आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
MS. MADHUMITA ROY, JUDICIAL MEMBER

आयकरअपीलसं./**ITA Nos. 30/Rjt/2020**
निर्धारणवर्ष/Asstt. Year:2010-11

Sr. No.	ITA No.	Asstt. Year	Name of Appellant	Name of Respondent
1.	ITA No.30/Rjt/2020	2010-11	Girishbhai Nanjibhai Solanki A-202, Shyamal Plaza, Nr. Raiya Circle, Raiya Road, Rajkot **PAN: AFPPB7122Q**	ITO Ward-1(1)(2), Rajkot
2.	ITA No.33/Rjt/2020	2013-14	Girishbhai Nanjibhai Solanki A-202, Shyamal Plaza, Nr. Raiya Circle, Raiya Road, Rajkot **PAN: AFPPB7122Q**	ITO Ward-1(1)(2), Rajkot
3.	ITA No.28/Rjt/2020	2015-16	Girishbhai Nanjibhai Solanki A-202, Shyamal Plaza, Nr. Raiya Circle, Raiya Road, Rajkot **PAN: AFPPB7122Q**	ITO Ward-1(1)(2), Rajkot

Assessee by :	Shri Kalpesh Doshi, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing : 28/02/2023**
घोषणाकीतारीख/**Date of Pronouncement: 29/03/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned three appeals have been filed at the instance of the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-2

(in short the Ld. CIT(A)), Rajkot arising in the matter of assessment order passed under Section 143(3)/147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2010-11 to 2012-13.

2. ***First, we take up ITA No. 30/RJT/2020 for the AY 2010-11***

2.1 The assessee has raised following grounds of appeal:

Learned AO has erred in law as well as on facts in making addition on account of failure to prove genuineness of transaction of Rs.1,50,000/- u/s.69 and the CIT(A) had not considered the contention that the addition to be deleted. The same should be deleted.

Appellant craves leave to add, amend, alter to withdraw any grounds of appeals

2.2 The assessee vide application dated 23rd December 2022 has pleaded before us for the admission of the additional ground of appeal which reads as under:

1. The appellant most respectfully prays before the Hon'ble Income Tax Appellate Tribunal, Rajkot to allow the following additional ground of appeal to be raised in the above matters.
Ground no.1 "That, the Ld. AO has wrongly reopened assessment u/s.148 of the I.T. Act."

2. This ground goes to the root of the matter and it is legal ground as to the validity of the reassessment.

3. The legal ground can be taken up at any stage, in this regards reliance is placed on decision of Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC).

4. In view of above, the appellant therefore makes this prayer to allow to raise this additional ground of appeal with a further prayer that the same may kindly be adjudicated upon.

3. It was pleaded by the assessee in the application filed for the admission of the additional ground of appeal that the issue raised in the additional ground of appeal goes to root of the matter and the necessary facts are available on record. Accordingly, it was prayed by the learned AR for the assessee that the same should be admitted for adjudication.

4. On the other hand, the learned DR opposed to admit the additional ground of appeal on the reasoning that it was not raised before the authorities below.

5. We have heard both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT, reported in 229 ITR 383 has held as under :-

> *" Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.*

5.1 From the above, it is transpired that the view that the Tribunal is confined only to those issues arising out of the appeal before Commissioner (Appeals) is too narrow a view to describe the powers of the Tribunal. Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which were on record during the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Since, the claim of the assessee is purely legal claim and all the facts are available on record, thus, it is not justified in not admitting the purely legal ground raised by the assessee for the first time. Thus, we admit the additional ground of appeal of the assessee.

5.2 The assessee in the additional ground of appeal challenged the validity of the assessment order passed under section 147 r.w.s. 143(3) of the Act.

5.3 The facts in brief are that the assessee is an individual and engaged in the activity of works contract & energy audit of Government undertakings. For the

year under consideration (i.e. A.Y. 2010-11), the re-assessment/income escaping assessment proceedings were initiated vide notice dated 04-11-2015 under section 148 of the Act. The reasons recorded were also provided to assessee vide letter dated 13-01-2016. The assessee vide letter dated 15-11-2016 requested to treat the original return filed under section 139 of the Act as a return of income under section 148 of the Act. Thereafter, the AO issued notice under section 143(2) of the Act dated 07-12-2016 and after providing final opportunity to the assessee framed the assessment vide order dated 30-12-2016 wherein certain additions were made to the total income of the assessee.

5.4 The assessee, before the learned CIT(A) agitated the income assessed by the AO on merit of the addition but failed to succeed.

5.5 Now, the assessee for the first time before us through additional ground of appeal challenged the proceedings under section 147 of the Act on technical count.

6. The learned AR before us contended that the proceedings under section 147 of the Act were initiated based on the statement of the assessee recorded in the course of survey operation under section 133A of the Act at third party premises. As per the learned AR, the statement recorded under section 133A of the Act has no evidentiary value, therefore based on such statement, proceedings under section 147 of the Act cannot be initiated. On this count only, the assessment framed under section 147 of the Act is invalid.

6.1 The learned AR further contended that the approval obtained under the provisions of section 151 of the Act was given in a mechanical manner, without application of mind. Thus, the same cannot be considered proper approval and therefore the initiation of the proceedings under section 147 of the Act is in itself bad in law and accordingly the consequential order passed under section 147 of the Act cannot be sustained.

7. On the other hand, the learned DR before us filed a written note dated 9th February 2023 running into 4 pages and contended that there was a diary belonging to the assessee which was found from the premises of the company namely M/s Bhavani Energy Solutions Pvt. Ltd in which the assessee is a director. Such diary was containing the unrecorded cash transactions. Thus, the allegation of the learned counsel of the assessee that proceedings were initiated merely on the basis of the statement is not true.

7.1 The learned DR further contended that the submission of the assessee that the approval under section 151 of the Act was granted in mechanical manner is not sustainable. First of all, the assessee has not given any reason alleging the approval given by the higher authority was in mechanical manner. He has just made bald statement without making any specific submission. In the given case the AO has recorded the detailed reasons for reopening which were forwarded to the higher authority for the approval where it was duly recorded that ***"Yes I am satisfied on the reasons recorded by the AO that it is fit case for issue of notice u/s 148 of the I.T. Act".*** Such recording of the satisfaction by the higher authority cannot be question by the assessee. The learned DR to buttress his arguments has vehemently referred the judgement of Hon'ble Gujarat High Court in the case of *Baldevbhai Bhikhabhai Patel vs. DCIT* reported in 94 taxmann.com 428.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The 1st controversy arises whether the AO has recorded the reasons for the reopening merely on the basis of the statement of the assessee recorded in the course of survey operation under section 133A of the Act. In this regard, we note that there was a diary found in the course of survey operation which was belonging to the assessee wherein cash transactions were recorded. At the time of initiating the proceedings under section 147 of the Act, AO has to make a prima facie opinion that the income of the assessee has

escaped assessment. In the present case the reasons were recorded not only on the basis of the statement recorded during the survey operation but also on the basis of the diary belonging to the assessee, reflecting the unrecorded cash transactions recovered from the premises of the company in which the assessee is a director. Thus, we are of the view that the assessing officer has formed the opinion based on the documents not on the statement recorded during survey which is sufficient enough for initiating the proceedings under section 147 of the Act.

8.1 Regarding the 2nd controversy whether the approval was obtained under section 151 of the Act in a mechanical manner, in this regard we disagree with the contention of the assessee. The Hon'ble Gujarat High Court in the case of *Baldevbhai Bhikhabhai Patel vs. DCIT* (supra) has held as under:

> ***14.*** *This Court, in the case of Lalita Ashwin Jain (supra), in the context of such requirement, had made the following observations;*
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> > *"17.4 However, so as to aver such allegations of non-application of mind all that is desirable is that the Joint Commissioner should briefly state his reasons. However, only because he has nodded in favour of Assessing Officer by writing 'yes' to the reasons recorded and accorded permission for reopening of the assessment, the notice of reopening of that count alone cannot fail holding that the assumption of jurisdiction under Section 147 is invalid, if application of mind is demonstrable from the material on record. From the record, it emerges that the reasons recorded were placed before the Assistant Commissioner along with other details in prescribed format. It was only after perusing such details that the Assistant Commissioner agreed that it was a fit case for issuing notice u/s.148 of the Act. Thus, this is not a case where such permission can be stated to have been granted without application of mind. We are satisfied from the overall facts and circumstances that the provisions of the Act are duly complied with in the action of the Joint Commissioner."*
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> ***15.*** *In the result, the petition is dismissed.*

8.2 In the present case the joint commission has recorded the satisfaction as detailed below:

> *"Yes, I am satisfied on the reason recorded by the AO that it is a fit case for the issue of notice under section 148 of the IT Act"*

8.3 In view of the above, we hold that the approval granted under section 151 of the Act is a valid approval in the light of the judgement of Hon'ble Gujarat High Court in the case of Shri Baldevbhai Bhikhabhai Patel as discussed above. Thus,

we do not find any infirmity in the initiation of the assessment framed under section 147 of the Act. Hence, the ground of appeal of the assessee is hereby dismissed.

8.4 Coming to the issue raised by the assessee on merit challenging the addition of Rs. 1.5 Lakh made on account of unaccounted investment.

8.5 The Facts in brief are that during the survey proceedings dated 09-12-2014 at the premises of M/s Bhavani Energy Solutions Pvt. Ltd wherein the assessee is director, a diary belonging to assessee was found. The page no. 78 of the impugned diary was containing detail of payment against purchase of Flat and shop in Avadh Residency for Rs. 33 lakh purchased by the assessee and his brother Shri Chandresh Nanjibhai Bhayani. Out the said payment, an amount aggregating to Rs. 18 lakh was made in cash during the A.Ys. 2010-11 to 2012-13. Out total cash payment of Rs. 18 lakh an amount of Rs. 3 lakh was made in the year under consideration i.e. A.Y. 2010-11. During the assessment, the question was raised by the AO to the assessee but the assessee failed to make any reply. Thus, the AO in absence of any explanation made the addition of Rs. 1.5 lakh to the total income of the assessee.

9. Aggrieved assessee preferred an appeal before the ld. CIT-A who confirmed the order of the AO.

10. Being aggrieved by the order of the ld. CIT-A, the assessee is in appeal before us.

11. At the outset, the ld. AR before us submitted that he has been instructed by the assessee not to press this ground of appeal raised on merit on account of smallness of the amount involved in dispute. Accordingly, we dismiss the ground of appeal raised by the assessee on merit as not pressed.

11.1 In the result, the appeal filed by the assessee is hereby dismissed.

Coming to ITA No. 33/RJT/2020 for A.Y 2013-14 in case of Shri Girishbhai Nanjibhai Solanki

12. The assessee has raised following grounds of appeal:

Learned AO has erred in law and well as on facts in making addition on account of failure to prove genuineness of transaction of Rs.1,00,000/- u/s.68 and the CIT(A) had not considered the contention that the addition to be deleted. The same should be deleted.

Appellant craves leave to add, amend, alter or withdraw any grounds of appeals.

12.1 The assessee has vide application dated 23rd December 2022 pleaded before us for admitting the additional ground of appeal which reads as under:

1 . The appellant most respectfully prays before the Hon'ble Income Tax Appellate Tribunal, Rajkot to allow the following additional ground of appeal to be raised in the above matters:

Ground no. 1 "That, the order passed u/s** 143(3) **of the I. T. Act, 1961 is bad-in-law since the notice u/s 148 of the Act is issued after issuing notice** u/s 143(2) **of the Act and once notice is issued u/s 148 of the Act, the proceedings** u/s 143(2) **of the Act is tereminated. "

2. This ground goes to the root of the matter and it is a legal ground as to the validity of the reassessment.

3. The legal ground can be taken up at any stage . in this regards reliance is placed on decision of Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC).
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4. In view of above, the appellant therefore makes this prayer to allow to raise this additional ground of appeal with a further prayer that the same may kindly be adjudicated upon.

13. Since the issue raised by the assessee in the additional ground of appeal is legal in nature and goes to the root of the matter, we, after considering the rule of law laid down by the Hon'ble Supreme court in this regard in the case of National Thermal Power Co. Ltd vs. CIT reported in 229 ITR 383, hereby allow the same.

14. The issue raised by the assessee in the additional ground of appeal are with regard to the validity of assessment order framed under section 143(3) of the Act therefore, first we proceed to the adjudicate the additional grounds of appeal.

15. The fact in brief are that the assessee for the year under consideration furnished return of income under section 139 of the Act declaring total income at Rs. 9,41,230/. Subsequently, the return of the assessee was selected for scrutiny assessment by issuing notice under section 143(2) of the Act dated 10-09-2014. Finally, the income of the assessee was assessed at Rs. 10,41,230/- vide order under section 143(3) of the Act dated 30-03-2016.

16. On appeal by the assessee, on the merit of the addition the learned CIT(A) confirmed the addition made by the AO.

17. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us and challenged the validity of the assessment under section 143(3) of the Act.

18. The learned AR before us submitted that while the proceedings under section 143(3) of the Act were in progress, the notice under section 148 of the Act has been issued which implies that all earlier proceedings should come to an end and the proceedings under section 147 of the Act afresh should begin. But despite the fact that the proceedings under section 147 of the Act were initiated, the assessment has been frame under section 143(3) of the Act on the basis of notice issued under section 143(2) of the Act before the issue of notice under section 148 of the Act which is against the provisions of law.

19. On the other hand, the learned DR contended that the assessment was framed under section 143(3) of the Act and the proceedings initiated under section 148 of the Act were subsequently dropped. Therefore, it cannot be said that there were 2 simultaneous proceedings for the same assessment year.

20. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, while the proceedings under section

143(3) were going on/in process, the notice under section 148 of the Act dated 17-08-2015 was issued by the AO for the same assessment year. It is the settled provisions of law there cannot be 2 assessments for the same assessment years simultaneously as held by the Hon'ble Gujarat High Court in the case of Marwadi Shares and Finance Ltd. vs. DCIT reported in 94 taxmann.com 398.

20.1 Coming to the case on hand, admittedly there were proceedings which were going on under the provisions of section 143(3) of the Act when the notice under section 148 of the Act was issued dated 17-08-2015. But undeniably such initiation of the proceedings under section 147 of the Act were subsequently dropped and the assessment was finally framed under section 143(3) of the Act. Thus, it cannot be said that there were 2 proceedings or 2 assessments framed by the AO simultaneously for same assessment years. Undeniably the assessment was framed under section 143(3) of the Act and no material was brought on record by the learned AR of the assessee at the time of hearing that there was also the assessment framed under section 147 of the Act. Thus, we are not inclined to persuade ourselves with the contention of the learned AR for the assessee. Hence, the contention raised by the assessee is hereby dismissed.

20.2 Coming to the issue involved in the ground raised by the assessee on merit against the addition of Rs. 1 lakh under section 68 of the Act.

20.3 The facts in brief are that during the survey proceedings dated 09-12-2014 at the premises of M/s Bhavani Energy Solutions Pvt. Ltd wherein the assessee is director, a diary belonging to assessee was found. The page No. 119 of the impugned diary was containing detail of cash payment of Rs. 4.55 lakh to one Shri Sumit Mishra on different dates. Out the said payment one payment of Rs. 1 lakh dated 01-05-2012 pertaining to the year under consideration.

20.4 The assessee during the assessment submitted that the cash was given to him by one of his friend namely Shri Bhupat Thakarshibhai Kumbhani to send the

same to Shri Sumit Mishra (Indore) which he sent with the help of angadiya. The assessee in this respect furnished confirmation letter of Shri Bhupat Thakarshibhai Kumbhani.

20.5 However, the AO held that the assessee not furnish any other detail such as ITR, bank statement, detail of credit worthiness etc with regard to his contention except confirmation letter which is not sufficient to explain the source of such cash payment. The AO also found that the assessee came with above said explanation in response to final show cause notice. As such the assessee has not submitted any explanation or detail either before the ADIT or during initial stage of assessment which suggest that the explanation of the assessee is afterthought. Hence, the AO treated cash of Rs. 1 lakh as unexplained income of the assessee for the year and added to his total income.

21. On appeal by the assessee, the learned CIT(A) also confirmed the addition made by the AO by observing as under:

> *In the diary found during survey there were entries of payments to Shri Sumit Mishra of Indore. The total amount paid to him was Rs. 4,55,000/- falling in 3 Assessment years (Rs. 1,55,000/- in AY 2011-12, Rs. 2,00,000/- AY 2012-13 and* ***Rs. 1,00,000/- AY 2013-14).*** *During assessment the assessee contended that these payments were actually sent to Shri Surnit Mishra by Shri Bhupat Kumbhani through Angadia. It was contended that assessee had simply facilitated these transfers on behalf of Shri Bhupat Kumbhani. The assessee also filed an affidavit of Shri Bhupat Kumbhani wherein he claimed that he had sent this amount to Shri Sumit Mishra token money of property purchased through Shri Girishbhai. Having considered the facts and circumstances of the case, I find that no such claim was made during survey proceedings. Besides, neither the identity of Shri Sumit Mishra has been established nor the property which was proposed to be purchased has been identified. This is also noteworthy that the dates of payments as per the affidavit are as under:-*
>
> | *Dates* | *Payments* |
> |---|---|
> | *03.05.2011* | *1,00,000/-* |
> | *12.05.2011* | *1,45,000/-* |
> | *21.05.2011* | *2,00,000/-* |
> | *01.05.2011* | *1,00,000/-* |
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> *It can be seen that while in affidavits of the payments are stated to have been made in May 11, in the Diary, the payment have been made in various years. Therefore, the affidavit and the averments therein are not reliable. The contention of the assessee are rejected and* ***the*** *addition of Rs.1,00,000/-* ***is confirmed.***

22. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

23. At the outset, the ld. AR before us submitted that he has been instructed by the assessee not to press this ground of appeal raised on merit on account of smallness of the amount involved in dispute. Accordingly, we dismiss the ground of appeal raised by the assessee on merit as not pressed.

23.1 In the result, the appeal filed by the assessee is hereby dismissed.

Coming to ITA No. 28/RJT/2020 for A.Y 2015-16 in case of Shri Girishbhai Nanjibhai Solanki

24. The assessee has raised following grounds of appeal:

All the grounds mentioned below are independent and without prejudice to each other:
1. Learned AO has erred in law as well as on facts in making addition on account of unexplained investment made in Flat No 101, 201 and 401 amounting to Rs 15,80,000/- u/s 69 and the C/T(A) had not considered the contention that the addition to be deleted.

2. Learned AO has erred in law as well as on facts in making addition made on account of unexplained investment for the purchase of auto rickshaw amounting to Rs 65,000/- u/s 69 and the CIT(A) had not considered the contention that the addition to be deleted.

3. Learned AO has erred in law as well as on facts in making addition on account of rent receipts amounting to Rs 2,46,000/- u/s 69 and the CIT(A) had not considered the contention that the addition to be deleted.

Appellant craves leave to add, amend, alter or withdraw any grounds of appeals.

24.1 The assessee has vide application dated 23rd December 2022 pleaded before for admitting the additional ground of appeal which reads as under:

1. The appellant most respectfully prays before the Hon'ble Income Tax Appellate Tribunal, Rajkot to allow the following additional ground of appeal to be raised in the above matters: ***Ground no. 1 "That, the Ld. AO has wrongly reopened assessment*** *u/s* ***148 of the I.T. Act."***

2. This ground goes to the root of the matter and it is a legal ground as to the validity of the reassessment.

3. The legal ground can be taken up at any stage , in this regards reliance is placed on decision of Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC).

> *4. In view of above, the appellant therefore makes this prayer to allow to raise this additional ground of appeal with a further prayer that the same may kindly be adjudicated upon.*

25. Since the issue raised by the assessee in additional ground of appeal is legal in nature and goes to the root of the matter, we, after considering the rule of law laid down by the Hon'ble Supreme court in this regard in the case of National Thermal Power Co. Ltd vs. CIT reported in 229 ITR 383, hereby allow the same.

26. The issue raised by the assessee vide additional ground of appeal is that the assessment order under section 143(3) r.w.s 147 of the Act is bad in law for the reason that same was framed without proper approval under section 151 of the Act and without having issued valid notice under section 143(2) of the Act.

27. The facts in brief are that the income escapement proceedings under section 147 of the Act were initiated in the case of assessee by issuing notice under section 148 of the Act dated 26-03-2017. Thereafter, the AO framed the assessment under section 147 r.w.s. 143(3) of the Act vide order dated 30-12-2017 after making certain additions to the total income of the assessee.

28. The assessee, preferred an appeal before the learned CIT(A) against the addition made by the AO on merit. However, the appeal of the assessee was dismissed by the learned CIT(A) for the reason that the assessee failed to appear during the appellate proceeding.

29. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us and filed additional ground of appeal by challenging the validity of the assessment.

30. The learned AR for the assessee before us contended that the appellant assessee in response to notice under section 148 of the Act dated 26-03-2017 vide letter dated 22-06-2017 submitted that the original return filed under section 139

of the Act, should be treated as return filed under section 148 of the Act. It is well settled position of law that the AO to acquire the jurisdiction to assess the income of the assessee was required to issue notice under section 143(2) of the Act within the time limit prescribed. The provision of section 143(2) uses the phrase "if considers it necessary or expedient", and on expression "considers it necessary". That means that the AO before issue of notice under section 143(2) of the Act is required to apply his mind on the return filed and reach to conclusion that whether it necessary or expedient to verify the correctness of income declared therein. However, the AO in the case on hand issued notice on the same day of filing of return of income i.e. 22-06-2017 which transpires that the AO issued notice under section 143(2) of the Act in haste and without application of mind i.e. in violation of procedure mandated under the provisions of the Act. Hence, the notice issued under section 143(2) of the Act was invalid. Therefore, the AO was not having valid jurisdiction to pass the assessment order in the absence of valid notice under section 143(2) of the Act. The learned AR in support of his contention relied on various case laws which are kept on record.

30.1 The learned AR also contended that the additional Commissioner of income tax has granted approval under the provisions of section 151 of the Act in a mechanical manner.

31. On the other hand learned DR before us contended that assessee has not filed return of income in response to notice issued under section 148 of the Act. As the assessee vide letter dated 22-06-2017 only stated that the original return filed under section 139 of the Act to be treated as return of income under section 148 of the Act. The AO on the basis of original return has already reached to the believe that there was income escaped to assessment. Hence the argument of the learned counsel for the assessee that the AO has not applied his mind on the return furnished before issuing notice under section 143(2) of the Act is not sustainable.

31.1 The learned DR further contended that there was proper approval given by the additional commissioner of Income Tax vide letter dated 22-03-2017 which is placed on pages 16 of the paper book.

32. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee was required to file the income tax return in response to the notice issued under section 148 of the Act. However, the assessee in response to the notice issued under section 148 of the Act has submitted that the return originally filed under the provisions of section 139 of the Act may be treated as a return under section 148 of the Act. To this effect, the assessee has filed the letter dated 22-06-2017 and on the same date, the AO has issued the notice under section 143(2) of the Act. Thus, it was alleged by the assessee that the notice under section 143(2) of the Act has been issued without considering whether it necessary or expedient to verify the income declared in the return as provided under the provisions of the section 143(2) of the Act. Thus, it was alleged that the notice issued under section 143(2) of the Act is invalid and consequentially the assessment framed under section 147 of the Act is also not sustainable under the provisions of law. The learned AR to buttress his argument has relied on several judgements placed in the paper book.

32.1 We have gone through all the judgements relied upon by the learned AR appearing on behalf of the assessee and found that the facts of the case referred in those judgements viz a viz facts of the case referred in the case on hand are distinguishable. In all those judgements, a return was filed in response to the notice issued under section 148 of the Act except in one case namely Micron Enterprises Pvt Ltd. Vs. ITO of Delhi Tribunal bearing ITA No. 901/DEL/2016, the facts of which are matching with the facts of the case of the assessee except one distinguishing feature. The tribunal while passing the order has made reference to the judgement of Hon'ble Delhi High Court in case of DIT vs. Society for Wordwide Interbank Financial Telecommunication, the facts of which were not similar to the facts of the case of the assessee on hand. As such in the case of the Hon'ble Delhi

High Court, there was return filed in response to the notice issued under section 148 of the Act. Considering the return filed under section 148 of the Act, it was held that the notice cannot be issued under section 143(2) of the Act on the same date on which the return under section 148 of the Act was filed. If it is done so, it is proved that there was non-application of mind. However, in the case on hand there was no return filed in response to the notice issued under section 148 of the Act. Accordingly, we hold that none of the case cited by the learned AR for the assessee supports the contention of the case of the assessee.

32.2 Without prejudice to the above, it is also important to note that the AO while forming the reasons to believe has duly referred the return filed by the assessee under the provisions of section 139 of the Act. The relevant portion of the reasons recorded is placed at page 13 and 14 of paper book.

32.3 Thus, from the above it is evident that the AO has already applied his mind on the return filed under section 139 of the Act and there was no separate return filed by the assessee in response to the notice issued under section 148 of the Act. Hence, there was no occasion/ reason for the AO to verify the return of income filed under section 139 of the Act, once the same return has been treated a return filed under section 148 of the Act. Thus, we are not convinced with the contention of the learned AR for the assessee.

32.4 The next contention of the learned AR is that there was no application of mind by the joint Commissioner while granting approval under the provisions of section 151 of the Act. We disagree with the contention of the learned AR for the assessee. It is for the reason that the learned additional Commissioner of income tax vide letter dated 23-03-2017 has granted proper approval for initiating the proceedings under section 147 of the Act. The copy of the letter is placed on pages 16 of the paper book. Thus, it cannot be said that there was no application of mind. Hence, the additional ground raised by the assessee is dismissed.

32.5 On merit of the case, we note that there was no appearance before the learned CIT(A) from the side of the assessee. Therefore, the learned CIT(A) confirmed the order of the AO ex-parte to the assessee. In our considered view the assessee after filing the appeal before the learned CIT(A) should pursue the matter and cooperate and furnish the necessary details in support of his contention. The assessee should be vigilant enough by keeping the record of the date of hearing before the learned CIT(A) for the purpose of necessary compliance. Be that as it may be, in the interest of justice and fair play we are inclined to give one more opportunity to the assessee to place his points of contention before the learned CIT(A) afresh and without delay. Hence, we set aside the issue to the file of the learned CIT(A) for fresh adjudication as per the provisions of law. Thus, the ground of appeal of the assessee on merit is allowed for the statistical purposes.

33. In the result the appeal filed by the assessee is allowed partly for the statistical purposes.

34. In the combined results the appeals filed by the assessee bearing ITA Nos. 30 & 33/Rjt/2020 for A.Y. 2010-11 & 2013-14 are dismissed whereas the appeal of the assessee bearing ITA No.28/Rjt/2020 for A.Y.2015-16 is partly allowed for the statistical purposes.

Order pronounced in the Court on 29/03/2023 at Ahmedabad.

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 29/03/2023
Manish, Sr. PS