officer v. Dr. Koshy George ITAT Cochin Bench - (2010) 190 Taxman 4 (Cochin) (MAG) - dated 26.06.2009.

15. We heard both sides. We have perused the entire materials available on record. We have also gone thoroughly through the orders of the lower authorities. There is no dispute that the assessee owned five acres of coffee estate at Wayanad and the same was sold by way of a conveyance deed registered during the previous year relevant to the assessment year under consideration. The assessee claims that the said property was sold at Rs. 15 lakhs and the entire transactions were banking channels. The Assessing Officer held that the conveyance deed was registered for a sum of Rs. 2.65 lakhs and therefore the remaining amount was "on money". The assessee contends that in the conveyance deed, value was understated and the assessee has paid compounding fee to the Revenue authorities and at the instance of the purchaser, value was understated. The assessee had no other alternative except to register the conveyance deed for an understated value, as most of the amounts were utilised in the construction. The Commissioner of Income-tax (Appeals) has considered the issues in a detailed manner and found that the entire transaction was through banking channels. The assessee had furnished a copy of agreement to sell the impugned coffee estate. It is a common feature that in the State of Kerala, the Government itself has fixed the minimum value to be considered for registration, in each area, and if the value is understated by that amount, the purchaser/seller has to pay compounding fee to the Revenue authorities. In the instant case, it is the contention of the assessee that the actual consideration is as per the agreement and he has received the said amount by cheques/demand drafts and paid compounding fee for understated consideration. Therefore, the Commissioner of Income-tax (Appeals) has

accepted the contentions raised by the assessee and deleted the additions made by the Assessing Officer. We do not find any error on this finding. Accordingly, we uphold the order of the Commissioner of Income-tax (Appeals) with regard to the additions made by the Assessing Officer.

16. Apart from the factual finding arrived at by the Commissioner of Income-tax (Appeals) and confirmed by us, as stated in paragraphs above, there is a legal dimension to the issue. The Assessing Officer himself has characterised, without any contradiction of facts, that the additional amount received by the assessees on sale of coffee estates in Wayanad, over and above the registered sale deed, were "on money". The question is whether the said "on money" is still taxable in the present case. The property sold by the assessee was agricultural property situated beyond 8 k.m. of any Municipality. The property was not notified either. In such circumstances, any surplus of money arising to an assessee on sale of agricultural land always partakes the character of agricultural income itself. The consideration stated in the registered sale deed is very much agricultural income. Likewise, the "on money" also should be treated as agricultural income even though that surplus consideration is tainted with the expression "on money". The genesis of the "on money" is definitely the sale of agricultural land. The hon'ble Supreme Court in the case of CIT v. All India Tea & Trading Co. Ltd. [1996] 219 ITR 544 has held that compensation received on requisition of agricultural land amounted to agricultural income. The Supreme Court again in the case of Singhai Rakesh Kumar v. Union of India [2001] 247 ITR 150 has held that income arising, out of the transfer of such agricultural lands are not exigible to capital gain as they are in the nature of agricultural income. Therefore, it is to be held that the receipts/profits arising to an assessee on transfer of agricultural land amounts to agricultural income as provided under section 2(1A) of the Act. Therefore, even if the consideration in excess of the apparent consideration is deemed as "on money", still it cannot be taxed, as the true colour of that "on money" is "agricultural income".

5. Aravali Trading Company v. Income Tax Officer - Rajasthan High Court - (2010) 187 Taxman 338 (Rajasthan) dated 25.01.2007.

8. All the money have been received by the assessee through account payee cheques or account payee pay orders. In other words the existence of each of the depositors was proved beyond doubt. Each of the depositors accepted and owned to have deposited the money with the assessee. Money was received through bank. Thus, before assessee firm received money, it was already with the bank deposited by the depositors. Only basis on which the explanation of assessee has been rejected is that the depositors have not been able to explain the sources wherefrom the money deposited with the assessee came to the depositors. This is apart from the fact that the statements referred to above have been made by the respective depositors is not in dispute.

9. Therefore, central issue arising from the three questions framed above, is whether it is incumbent upon the assessee before his explanation can be accepted, to prove the sources of income or to say source where from the depositor could have acquired the money or once the assessee establishes the existence of the real person who had deposited the money in question with the assessee and those persons owned to have deposited such money with the assessee, assessee's burden does not extend further to establish the source of the depositors from where they could have acquired the money.

10. The answer to us appears to be no more res integra. Neither the provisions of section 68 of the Income-tax Act nor on general principle, it can be said that once the existence of persons in whose name credits are found in the books of the assessee is proved and such persons own such credits with the assessee still the assessee is to further prove the source from which the creditors could have acquired money to be deposited with him.

11. The fact that the depositors' explanation about the sources wherefrom they acquired the money is not acceptable to the Assessing Officer, it cannot be presumed that the deposits made by such creditors is the money of the assessee himself. There is no warrant for such presumption. In such event if the creditors explanation is found to be not acceptable about such deposits,

the investment owned by such persons may be subjected to the proceedings for inclusion of such investment as their income from undisclosed sources or if they have been found Benami, the real owner can be brought to the tax net. But in order to fasten liability on the assessee by including such credits as his income from unexplained sources a nexus has to be established that the sources of creditors' deposit flew from the assessee. In the absence of any such link, additions of cash credits found in the books of account of the assessee cannot be considered to be unexplained income of the assessee, where existence of depositors of such credits is established and such deposits/advance/loan is owned by such existing person. On such proof the assessee's onus is discharged.

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19. This Court held by the parity of reasonings which prevailed in Daulat Ram Rawatmull's case (supra) that it can well be said that merely because the explanation furnished by Shri Bhopal Singh, Om Prakash Gupta and Shri Gauri Shanker Singhal, about the purpose for which the gold ornaments were delivered for making new ornaments and that the ornaments were belonging to their family was found to be not acceptable, could not have provided any nexus for drawing inference therefrom that the primary gold and gold ornaments belonged to the assessee.

20. This principle is fully applicable to the present case. The fact that the explanation furnished by the aforementioned four creditors about the sources wherefrom they acquired the money was not acceptable by the revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.

6. Labh chand Bohra v. Income tax Officer - Rajasthan High Court - (2010) 189 Taxman 141 (Rajasthan) dated 28.04.2008.

The judgment of CIT v. Daulat Ram Rawat Mull [1973] 87 ITR 349 (SC) is the authority for the proposition that the assessee

cannot be required to prove the source of the source. It was precisely held in Daulat Ram Rawat Mull's case (supra) that the fact that lender has not been able to give satisfactory explanation regarding the source of the fund lent by him, would not be decisive, even of the matter, as to whether the lender was the owner of that sum, even though the explanation furnished by him regarding that source of money is found to be not correct. From the simple fact, that the explanation regarding source of money furnished by the lender whose money is lying deposited, has been found to be false, it would be a remote and far-fetched conclusion to hold that the money belongs to the assessee and that he would, in such a case, have any direct nexus between the facts and conclusions found therefrom. Further, in CIT v. Kishorilal Santoshilal [1995] 216 ITR 9, the Rajasthan High Court observed that in order to determine whether any addition is to be made under section 68 or not, the following six conditions are required to be considered :

(i) that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party;
(ii) that the burden to prove the identity, capacity and genuineness have to be on the assessee;
(iii) if the cash credit is not satisfactorily explained, the ITO would be justified to treat it as income from 'undisclosed sources';
(iv) the firm has to establish that the amount was actually given by the lender;
(v) the genuineness and regularity in the maintenance of the account have to be taken into consideration by the taxing authorities; and
(vi) if the explanation is not supported by any documentary or other evidences, then the deeming fiction created by section 68 can be invoked. [Para 7]
In the instant case, the first requirement was not relevant. So far as the second requirement was concerned, there was no doubt about initial burden being on the assessee. So far as the third requirement was concerned, obviously if the explanation was not satisfactory, then it was to be added. Then fourth requirement was that the firm had to establish that the amount was actually given by the lender. Fifth requirement was about genuineness

> and regularity in maintenance of the accounts obviously of the assessee, and it was not the finding that the accounts were not regularly maintained. Then sixth requirement was that if the explanation was not supported by any documentary or other evidences, then the deeming fiction created by section 68 could be invoked. In the instant case, that requirement was very much there in existence inasmuch as the amounts had been advanced by account payee cheques through the bank and were duly supported by documentary evidences as well as the evidences of the two lenders, and that satisfied the second requirement also about the discharge of burden on the part of the assessee to prove identity and genuineness of the transaction. So far as capacity of the lender was concerned, on the face of the judgment of the Supreme Court in Daulat Ram Rawat Mull (supra) and other judgments, capacity of the lender to advance money to the assessee was not a matter which would require the assessee to establish, as that would amount to calling upon him to establish the source of the source. In view of the above, the appeal was to be allowed and additions with respect to the entries of VK and DS made to the income of the assessee were to be deleted.

16. In addition to the written submission, the ld. AR drawn our attention to the sale deed filed in the paper book and reconciled date wise the amount deposited vis-à-vis the sale consideration. He has also proved that the sale deed is placed in the assessee's paper book 18 to 20 and the consideration although not disclosed in the sale deed fully but it arisen out of the sale consideration of the same propety. In response to the remand proceedings, the buyer were called upon and have confirmed that land was sold at a consideration of Rs.48,00,000/-. Therefore, the source of the amount deposited in the bank account stands explained and as the assessee's mother has no bank account. The amount has been deposited in the name of the bank account of the assessee and even the subsequent utilization of the fund is also explained and the money has been ultimately given to the mother and

father of the assessee and the assessee has not been benefited and has been proved with the aforesaid arguments. The date of deposit of cash and date of sale deed are almost matching that a difference of one day only. The statements of buyers recorded and accepted the contention raised by the assessee. The ld. AR of the assessee has relied on the ITAT judgment in the case of Bhawani Singh Rathore vs. ITO (ITA No. 521/JP/2014 dated 09.10.2017) and the fact of this case and he has relied on the judgment are similar. The relevant finding of Co-ordinate Bench decision is as under:-

> "2.4 I have heard the rival contentions and perused the materials available on record. The AO has made the addition of Rs.12,84,330/- by holding the same as unexplained investment in the acquisition of land purchased by assessee in auction which was confirmed by ld. CIT(A). Before the bench, the AR of the assessee contended that during the year under appeal assessee has sold a piece of agriculture land for a total consideration of Rs. 25 lacs, however, the sale deed was registered wherein the sale consideration was stated at Rs. 12,15,670/- (PBP-21-22) and accordingly the AO has made the addition of differential amount of Rs. 12,84,330/- by holding the same as unexplained. In confirmation of the fact, during the course of hearing the AR of the assessee draw the attention of the Bench to one document "Likhawat" available in the paper book page No. 24 & 25 wherein it has been categorically mentioned that the said piece of land was sold by the assessee for a total consideration of Rs. 25 lacs which document is signed by the assessee as well as by all the buyers namely Sis Madan Lal Sharma, Gyarsa Ram, Shyo Ram and Ramavtar. This agreement (Likhawat) was also witnessed by two persons namely Shri Moola Ram and Shri Banwari Lal (PBP 24-25). The assessee had also filed the affidavits of Banwari Lal and Moola Ram (PBP 27-28), the witnesses wherein they have accepted that in their presence the deal of sale of agriculture land was executed for a total consideration of Rs. 25 lacs and the same was handed over by the buyers to the assessee in their presence when this document (Likhawat) was prepared which they have signed in the capacity of witness. All these documents were brought to the notice of ld. CIT(A)

as additional evidences during the course of appellate proceedings and remand report was sought by the ld CIT(A) and after considering the remand report, ld. CIT(A) rejected the claim of the assessee. On the other hand, the ld. DR during the course of hearing filed the statements of the buyers Shri Ramavtar, Gyarsa Ram, Madan Lal and argued that all the buyers have denied of making payment of Rs. 25 lacs to the assessee and stated that the land was purchased them at the price on which the sale deed was registered i.e. Rs. 12,15,670/ and the Likhawat submitted by the assessee is nothing but an afterthought. In rejoinder, the ld.AR stated that in the statements recorded before the AO, the buyers have denied the payment of Rs. 25 lacs, due to the fact that source of the same was not declared and therefore their statements cannot be relied upon being biased and would affect their personal tax liability. After considering the facts and the documents placed before the Bench, it is undisputed fact that the assessee has sold the land however, the sole issue is the actual amount of sale consideration received by the assessee, which as per the lower authorities and as noted in registered sale deed was of Rs.12,15,670/- and according to assessee was Rs. 25 lacs based on the "Likhawat" made prior to the registration of the sale deed. The buyers except denving the payment of Rs. 25 lacs made to the assessee as per "Likhawat" had failed to produce any further corroborative evidence to support their contention that they have made the payment of Rs.12,15,670/- only as written in the registered sale deed. Contrary to this, the assessee has not only produced the original copy of the Likhawat but also filed the affidavits of the witnesses namely Shri Moola Ram and Shri Banwari Lal IPB 27-281 wherein they have categorically accepted that Rs. 25 lacs were paid by the buyers to the assessee in their presence for which they had been the witness in terms of the Likhawat dated 10.07.2006 produced before the Bench. Considering these facts, I am of the considered view that the land was sold by the assessee for a total consideration of Rs. 25 lacs which was utilized by him for making payment towards the purchase of land in auction. Accordingly, the addition of Rs. 12,84,330/- is directed to be deleted. Thus ground of appeal No.1 and 1.1 of the assessee are allowed."

17. The ld. AR of the assessee has also relied on the judgment of the Allahabad High Court reported in assessee's paper book Page No. 14 in

the case of ***CIT vs. Intezar Ali report in [2013] 38 taxmann.com 103 (Allahabad) HC***.

18. The ld. AR of the assessee further stated that buyer have appeared in the remand proceedings and confirmed that have to the additional consideration received from the sale of the property. The mother of assessee has no bank account and therefore, the amount deposited in the bank account stands explained. The ld. AR of the assessee also drawn our attention to the remand report which is mentioned by the ld. CIT(A) at page No. 8 of his order wherein the ld. Assessing Officer has admitted that the mother of the assessee has received Rs. 48,00,000/-. The relevant part of the remand report is extracted herein below for the sake brevity of the case as under:-

> "6.3 The detailed submissions filed by the appellant alongwith additional evidence were forwarded to AO for examination and comments. A remand report received from the AO is as under:
>
> Kindly refer to your office letter no. 718 dated 16.06 2017 on the above subject, vide which your good self has directed to this office for furnishing report on the additional evidence furnished by the assessee during the appellate proceeding. As per your direction, an opportunity was provided to the assessee vide this office letter no. 592 dated 16.06.2017. In compliance thereto the assessee has furnished a reply on 28.06.2017 in which he has stated that he has already filed requisite document before CIT (A), Alwar. During the remand report proceedings statement of the assessee recorded in which he stated that his mother had sold agriculture land to Sh. Satyavir. yadav and Sh. Surendra yaday. Further summon u/s 131 was issued to the above persons who have purchased agriculture land from assessee's mother. In response thereto they have attended the office and their statements were recorded during the remand proceeding which is placed on record. The evidence furnished by the assessee was examined during the proceedings and after considering the facts of the case and relevant material, the report in the matter is submitted as under:-
>
> The brief fact of the case are that the assessee has deposited cash of Rs. 37,00,000/- on different dates in his saving bank account during the F.Y. 2008-09 but the assessee has not filed his return of income for the the year under consideration, After recording reasons

proceedings u/s 147 were initiated by issuing notice u/s 148 on 28.03.2016 which was duly served upon the assessee on 01.04.2016. During the assessment proceedings the assessee were required to furnish source of such cash deposit but nobody attended nor filed any written reply.

Further final show cause notice issued on 30.112016 In compliance thereto nobody attended nor filed any written reply. Therefore, assessment proceedings u/s 147/144 was completed on 23.12.2016 at the total income of its 37,01,690/- by making addition on account of unexplained cash of Rs.37,00,000/- and Interest received from bank of Rs. 1,690/-.

During the remand report proceedings the assessee has claimed that the cash deposit in the bank account is out of sale of agriculture land sold by his mother Smt. Kamla Devi. Copy of agreement and sale deed are also produced by the assessee. As per sale deed the mother of the assessee sold agriculture land of Rs. 10,62,500/ whereas as per agreement dated 30.07.2008 furnished by the assessee, the above land to be sold of Rs.48,00,000/- To verify the genuineness of the agreement, summon u/s 131 issued to the purchasers of the land in compliance to the summons, statement of purchaser, Sh. Satyavir Yadav and Surendra Yadav was recorded in wch they have admitted land was sold by the mother of the assessee. Further, source of purchasing of the land was asked to them with documentary evidence. As per statement of these persons, they have purchased the land from mother of the assessee out of sale of agriculture land sold by them to various persons. Copy of four sale deed and agreement was also produced by them. As per statement and agreement of Purchaser of land sold by the mother of the assessee, they have admitted to sold agriculture land of Rs, 56,00,000/- from which land was purchased from the mother of the assessee of Rs. 48,00,000/- However, as per four sale deeds/registry of land produced by the purchasers it was sold at Rs. 26,24,000/- instead of Rs. 56,00,000/-.

From the above facts it is clear that the mother of the assessee has sold agriculture land. Further purchaser has not produced any receipt of making payment to the assessee's mother of Rs. 48,00,000/-. Thus the alleged amount of Rs, 48,00,000/- claimed by the assessee, is not fully verifiable according to sale deed produced by him. Copy of statement of the assessee, statement of the purchasers, sale deed and agreements made by the assessee's mother and purchaser are also enclosed for kind perusal."

19. Per contra, the ld. DR has stated that assessee unable to explain delay of 18 days with plausible reason. The consideration

of Rs.48,00,000/- is not appearing from the registered agreement or from the sale deed. Therefore, it is an afterthought and he has also stated that the case relied upon by the ld. AR of the assessee are different with a fact of the case and therefore, the same is not required to be considered and hence he has relied on the orders of lower authorities.

20. We have heard the rival contentions and perused the material placed on record. It is not disputed that the assessee is merely acting on behalf of the mother. He has explained the source of money deposited into the bank account with that of utilization for his mother and father. Therefore, considering overall facts submitted by the assessee facts gathered in the remand proceedings the source of amount deposited into the bank account for Rs. 37 lakhs in PNB, Bharatpur during the period under consideration stands explained. The assessee had not filed regular return for the period under consideration as his income from all the sources are below the maximum amount not chargeable to tax and has also not filed during assessment proceedings. It is found that the assessee received a consideration of Rs. 48,00,000/- which is duly confirmed by the parties appeared before the AO in remand proceeding and the date of deposition of money and the date of sale agreement has only one day difference and therefore, we are of the considered view that the amount deposited in the bank account stands explained. Accordingly, the addition of Rs. 10,76,000/- sustained by the ld. CIT(A) deserves to be deleted.

21. In terms of the above observations the appeal of the assessee is hereby allowed.

Order pronounced in the open Court on 13/07/2022.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेश जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 13/07/2022
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Kirodi Mal, Alwar
2. प्रत्यर्थी/ The Respondent- ITO, Ward 1(1), Alwar
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 883/JP/2017}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar