IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.799 & 800/Del/2020
[Assessment Year : 2008-09 & 2009-10]

Ballu Singh, H.No.415, Sec-22, Gurgaon, Haryana-122016. ***PAN-ARBPS7573G***	vs	ITO, Ward-65(5), New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Shri N.K.Ishwar & Shri Anjani Kumar Singh, Adv.
Respondent by	Shri Om Parkash, Sr. DR
Date of Hearing	27.04.2023
Date of Pronouncement	15.05.2023

ORDER

PER KUL BHARAT, JM :

These two appeals filed by the assessee for the assessment years 2008-09 and 2009-10 are directed against the different orders of Ld. CIT(A), Delhi, both dated 06.12.2019. Since identical grounds have been raised, both appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.799/Del/2020 [Assessment Year : 2008--09]

2. First, I take up ITA No. 799/Del/2020 assessee's appeal pertaining to Assessment Year : 2008-09. The assessee has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the reopening of the assessment proceedings uls 148 of the Act as a valid proceedings though the notice u/s 148 of the Act was issued by the Assessing Officer who did non hold jurisdiction (either territorial or class of person) over the appellant.*

2. *That the notice u/s 148 of the IT Act dated 30103/2015 is bad in law and without jurisdiction in as much as there was no cogent material or evidence on record to form reason to believe that any income of the assessee, for the concerned assessment year has escaped assessment. The information received (AIRICIB information) in itself was insufficient and could not be cogent material to assume a valid jurisdiction u/s 147/148 of IT Act. Learned CIT(A) turned down the submission of the assessee without looking in to the detail.*

3. *That the learned Commissioner of Income tax (A) further erred in law in deciding the appeal on merits only without appreciating the fact that notice u/s 143(2) of the Act was neither issued nor served on the assessee whereas it is being a mandatory requirement before passing any order u/s 143(3)1147 of the Act, assessment order passed without issue of such notice deserves to be quashed as failure to issue notice u/s 143(2) render the reassessment void.*

4. *That the learned CIT(A) has erred both on facts and law by upholding the impugned addition u/s 69A of the Act, failing to appreciate that provisions of section 44AF of the Act is presumptive and assessee is not required to maintain books of account an records and further failed to appreciate that the Ld. AO had not summoned the employee of the assessee who were named during assessment proceeding.*

5. *That the learned CIT(A) has erred both on facts and law by upholding the impugned addition u/s 69A of the Act, failing to appreciate that verification letter under provisions of section 133(6) of the Act were sent after a long period of time and held assessee responsible for return of letter as well as non-response.*

Without prejudice to above

6. *That the learned CIT(A) has erred both on facts and law by upholding the addition of Rs. 15,31,500/- u/s 69A of the Act*

without appreciating the facts that Rs. 14,80,750/- has been withdrawn during the concerned period.

7. *That in any case, the impugned assessment has been framed in violation of the principles of natural justice without granting to the assessee a fair, proper and reasonable opportunity to the instant case. "*

3. Apart from these grounds, Ld. Counsel for the assessee raised **two additional grounds** which read as under:-

1. *"That on the facts and circumstances of the case, the notice u/s 148 dated 29/03/2016 issued by Ld. AO, Ward 65(5), New Delhi is invalid and without jurisdiction as the said notice was issued by non-jurisdictional assessing officer. The Ld. AO, Ward 65(5), New Delhi did not have jurisdiction over the assessee as per provisions of the law and the related Notification No. 70/2014 dated 13/11/2014 (applicable from 15/11/2014) and thus, the assessment order framed u/s 144/147 of the Act pursuant to such invalid notice is bad in law and void-ab-initio and liable to be quashed.*

2. *That on the facts and circumstances of the case, the Ld.AO has erred in law while issuing notice u/s 143(2) of the Act, (on 08/11/2016, that is the day of filing of ITR in response to notice u/s 148 and notice u/s 143(2) handed over to AR of the assessee), which is issued in gross violation of the scheme of section 143(2) and thus the assessment order passed by the Ld. AO liable to be quashed in view of the decision of Hon'ble Jurisdictional High Court (Delhi) in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249."*

4. Facts giving rise to the present appeal are that the Assessing Officer ("AO") was having information regarding cash deposited by the assessee in his bank account. The case of the assessee was re-opened for the assessment u/s

147 of the Income Tax Act, 1961 ("the Act"). Thereafter, the AO framed the assessment vide order dated 29.03.2016 and the income was assessed at Rs.16,89,866/- u/s 147 r.w.s. 143(3) of the Act. Thus, he treated the cash deposited in bank account as unexplained income of the assessee, even without giving set off of cash withdrawal by him.

5. Aggrieved against the action of the AO, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee and confirmed the addition made by the AO.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Apropos to **Ground Nos. 1 to 3** raised by the assessee, are against the validity of the re-opening and framing of the assessment u/s 147/143(3) of the Act.

8. Ld. Counsel for the assessee reiterated the submissions as made in the written submission. The relevant contents of the written submission are reproduced as under:-

> ***BRIEF FACTS OF THE CASE:***
>
> *1. "Assessing Officer (AO), Ward 65(1), New Delhi received AIR/CIB data regarding cash deposit of Rs. 15,31,500/- in saving account of the assessee during the F.Y. 2007-08 i.e. AY 2008-09. Non statutory query letter issued but not served on the assessee and thus not responded. Hence, notice u/s 148 dated 30/03/2015 issued by AO which was not served upon the assessee as assessee is not living on the address mentioned in the notice(s).*
>
> *2. Subsequently, notices u/s 142(1) was issued and again not served upon the assessee. Notice u/s 142(1) of the Income Tax Act, 1961 issued*

on 08/07/2015 at the correct address i.e. H.No. 415, Sector-22, Gurgaon, Haryana- 122001 were served on the assessee for the first time and when the notice was pursued through Authorised Representative (AR) as regards limitation on issue of notice beyond six years, letter from the AR has not been put on record by assessing officer and asked to file Return of Income for the AY 2008-09.

3. Assessee collected all the relevant documents from several places and filed his return of income on 07/12/2015 declaring income of Rs. 2,69,166/- which includes income from Salary, Business and income from other sources e.g. interest. After filing of Return of Income with Income Tax Officer, Ward 65(1), New Delhi, the Assessing Officer (Income Tax Officer) transferred the Return of Income along with other document such as notices issued till date, proceeding sheet etc. (assessment folder) to Income Tax Officer, Ward 65(5), New Delhi on the date not mentioned in transfer memo citing the reason for such transfer under remark column as "The assessee is retired employee of Delhi Police, therefore, the jurisdiction of the case lies with Ward 65(5)".

4. Reasons recoded for opening of case was sought from AO Ward 65(5) and received on 04/01/2016 and objection was filed vide letter dated 10/02/2016 with regards to jurisdiction and reason to believe with respect to issue of notice u/s 148 of the Act, which was disposed of by the AO, Ward 65(5), New Delhi arbitrarily ignoring the decision of the Hon'ble Apex Court, High Courts and Jurisdictional ITAT and proceeded with assessment.

5. On the basis of documents furnished by the assessee such as Form 16, bank statements, interest certificate and copy of invoices, AO has chosen to issue notice u/s 133(6) of the Act in two cases and one of them returned back on 10/03/2016 while other was not replied but on 08/03/2016 (two days prior the letter issued u/s 133(6) got returned back) issued a final show cause notice u/s 142(1) fixing date for 11/03/2016 for FINAL HEARING proposing addition of cash deposit in bank as undisclosed income u/s 69 A of the Act.

6. The AO committed the error of law by adding the sum of Rs. 15,31,500/- without waiting for reply (and returned post), which has resulted in non-application of the judicial mind prejudicial to the interests of the Appellant. The act of aforesaid addition of Rs. 15,31,500/- is arbitrary ignoring jurisdiction, reasons, submission of assessee (letter) and other evidences which were available on record.

7. The matter was finally discussed on 11/03/2016 (on scheduled date) with AR of the assessee and assessment was completed except issue of assessment order. AO has not issued notice u/s 143(2) and the facts came in our knowledge when the file was inspected by counsel of the assessee and the matter is agitated before First Appellate Authority, who on the basis of remand report received from AO turned down the issue whereas no such notice has ever seen on the record.

8. The assessee vide his letter dated 04/01/2016 while requesting for reasons to believe cited the guidelines as pronounced by Hon'ble Delhi High Court in the case of CIT (Central)-1 Vs. Chetan Gupta decided on 15/09/2015 and stated that notice u/s 142(1) could not be issued unless and until a prior notice u/s 143(2) or 148 is issued. Service of notice upon assessee is a jurisdictional requirement and that must be mandatorily complied with. Notice u/s 143(2) has not been issued by the Ld. AO and this fact is confirmed by the counsel of the assessee who inspected the assessment file and later on re-confirmed by the Learned CIT(A)-XXI (who was looking the matter in appeal prior to disposal by Ld. CIT(A)-XXXV) in our presence, who turned each and every page of the assessment file, one by one, but did not find the copy of notice u/s 143(2).

GROUNDS:

This appeal contains as many as 7 (seven) grounds including legal grounds on the matter of jurisdiction (Ground-1), reasons to believe (ground- 2) and non- issue of notice u/s 143(2) of the Act (Ground- 3). A brief facts of all the legal grounds is mentioned hereunder for your perusal, and our detailed submission will follow on each and every grounds of appeal.

Ground -1 (Related to jurisdiction of AO)

1.1 Notice u/s 148 of the Act is issued by AO, ward 65(1), New Delhi. Upon filing of the Return of Income with AO, ward 65(1), New Delhi on 07/12/2015, case is transferred to AO, Ward 65(5), New Delhi with mention on transfer memo (paper book page no. 10) citing the reason under remark column as "The assessee is retired employee of Delhi Police, therefore, the jurisdiction of the case lies with Ward 65(5)". When objected on the matter of jurisdiction during assessment, the Ld. AO replied that she has assumed jurisdiction on the basis of PAN jurisdiction. There is no such concept of PAN jurisdiction under the law and learned CIT (A) has erred in confirming the order passed by the Ld. AO.

1.2 Exactly the similar matter is already considered by this Hon'ble Appellate Tribunal in the case of Mukesh Kumar Vs. ITO (ITAT Delhi, "E" Bench), I.T.A. No. 2358/Del/2012, [Assessment Year : 2004-2005] Date of pronouncement: 12.06.2015, (Paper book page no. 83-86), where notice u/s 148 was issued by AO, Ward 26(4), New Delhi and the file was transferred to AO ward 26(3), New Delhi who was having valid jurisdiction and assessment order was passed by AO ward 26(3), New Delhi. The Hon'ble ITAT has quashed the assessment proceeding since there was no valid notice pursuant to which assessment was made. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law.

1.3 The case of Mukesh Kumar Vs. ITO (supra) is squarely applicable in the present case and hence the assessment proceeding, as the notice u/s 148 issued by non-jurisdictional AO [Ward, 65(1), New Delhi], is liable to be quashed because the notice is invalid and assessment so made without issue of fresh notice u/s 148 from AO [Ward, 65(5), New Delhi] having jurisdiction, is non est in law.

Ground -2 (Related to Reason to Believe)

2.1 Notice u/s 148 dated 30/03/2015 is issued merely on the basis of AIR information. Except AIR information, Ld. AO had nothing in his

possession to make a belief as to escapement of income. Even bank statement of the assessee was obtained by issuing letters u/s 133(6) dated 21/12/2015 to the concerned banks. Bank statement has been printed on 28/12/2015 by bank namely Oriental Bank of Commerce (OBC) (paper book page no. 56-60) & Axis Bank Limited (paper book page no. 61-65)] and on 02/01/2016 by SBI (paper book page no. 51-55)] and later on furnished to the Ld. AO'. Obviously, there was no tangible materials in the possession of Ld. AO on the basis of which he makes a belief as to escapement of income. Reasons recorded by the Ld. AO (Paper book page no. 5-6) is reproduced hereunder:

> *"This office is in receipt of AIR information for the F.Y. 2007-08 in the case of Assessee. It is observed that the assessee has deposited cash amounting to Rs. 15,31,500/- in his saving bank account during the period.*
>
> *Vide letter dated 26.02.2015 and 12.03.2015 respectively the assessee was asked to furnish necessary details/documents so that the source of cash deposit may be examined but the assessee neither attended nor furnished the details as asked for. Moreover, the assessee has not filed his ITR for the year under consideration.*
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> *In view of the above, I have reason to believe that the amount of cash deposit of Rs. 15,31,500/- have escaped assessment within the meaning of section 147 of the IT Act, 1961. Moreover, it is quite possible that any other income may also have escaped assessment and hence issue of notice u/s 148 becomes inevitable to bring the income that has escaped assessment under the ambit of assessment."*

2.2 Facts of the present case is similar to one decided by this Hon'ble Tribunal in Bir Bahadur Singh Sijwali Vs. Income Tax Officer Ward (1), Haldwani (ITAT Delhi) I.T.A. No.: 3814/Del/11 dated 20.01.2015 (paper book page no. 103-108) and later on followed in number of cases including Harmeet Singh Vs. Income Tax Officer, [order dated 10.02.2017, ITA No. 1939/Del/2016, (paper book page no. 109-121)] and Shri Mahavir Prasad

Vs Income Tax Officer [ITA 924/DEL/2015, order dated 09/10/2017, (paper book page no. 122-131)], in all the cases, the Learned Tribunal has observed that there is no nexus or live link between the material which had come to the notice of the Assessing officer, and the formation of his belief that there was escapement of income by the assessee which may be assessable to tax. In all the above cases, opening of assessment u/s 148 has been questioned on the basis of invalid reason to believe and appeal has been allowed to assessee.

2.3 The Hon'ble jurisdictional Delhi High Court in case of Pr. CIT Vs. Meenakshi Overseas (395 ITR 677) (paper book page no. 132-141) has held that reasons recorded without independent application of mind, without tangible material, where link between the tangible material and formation of belief is missing, cannot be sustained.

2.4 In view of the facts and circumstances of the present case and the proposition of the law as settled in cases relied upon (mentioned above), we request your honour to quash the assessment so made on the basis of invalid notice u/s 148 of the Act.

Ground -3 (Related to Non-issue of Notice u/s 143(2))

3.1 Notice u/s 143(2) of the Act has neither been issued nor served in this case before completion of the assessment. This fact can be verified with the assessment order itself where there is no mention about issue of notice u/s 143(2). Further, order sheet maintained by the Ld. AO (paper book page no. 36-40) has confirmed the same. There is no mention about issue of notice u/s 143(2) on the order sheet of the Ld. AO whereas issue of notice u/s 142(1) is mentioned there on several times. Notice u/s 143(2) has not been issued by the Ld. AO at all and this fact is confirmed by the counsel of the assessee who inspected the assessment file (record) after completion of the assessment (request letter at paper book page no. 35) and when the matter was agitated before Learned CIT (A)- XXI (who heard the appeal in detail prior to disposal by Ld. CIT(A)-XXXV), the Learned CIT(A)-XXI, in our presence, turned every single page of the assessment file, one by one, but did not find the copy of notice u/s 143(2). However,

learned CIT (A)- XXXV, who disposed of the first appeal, has grossly erred while passing appellate order has mentioned that the notice u/s 143(2) has been issued on 08/11/2016 (para 4.6.1 of order) after filing of return of income (in our opinion, without giving proper attention to assessment file). If the date mentioned by the Ld. CIT(A) is believed to be true, how can it be possible, whereas assessment order was passed by Ld. AO on 29/03/2016 i.e. much prior to the date of issue of notice u/s 143(2). A RTI application has been filed in this respect and copy of the notice issued u/s 143(2) is requested to be furnished but, reply is still awaited which can be produced once received from the authority.

3.2 The Hon'ble Supreme Court in the case of ACIT Vs. Hotel Blue Moon, [(321 ITR 362) (paper book page no. 159-165)], has held that the requirement to issue notice under Section 143(2) was mandatory. It was not "a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."

3.3 In the present case, the notice u/s 143(2) has not been issued by Ld. AO (emphasis supplied) as no such notice was seen by the counsel of the assessee who inspected the assessment file after completion of assessment and later on re-confirmed by the CIT(A)- XXI in our presence. Hence, following the decision of the Supreme Court in ACIT Vs. Hotel Blue Moon (supra) and the jurisdictional Hon'ble Delhi High Court in PR. Commissioner of Income Tax vs. Silver Line [(383 ITR 455), (paper book page no. 166-174) Alpine Electronics Asia Pvt. Ltd. Vs. DCIT (341 ITR 247), CIT vs. Shri Jai Shiv Shankar Pvt. Ltd [(383 ITR 448), (paper book page no. 179-187)], Indus Tower Limited vs. CIT, judgment dated 29/05/2017, the hon'ble courts on various occasions has concluded that for completion of the assessment under Section 148 of the Act, compliance with the procedure under Section 143 (2) is mandatory, and if notice is not issued to the Assessee before completion of the re-assessment, then such reassessment was not sustainable in law and liable to be quashed.

3.4 Therefore, keeping in view the facts mentioned above and decisions of the Supreme Court in ACIT Vs. Hotel Blue Moon (supra) and

jurisdictional Hon'ble Delhi High Court in the cases mentioned above, we request your honour to quash the assessment as no notice u/s 143(2) was issued by the Ld.AO.

We have mentioned above, all the legal issues connected with this case in summary manner for your quick view. Please allow us to present the case in detail containing all the grounds of appeal. Our submission is as under:

Ground No. -1

"On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the reopening of the assessment proceedings u/s 148 of the Act as a valid proceedings, though the notice u/s 148 of the Act was issued by the Assessing Officer who did not hold jurisdiction (either territorial or class of person) over the appellant."

1.1 It is an established fact in this case that the impugned notice U/s 148 of the Income Tax Act, 1961 (paper book page no. 1) was issued by Ld. AO, Ward 65(1), New Delhi whereas Assessment Order u/s 143(3) of the Act was passed by Ld. AO, Ward 65(5), New Delhi i.e. Assessing Officer issuing the notice and passing the assessment order is not the same. Jurisdictional Assessing Officer in the instant case is Ld. AO, Ward 65(5), New Delhi who have passed Assessment Order u/s 143(3) whereas Notice u/s 148 was issued by non-jurisdictional Ld. AO, Ward 65(1) New Delhi. It is the Ld. AO, Ward 65(1) who makes a belief to reason for opening of assessment u/s 147 of the Act. Further, assessment order was passed without issue of fresh notice u/s 148 of the Act by the jurisdictional AO, Ward 65(5), New Delhi.

1.2 Section 148 mandates issue of notice before assessment, reassessment or computation of income u/s 147. As per section 148, it is mandatory that the Assessing Officer shall serve on the assessee a notice required him to furnish a return. The expression "Assessing Officer" used in the section 148 means 'the Assessing Officer vested with the jurisdiction over the assessee as stipulated in the definition u/s 2(7A), by virtue of the directions / orders passed u/s 120, sub-section (1) & (2)'. Thus, the notice u/s 148 is required to be issued by the Assessing Officer who is vested

with the jurisdiction over the assessee on the basis of the criteria of territorial area, a person or classes of persons, income or classes of incomes and cases or classes of cases as enumerated in sub-section 3 of section 120 of Income Tax Act.

1.3 As a matter of fact, PAN address of the assessee was of Delhi and the said notice issued by Assessing Officer, Ward 65(1), New Delhi. In this case, jurisdiction is vested with the Assessing Officer, Ward 65(5), New Delhi based on the class of person (Employed/retired with Delhi Police) and if territorial jurisdiction is ascertained as the assessee was also having business income (considering principal source of income and address available with the department as per PAN database), it fall under the jurisdiction of Income Tax Officer, Ward 33(3), New Delhi i.e. under Range- 33, New Delhi. Furthermore, as the assessee is residing in Gurgaon, Haryana at the time of issue of notice, Income Tax Officer at Gurgaon is vested with the jurisdiction over the assessee on the basis of territorial criteria. In any case, notice u/s 148 was not issued by jurisdictional Assessing Officer.

1.4 As per Notification No. 70/2014 dated 13/11/2014 (Paper book page no. 220-246) which is applicable from 15/11/2014, jurisdiction of the assessee was decided by that notification and relevant extract of the list/notification are reproduced to the extent applicable in the matter at hand:

New Jurisdiction of Income-tax in Delhi w.e.f. 15.11.2014	
B. Non- Corporate Charges	
i	For the purpose of jurisdiction of Non Corporate Charges (a) 'persons other than companies deriving income from sources other than income from business or profession and residing within the territorial area mentioned in column (4); (b) Persons other than companies deriving income from business or profession and whose principal place of business or profession is within the territorial area mentioned; in column (4) i.e., Municipal Wards of MCD of Delhi or other areas as mentioned.

ii	Cases or classes of cases has been defined as (a) All cases of persons referred to in corresponding entries in item (a) and (b) above other than: (i) Persons whose principal source of income is from salary. (ii) Persons falling under jurisdiction of Principal Commissioner / Commissioner of Income Tax, Delhi-21
iii	Jurisdiction over residual cases in respect of the entire NCT of Delhi including corporate and non- corporate cases lies with Pr. CIT/ CIT -3, New Delhi

Charge	Range/Assessment Unit	Jurisdiction (Alphabetical)
11. Pr. Commissioner/ Commissioner of Income Tax, Delhi-11	Range 33/ Ward 33(3)	Falling under ward name of Vasant Kunj under MCD and number is 171.
22. Pr. Commissioner/ Commissioner of Income Tax, Delhi-22	Range 65/ Ward 65(5)	All Employees/ Pensioners of following Ministries/Departments: 1. Delhi Police, DDA, NDMC

1.5. From the above table, as the assessee is an individual and employed with/pensioner of Delhi Police and hence jurisdiction fall under the Pr. Commissioner/ Commissioner of Income Tax, Delhi- 22, Range 65, Ward 65(5), New Delhi which have jurisdiction over the assessee considering salary as principal source of income. Hence by virtue of B(ii)22 in table given above, jurisdiction of the assessee is vested with Assessing Officer, Ward 65(5) New Delhi and not falling under the jurisdiction of Ward 33(3), New Delhi. After considering business income, jurisdiction will fall with Income Tax Officer, Ward 33(3), New Delhi.

1.6 Hence, the impugned notice u/s 148 under the Act which was issued by Ld. Assessing Officer Ward 65(1), New Delhi was without jurisdiction over the assessee which was further accepted and authenticated by department itself by way of transfer of the case from Ward 65(1) to Ward 65(5) with mention in remark column of TRANSFER MEMO (Paper book page no. 10) as "The assessee is retired employee of Delhi Police, therefore, the jurisdiction of the case lies with Ward 65(5)". Consequently, it is established beyond doubt that the jurisdiction lies with Assessing Officer, Ward 65(5), New Delhi and the impugned notice issued by Assessing Officer, Ward 65(1), New Delhi was without jurisdiction and

hence it is an invalid notice in the eye of law and assessment order passed by Ld. Assessing Officer, Ward 65(5), New Delhi pursuant to such notice is void-ab-initio.

1.7 While disposing off objection filed by assessee, Ld. AO passed an order (Paper book page no. 32-33) rejecting the objection as to jurisdiction by quoting that in absence of ITR, type of income can't be ascertained and hence PAN jurisdiction is treated as current jurisdiction and the learned CIT(A) has further erred in confirming the view of the Ld. AO in her appellate order knowing that there is no such concept of PAN jurisdiction under the Income Tax Act.

1.8 The expression "Assessing Officer" used in the section 148 means 'the Assessing Officer vested with the jurisdiction over the assessee as stipulated in the definition u/s 2(7A) by virtue of the directions / orders passed u/s 120, sub-section (1) & (2)'. Thus, the notice u/s 148 is required to be issued by the Assessing Officer who is vested with the jurisdiction over the assessee on the basis of the criteria of territorial area, a person or classes of persons, income or classes of incomes and cases or classes of cases as enumerated in sub-section 3 of section 120 of Income Tax Act. Further, it is settled position that where law has a clear provisions, matter should be decided by law itself and not by common sense or by giving the logic/argument suitable for him. Therefore, the Ld. AO has ignored the provisions of law and disposed of the objection of the assessee arbitrarily and learned CIT (A) has confirmed the arbitrary action of the AO which is not justified and also bad in law.

1.9 Once again we would like to mention the case decided by this Hon'ble ITAT in exactly similar matter in case of Mukesh Kumar Vs. ITO (ITAT Delhi, "E" Bench), I.T.A. No. 2358/Del/2012, [Assessment Year : 2004-2005] Date of pronouncement: 12.06.2015, (Paper book No. 83-86), where notice u/s 148 was issued by AO, Ward 26(4), New Delhi and file was transferred to AO ward 26(3), New Delhi who was having valid jurisdiction and assessment order was passed by AO ward 26(3), New Delhi. The Hon'ble ITAT has quashed the assessment proceeding since

there was no valid notice pursuant to which assessment was made. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act, therefore, the assessment made pursuant to such notice is bad in law.

We also rely on the decision of the hon'ble courts in following cases:

1. *CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.)*

   It was held by the Hon'ble Allahabad High Court that the notice issued by an Officer who had no valid jurisdiction for the assessee is invalid.

2. *(i) Smt. SmritiKedia Vs. Union of India and Others, [2011] 339 ITR 37 (Cal.)*

   (ii) Indorama Software Solution Ltd. Vs. Income Tax Officer, [2013] 29 taxmann.com 78 (Mumbai)

   In both cases, the hon'ble courts have held that "When it is apparent that the notice u/s 148 was issued by the AO who was not vested with the jurisdiction over the assessee then, the same is illegal and void. Consequently, the reassessment proceedings and order in pursuant to the illegal notice u/s 148 are also void ab initio and liable to be set aside. Hence, we hold that the reassessment on the basis of an illegal notice u/s 148 is not sustainable and accordingly the same is set aside."

1.10 The courts on several occasions have settled the issue of jurisdiction and accordingly, valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act, therefore, the assessment made pursuant to invalid notice is bad in law. The courts have consistently held that the precondition is jurisdiction conferring on the AO to reopen the assessment and their non-fulfilment renders the initiation itself ab-initio void.

1.11 The notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the

assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void.

In support of this proposition we rely upon the cases of Hon'ble Apex Court and other Hon'ble Courts in the cases of:

a) *Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC);*

b) *CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC);*

c) *CIT Vs. Robert, 48 ITR 177 (SC).*

d) *CIT v. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)*

e) *CIT v. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)*

f) *DR. (MRS.) K.B. Kumar vs. Income Tax Officer (2010) 131 TTJ (Del) 511*

g) *ITO vs. Krishan Kumar Gupta (2008) 16 DTR (Del)(Trib) (Paper book page no. 98-102)*

h) *Ranjeet Singh vs. Asstt. CIT (2009) 120 TTJ (Del) 517 (Del)(Trib)*

i) *Gk Business Centre (P) Ltd. Vs ITO Ward - 10(4), I.T.A. No.828 /DEL/2020. ((Paper book page no. 92-97)*

Ground -2

''That the notice u/s 148 of the IT Act dated 30/03/2015 is bad in law and without jurisdiction in as much as there was no cogent material or evidence on record to form a reason to believe that any income of the assessee, for the concerned assessment year has escaped assessment. The information received (AIR/CIB information) in itself was insufficient and could not be cogent material to assume a valid jurisdiction u/s 147/148 of IT Act. Learned CIT(A) turned down the submission of the assessee without looking in to the detail."

2.1 Neither notice u/s 148 nor the reasons recorded by the Ld. AO were provided voluntarily by the AO. Authorised Representative (AR) of the

assessee has requested Ld. AO for the same vide letter dated 04/01/2016 (Paper book page no. 14-16) citing the guidelines laid down by the Jurisdictional High Court of Delhi in the case of CIT Vs. Chetan Gupta, order dated 15.09.2015 and the decision of the Apex Court in case of GKN Driveshafts India Limited (259 ITR 19) and thereafter notice u/s 148 and the reasons recorded have been provided on 04/01/2016. Reasons recorded by the Ld. AO is reproduced hereunder:

> *"This office is in receipt of AIR information for the F.Y. 2007-08 in the case of Assessee. It is observed that the assessee has deposited cash amounting to Rs. 15,31,500/- in his saving bank account during the period.*
>
> *Vide letter dated 26.02.2015 and 12.03.2015 respectively the assessee was asked to furnish necessary details/documents so that the source of cash deposit may be examined but the assessee neither attended nor furnished the details as asked for. Moreover, the assessee has not filed his ITR for the year under consideration.*
>
> *In view of the above, I have reason to believe that the amount of cash deposit of Rs. 15,31,500/- have escaped assessment within the meaning of section 147 of the IT Act, 1961. Moreover, it is quite possible that any other income may also have escaped assessment and hence issue of notice u/s 148 becomes inevitable to bring the income that has escaped assessment under the ambit of assessment."*

2.2 Plain reading of the reasons as recorded by the Ld. Assessing Officer suggest us as follows:

a) It is the AIR information (Paper book page no. 7) which reflects the cash deposit of Rs. 15,31,500/- in saving bank account of assessee and no other tangible material was in the possession of the ld. AO. Even the bank account number (not mentioned in reasons recorded) in which cash was deposited was not known to the Ld. Assessing Officer at the time of issue of notice u/s 148. Moreover, reasons recorded by Ld. AO are totally silent as to the availability of

tangible, cogent and reliable material with him on the basis of which he formed his belief and the Ld. AO fallaciously concluded that total cash deposited into the bank account of the assessee is equivalent to income escaped assessment.

b) Assessing Officer has issued non-statutory inquiry letters to assessee to furnish necessary details/documents so that the source of cash deposit may be examined. As there was no response to the inquiry letter issued, the Assessing Officer formed the belief that income of the assessee had escaped assessment.

c) There exists possibility as on the date of issue of notice in the opinion of Ld. AO, that there may be other income which may have escaped assessment.

2.3 The reasons recorded by the Ld. AO reflects that the AO did not have conviction as to escapement of income. Cash deposit in the bank account is the only reason to believe. Assessee had four saving bank accounts during the FY 2007-08. Rs. 15,31,500/- was deposited in Oriental Bank of Commerce (OBC) saving account no. -52252010007930. Assessee had deposited Rs. 1,000/- in other saving bank account with OBC (A/c No.- 52252151004328) and further Rs. 37,000/- was deposited in saving bank account no. 120010100435536 with Axis Bank Limited. Total cash deposit during the FY 2007-08 was Rs. 15,69,500/-. Since, the Ld. AO was having AIR information for Rs. 15,31,500/- and that is why he mentioned the same amount in his reasons to believe. He wants to examine the source of cash deposit (Para 2 of reason recorded) into the bank account of the assessee. This facts got confirmed when the AR of the assessee inspected the assessment file after conclusion of assessment and found that notice u/s 148 dated 30/03/2015 was issued merely on the basis of AIR information. Except AIR information, Ld. AO had nothing in his possession to make a belief as to escapement of income. Even bank statement of the assessee was obtained by issuing letters u/s 133(6) dated 21/12/2015 to the concerned banks. Bank statement has been printed on 28/12/2015 (by OBC & Axis Bank) and on 02/01/2016 (by

SBI) and later on furnished to the Ld. AO. Obviously, there was no tangible materials in the possession of Ld. AO, as on the date of issue of notice u/s 148, on the basis of which he makes a belief as to escapement of income. Had the ld. AO having bank statement on the date of issue of notice or recording of reason to believe, the amount would have been 15,69,500/- instead of Rs. 15,31,500/- as recoded by Ld. AO. Unfortunately, the Ld. CIT(A), in spite of having all the details before him for perusal, failed to appreciate the facts and erred in confirming the order of the Ld. AO.

2.4 In order to issue notice u/s 148 of the Act, there should be 'reasons' and 'belief. "Reasons" refer to the cause like document, statement, third party confirmation etc. and "belief" refers to the conclusion. The "reason to believe" is different from "reason to suspect" or from "to have an opinion".

2.5 It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor anything can be deleted from the reasons so recorded.

2.6 Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has observed that "It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordships added that "The reasons recorded should be self- explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....".Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly, at the stage of

recording the reasons for reopening the assessment all that is necessary is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection to an income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which indicate a legitimate suspicion about income escaping the assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. While dealing with this aspect of the matter, it is useful to bear in mind the following observations made by Hon'ble Supreme Court in the case of ITO Vs Lakhmani Mewal Das [(1976) 103 ITR 437],

> *"the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts." It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the*

point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

2.7 The Ld. Assessing Officer has initiated the proceeding u/s 147 of the Act by issue of notice u/s 148 of the Act is absolutely based on AIR information. No other tangible material, credible, cogent and relevant material was in his possession. Had the bank statements of the assessee was in the possession of the Ld. AO at the time of formation of his belief as to escapement of income, and had he seen the bank statement, as there is cash withdrawal to the extent of Rs. 14,80,750/-, his belief might be different than that he believed in reasons recorded. In absence of materials, belief can not be made. Hence, reasons to believe is based on surmises, conjectures, suspicion, and therefore, the same is without jurisdiction. Further, the reasons recorded are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income and this can only be treated as presumption. The Ld. AO has acted mechanically and issued notice u/s 148 on the basis of AIR information only. There is non-application of mind on the part of the Ld. AO so as to show that he formed an opinion based on any tangible material that such deposits represents escaped income.

2.8. In a similar matter, as in the present case, came up for consideration with Hon'ble ITAT in Delhi in case of BirBahadur Singh SijwaliVs. Income Tax Officer Ward (1), Haldwani (ITAT Delhi) I.T.A. No.: 3814/Del/11 dated 20.01.2015 (Paper book page no. 103-108)

The Learned ITAT put its observation as under:

Hon'ble Bombay High Court, in the case of Hindustan Lever Limited Vs. R.B. Wadkar, Asst. Commissioner of Income Tax, (2004) 268 ITR 332 (Bom) inter alia, observed that "……It is needless to mention that the reasons are required to be read as they were recorded by

the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordships added that "The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....". Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly, at the stage of recording the reasons for reopening the assessment all that is necessary is the formation of prima facie belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection to an income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which indicate a legitimate suspicion about income escaping the assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further

inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment. While dealing with this aspect of the matter, it is useful to bear in mind the following observations made by Hon'ble Supreme Court in the case of ITO Vs LakhmaniMewal Das [(1976) 103 ITR 437], " the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the I.T.A. No.: 3814/Del/l1 Assessment year: 2008-09 formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment donot make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we donot have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in

the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs.10,24,100 has escaped assessment of income because the assessee has Rs 10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

2.9 Proposition of the law as set out in the case of Bir Bahadur Singh Sijwali Vs. Income Tax Officer Ward (1), Haidwani (supra) has not been disputed by the department and has been followed in number of cases, a few is mentioned hereunder:

(i) Amrik Singh Vs. ITO, [reported in 159 ITD 329 (Asr)]

(ii) Vinod Maheshwari Vs. ITO, order dated 9.9.2016.[reported inITA No. 1498/Del/2015(Delhi ITAT, SMC Bench)]

(Paper book page no. 142-145)

(iii) Rahul Bhandari Vs.ITO,order dated 8.9.2016. [reported in ITA No.2637/Del/2015 (Delhi ITAT, SMC Bench)]

(Paper book page no. 155-158)

(iv) Mariyam Ismail Rajwani order dated 09.08.2016 [reported in I.T.A. No.676/Ahd/2016]

(v) Praveen Kumar Jain vs. ITO [(ITA No. 133 l/Del/2015, order dated 22.1.2016.)] (Paper book page no. 146-154)

(vi) Muni Devi Vs. ITO, order dated 15.9.2016 (Ahmedabad ITAT)

(vii) Sh. Gyan Prakash Motwani Vs. ITO, [order dated 31.8.2016 (ITAT, Lucknow)]

(viii) Ashwani Kumar Vs. ITO, [order dated 23.02.2016, ITA.No.l29(Asr)/2015]

(ix) Harmeet Singh Vs. ITO, [order dated 10.02.2017 ITA No. 1939/Del/2016] (Paper book page no. 109-121)

(x) Shri Mahavir Parsad Vs. ITO (ITA No 924/DEL/2015)

(Paper book page no. 122-131)

2.10 We also place our reliance on the decisions of the various hon'ble courts in the cases of

a) Joti Prasad vs. State of Haryana 1993 AIR 1167 (SC)

b) Ashok Kumar Sen V/s CIT 132 ITR 707 (Del. HC)

c) United Electrical Co. Pvt. Ltd. vs. CIT (2002) 258 ITR 317 (Del HC)

d) CIT v. Kelvinator India (256 ITR 1, SC)

e) Sarthak Securities Co. P. Ltd. vs. ITO - (2010) 329 ITR 110 (Delhi)

f) Indian Oil Corporation V/s ITO 159 ITR 956 (SC)

g) Dass Friends Builders P. Ltd. vs. DCIT (2006) 280 ITR 77(A11)

h) Madanlal Jindal vs. ITO (1973) 92 ITR 546 (Cal)

i) Signature Hotels Pvt. Ltd., 338 ITR 51 (Delhi High Court)

2.11 While disposing of objection on the matter raised during assessment, the Ld. AO has justified his action as to reason to believe on the basis of AIR information and quoted the decision of the Supreme Court in the case of Raymond Woolen Mills Ltd. Vs. ITO (1999, 236 ITR 34), which in our humble opinion, is distinguishable as there was no prima-facie tangible material available on the record or was in the possession of the Ld. AO on the date of making his believe as to escapement of income. This is the case of complete absence of tangible, cogent, reliable and relevant material in the possession of the Ld. AO, on the basis of which, he made his belief. Hence, sufficiency or correctness of the material is totally irrelevant. The Ld. CIT(A) has also erred in justifying the view taken by the Ld. AO.

Ground - 3

"That the learned Commissioner of Income tax (A) further erred in law in deciding the appeal on merits only without appreciating the fact that notice u/s 143(2) of the Act was neither issued nor served on the assessee whereas it is being a mandatory requirement before passing any order u/s 143 (3)/147 of the Act, assessment order passed without issue of such notice deserves to be quashed as failure to issue notice u/s 143(2) renders the reassessment void."

3.1 Notice u/s 143(2) of the Act has neither been issued nor served in this case before completion of the assessment. This fact can be verified with the assessment order itself where there is no mention about issue of notice u/s 143(2). Further, order sheet maintained by the Ld. AO confirmed the same. There is no mention about issue of notice u/s 143(2) on the order sheet of the Ld. AO. Notice u/s 143(2) has not been issued by the Ld. AO1 at all and this fact is further confirmed by the counsel of the assessee who inspected the assessment file (record) after completion of the assessment and got re-confirmed when the matter was agitated before First Appellate Authority, Learned CIT (A)- XXI (who heard the appeal in detail prior to disposal by Ld. CIT(A)-XXXV), in our presence, turned every single page of

the assessment file, one by one, but did not find the copy of notice u/s 143(2).

3.2 Learned CIT (A)- XXXV, who disposed of the first appeal, has erred while passing appellate order has mentioned that the notice u/s 143(2) has been issued on 08/11/2016 (para 4.6.1 of the order) after filing of return of income (without giving proper attention to assessment file) and at the later part of para 4.6.1, she has mentioned that the AO has issued notice u/s 143(2) as soon as the ITR was submitted. It appears contradictory in themselves as the assessment order was passed by Ld. AO on 29/03/2016, much prior to the issue of notice u/s 143(2), as mentioned by Ld. CIT(A) in her order. Return of income was filed on 07/12/2015 and assessment order was passed on 29/03/2016. If the order of Ld. CIT(A) believed, issue of notice after completion of assessment appears to be ridiculous, and otherwise, if it is presumed that there is typographical error occurred as regards to date of issue of notice u/s 143(2) of the Act, the date of issue of notice with all imagination may be 08/11/2015 or 11/08/2015, and both the dates (as imagined) fall prior to the date of filing of the Return of Income i.e. 07/12/2015, which in itself render the notice invalid in view of the decision of the Jurisdictional High Court in case of Pr. CIT-8 vs. Shri Jai Shiv Shankar Pvt. Ltd (383 ITR 448, ITA 59/2015). (Paper book page no. 179-187).

3.3 A RTI application has been filed in this respect and copy of the notice issued u/s 143(2) is requested to be provided to us, but reply of the RTI application is still awaited and the same can be produced once received from the authority.

3.4 We are of the firm belief that the notice u/s 143(2) has not been issued at all as the fact is justified by the counsel of the assessee as well as CIT(A)-XXI. With this belief, we submit as under:

> *Scrutiny notice issued u/s 143(2) of the Income Tax Act, 1961 is the starting point of assessment proceedings whereby AO1 seeks documents/evidences from the assessee to support the claims made*

in the return of income. The service of a proper notice u/s 143(2) is mandatory and statutory requirement that need to be complied with.

3.5. While demanding reasons recorded in writing vide our dated 04.01.2016 (paper book page no. 14-16), we brought attention of the Ld. Assessing Officer that compliance of statutory requirement is mandatory and farther stated that in case of CIT Vs. Chetan Gupta, order dated 15.09.2015, the Hon'ble Delhi High Court lays down the guidelines on the issue, service and validity of notice that need to be observed thoroughly. But, even after our request to follow the guidelines as laid down in CIT Vs. Chetan Gupta (supra), issue/ service of notice u/s 143(2) is not executed.

3.6. In absence of valid issue of notice u/s 143(2) of the Act, assessment so framed becomes invalid and void-ab-inito and against the provisions of the law and was not sustainable in the eyes of law.

1. *The Hon'ble Supreme Court in the case of ACIT Vs. Hotel Blue Moon, 321 ITR 362 (paper book page no. 159-165) held that the requirement to issue notice under Sectionl43(2) was mandatory. It was not "a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."*

2. *The Hon'ble Delhi High Court (Division Bench) in PR. Commissioner of Income Tax vs. Silver Line: (2016) 383 ITR 455 (paper book page no. 166-174) has observed in para 20 that The proposal to reopen an assessment under Section 147 of the Act is to be based on reasons to be recorded by the AO. Such reasons have to be communicated to the Assessee. However, merely because the Assessee participates in the proceedings pursuant to such notice under Section 148 of the Act, it does not obviate the mandatory requirement of the AO having to issue to the Assessee a notice under Section 143(2) of the Act before finalising the order of the reassessment." The said decision was later on followed in by the Hon'ble Court in Pr. Commissioner of Income Tax Vs. M/s*

Paramount Biotech Industries Ltd. (ITA 887/2017 & ITA 888/2017.) (paper book page no. 175-178)

3. *In DIT v. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del), the jurisdictional High Court invalidated an reassessment proceedings after noting that the notice under Section 143(2) of the Act was not issued to the Assessee pursuant to the filing of the return. In other words, it was held mandatory to serve the notice under Section 143(2) of the Act only after the return filed by the Assessee is actually scrutinized by the AO.*

4. *The Hon'ble Delhi High Court in the case of Alpine Electronics Asia Pvt. Ltd. Vs. DCIT, 341 ITR 247 (Del.) and in R. Education Trust in appeal No. 510 of 2011 has again held that service of notice u/s. 143(2) is a mandatory requirement even in the proceedings u/s. 148 of the Act.*

5. *The Hon'ble Delhi High court in recent case of Indus Tower Limited vs. CIT vide its judgment dated 29.05.2017 has also considered similar issue by following the judgment of Hotel Blue Moon, 321 ITR 366 (SC) and CIT vs. Jai Shree Shiv Shankar and has again decided the issue in favour of the assessee by holding as under :*

"13. In response to the above submissions, Mr. Dileep Shivpuri, learned Senior Standing Counsel for the Department, submitted that as far as second submission is concerned, the facts speak for themselves. He had nothing further to add because there was no explanation for the failure to issue notice under Section 143(2) of the Act pursuant to the notice under Section 148 of the Act before 30 September 2013, the last date by which the notice ought to have been issued.

14. The law on this point is fairly well settled in the decisions in ACIT v. Hotel Blue Moon 12010] 321 ITR 362 (SC) reiterated in CIT v. Madhya Bharat Energy Corporation [2011] 337 ITR 389 (Del) and Principal Commissioner of Income tax v. Jai Shiv Shankar Traders

(P.) Ltd. [201 6]383 ITR 448 (Del). In the last mentioned judgment, this Court held that the delay in issuing a notice under Section 143(2) of the Act would be fatal to the re-assessment proceedings.

15. For the aforementioned reasons, it is held that as far as the second ground is concerned, the Petitioner should succeed. In that view of the matter, the Court does not consider it necessary to examine the first ground of challenge. The impugned notice dated 22 February, 2013 issued to the Petitioner under Section 148 of the Act as well as the consequential order dated 20th January, 2014 disposing of its objections as well as the reassessment proceedings pursuant thereto are hereby quashed."

6. *The Hon'ble Delhi High court in the case of CIT vs. Shri Jai Shiv Shankar Pvt. Ltd. [2016]383 ITR 448 (Del) (paper book page no. 179-187) has also considered the judgment of Delhi High court in the case of Mandhya Bharat Energy Corporation (supra) and has also considered the decision in the case of CIT vs. Vision Inc. (supra) and after considering these judgments, Hon'ble High Court decided the issue in favour of the assessee wherein it has been decided that even in the cases covered u/s. 148, the issuance of notice u/s. 143(2) is a mandatory requirement and held that failure by the AO to issue a notice to the Assessee under Section 143(2) of the Act, is fatal to the order of reassessment."*

3.7. We further place our reliance on the various court decision on the identical matters are mentioned hereunder:

1. ACIT v. Geno Pharmaceuticals Ltd., [32 taxmann.com 162](Hon'ble Bombay High court),

2. Travancore Diagnostics (P.) Ltd., v. ACIT [74 taxmann.com 239], (Hon'ble Kerala High Court)

3. CIT v. Gitsons Engineering Co. [370 ITR 87] (Hon'ble Madras High Court)

4. CIT Vs. M/s Panorama Builders Pvt. Ltd. In tax appeal No. 435 of 2011, (Gujrat High Court)

5. CIT vs. Sukhini P. Modi reported at (2014) 367 ITR 682 (Hon'ble Gujarat High court),

6. CIT vs. K M Ravji in Tax Appeal No. 771 of 2010 order dated 18.07.2011 (Gujarat High Court)

7. CIT vs Rajeev Sharma 336 ITR 678, (High court of Allahabad)

8. M/s Sapthagiri Finance and Investments vs. ITO: TC(A). No. 159 of 2006 dated 17.07.2012 (Mad HC) [(2013) 90 DTR (Mad) 289]

9. CIT Vs. C. Pakniappan 284 ITR 257 (Hon'ble Madras High Court)

10. CIT Chennai Vs. Alstom T&D India Ltd. in Tax Case (Appeals) No. 1183 and 1186 of 2006 dtd. 3.9.2012 (Hon'ble Madras High Court)

11. ACIT Cir.2(l), Panaji Vs. JenoPharmaceutieals Ltd. in Tax Appeals No.75 to 78 of 2012 dtd. 14.2.2013 (Hon'ble Bombay High court)

12. CIT Vs. Deep Baruah (2010) 329 ITR 362, (Hon'bleGuhawati High Court)

12. CIT Vs. Salman Khan in Income-tax Appeal(L) No.2362 of 2009 dtd. 1.12.2009 (Hon'ble Bombay High court)

13. Raj Kumar Chawla & Others VS. ITO -(2005) 94 ITD 1 (Del)(SB)

14. CIT vs. Abacus Distribution Systems (India) Pvt. Ltd, order dated

07.02.2017 (Bombay High Court)

15. Pr. CIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd, order dated 14.10.2015 (Delhi High Court)

16. ITO v. Naseman Farms Pvt. Ltd. &Ors. In ITA No. 1175/Del/2011, dated 8-4-2015

17. ACIT Vs M/s. Dimension Promoters (P) Ltd. (ITAT Delhi), ITA No. 1105/Del./2011 dated 02/01/2018

18. UKT Software Technologies Pvt. Ltd. Vs. ITO Wd-18(l), New Delhi in ITANo.5293 & 5294/Del/201O dated. 11.2.2011

19. ITO Vs. M/s. Staunch Marketing Pvt. Ltd. in ITA No.l643/Del/2008 dated 12.5.2015

20. ITO vs. Gravity Systems Pvt. Ltd (ITAT Delhi), order dated 30.03.2017

21. Sanjeev Aggarwal Vs. DCIT, order dated 25.05.2016 (Chandigarh ITAT)

22. Raj Files & Stationers P. Ltd. v. ITO in ITA.No. 7553/Mum/2016 dated 05.07.2017

23. M/s. Tiny Girl Clothing Company Private Limited in ITA.No. 3599/Mum/2016 dated 20.12.2017

24. Mehta Emporium JewellersVs ITO (ITAT Mumbai) ITA No.3769/MUM/2016 dated 15/06/2018

25. Pankaj Dutta Vs ITO (ITAT Kolkata), I.T.A. No. 2206/Kol/2016, dated 17/11/2017

26. Shri G.N. Mohan Raju v. ITO passed in ITA No. 242 & 243(Bang) 2013, dated 10-10-2014

3.8 In the case of Commissioner Of Income Tax Vs. Laxmam Das Khandelwal, (paper book page no. 188-192) the Supreme Court in its decision dated 13 August, 2019 has observed at para 9 of its order that "According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself."

3.9 In the instant case, section 292BB is not applicable primarily, as we have already requested the Ld. AO vide our letter dated 04/01/2016 to

follow the procedure regarding issue and service of notice relating to assessment/reassessment according to guidelines laid down by the Jurisdictional High Court in the case of CIT Vs. Chetan Gupta (supra) and secondly, the supreme court of India in the case of Commissioner Of Income Tax Vs. Laxman Das Khandelwal has already decided that the section 292BB does not save the complete absence of notice. Hence, according to fact and circumstances of the case, section 292BB is not applicable.

3.10 Ld. CIT(A) has given reference to judicial pronouncement, with due regards to all those judicial pronouncement, we are of the opinion that the subject matter covered under those cases are not the subject matter in the present case. Case of CIT vs. OCM India Ltd. deals with limitation period regarding issue of notice u/s 143(2) which is not the subject matter of the present appeal. Decision in the case of Josh Builders & Developers (P) Ltd. Vs. PCIT deals with the objection during assessment and that has been objected during assessment from our side since beginning of the assessment and, hence distinguishable. The issue in the present case is the complete absence of the notice u/s 143(2) and hence, case laws citied by the Ld. CIT (A) is not applicable.

Ground No.-4 & 5

Ground -4

"That the learned CIT(A) has erred both on facts and law by upholding the impugned addition u/s 69A of the Act, failing to appreciate that provisions of section 44AF of the Act is presumptive and assessee is not required to maintain books of account and records and further failed to appreciate that the Ld. AO had not summoned the employee of the assessee who were named during assessment proceeding."

Ground -5

"That the learned CIT(A) has erred both on facts and law by upholding the impugned addition u/s 69A of the Act, failing to appreciate that verification letter under provisions of section 133(6) of the Act were sent after a long

period of time and held assessee responsible for return of letter as well as non-response."

4.1 Assessee was carrying on retail trading of unstitched cloths in local market popularly known as Saptahik Bazar i.e. weekly market that is still being organised in various parts of Delhi. Usually, sales were made in cash in that market. We have furnished copy of invoice (paper book page no. 66-77), monthly sales and purchases (paper book page no. 78 & 79), name of employees who were employed at that time but the Ld. Assessing Officer was erred in rejecting business activity arbitrarily and labeled a charge that it is cover up exercise i.e. after thought to justify cash deposit. Assessee was unaware of the reasons as to why details are being asked from the department. Copy of notice u/s 148 as well as reasons recorded was received on 04/01/2016 whereas return of income of income was filed on 07/12/2015. Hence, charge of afterthought is arbitrary and baseless.

4.2 The purpose of framing presumptive taxation scheme u/s was to give relief to small taxpayers from the tedious job of maintenance of books of account and from getting the accounts audited. As per the Income-tax Act, a person engaged in business or profession is required to maintain regular books of account and further, he has to get his accounts audited but to give relief to small taxpayers from this tedious work, the Income-tax Act has framed the presumptive taxation scheme under sections 44AD, 44ADA and 44AE. A person adopting the presumptive taxation scheme can declare income at a prescribed rate and, in turn, is relieved from tedious job of maintenance of books of account and also from getting the accounts audited.

4.3 Assessee is a retired employee of Delhi Police and just to keep himself engaged, he started trading of unstitched cloth. Level of the business was so low, he did not keep books of accounts and other corroborative evidence, when required after getting the notice u/s 148 of the Act, he started to collect evidence such as bank statement, copy of invoice etc. and filed his return of income. Further, assessee is also shifted

himself from Delhi to Gurgaon, Haryana and the documents/evidence, which was old and not in use, was not preserved. Only copy of bills (a few) were found and furnished to the Ld. AO during assessment. Ld. AO sent letter u/s 133(6) of the Act to verify the purchases and those were returned back after some time i.e. one letter got returned on 10/03/2016 and the other was not responded. We would like to draw your attention that those letters were sent after a period of seven and half years from the year of transaction. Obviously, it is long period and considering the time that has passed since the year of purchase, merely non-service of letter u/s 133(6) to parties does not lead to conclusion that purchases are not genuine. There may be a number of reasons for non-service of letter, one of them may be that the person has changed their business address. However, the assessee in his reply letter to Ld. AO also mentioned the name of person who was employed by assessee in order to carry on the business, but Ld. AO did not choose to verify the same. In our humble opinion, since a long time has passed since the year of purchase and other possibility to verify the genuineness of the business has not been exercised by the Ld. AO, therefore, non-service of letter u/s 133(6) should not be the sole criteria to conclude that the business activity is not genuine and thus deposit in the bank account remained unexplained. Further, Ld. AO has not given due attention to the bank statement of the assessee which itself reflect that a huge amount of Rs. 14,80,750/- has also withdrawn from the bank account during the year 2007-08 and this basic facts has not been considered by the Ld. AO.

4.4 In her assessment order, The Ld. AO has travelled an extra mile, by giving the details of investment of Rs. 100169/- as on 12/10/2007, Rs, 700000/- on 29/11/2007, Rs. 929250/- on 23/01/2008, Rs, 200000/- on 28/01/2008 (in fact, it is cash withdrawn, presumed by AO as investment as the cheque no. is mentioned in bank statement) and Rs. 3,38,856/- on 12/02/2008, to justify that the assessee has invested a large sum of money and failed to appreciate that the assessee has withdrawn Rs. 14,80,750/- from his bank account during FY 2007-08. Assessee has also furnished a statement (paper book page no. 81-82)

showing date wise cash withdrawn from bank and date wise cash deposited into the bank account and the same has not been considered by the Ld. AO and right away rejected. Obviously, the Ld. AO further failed to prove that the withdrawn cash has been used otherwise than deposit into the bank account and no evidence or documents are brought on record.

4.5 Therefore, the Ld. AO has passed her assessment order without considering all the facts and figures on record and hence, the said order is passed arbitrarily and with biased intention and need to be set aside.

Ground - 6

"That the learned CIT(A) has erred in both on facts and in law by upholding the addition of Rs. 15,31,500/- u/s 69A of the Act without appreciating the facts that Rs. 14,80,750/- has been withdrawn during the concerned period."

5.1 Ld. AO has made an addition of Rs. 15,31,500/- on account of cash deposit into the bank account of the assessee. The same has been added u/s 69A as an unexplained income. That the assessee was carrying on the business has not been accepted by the Ld. AO. However, cash has also been withdrawn from the bank accounts and particularly, cash withdrawn from one bank account and deposited in another bank account, this fact is totally ignored. We hereby furnish the details hereunder of total cash deposited and cash withdrawn from the bank (bank-wise) during the year FY 2007-08.

Name of Bank and account number	*Cash Withdrawn (figures in Rs.)*	*Cash Deposited (figures in Rs.)*
State Bank of India (A/c No. - 10141951643) (paper book page no. 51-55)	*10,50,000/-*	*NIL*
Oriental Bank of Commerce (A/c No.- 52252151004328) (paper book page no. 56-57)	*NIL*	*1,000/-*
Oriental Bank of Commerce (A/c No.- 52252010007930) (paper book page no. 59-60)	*2,55,750/-*	*15,31,500/-*

Axis Bank Limited (A/c No.- 120010100435536) (paper book page no. 61-64)	*1,75,000/-*	*37,000/-*
TOTAL	*14,80,750/-*	*15,69,500/-*

5.2 From the table given above, it is clear that cash deposit made in Oriental Bank of Commerce (A/c No. - 52252010007930) is considered only while framing assessment order and thus, addition is made. Cash deposited in other bank account and cash withdrawn from three bank accounts to the extent of Rs. 14,80,750/- has not been considered at all which is once again arbitrary and unjustified.

5.3 The Ld. AO has not given attention to other bank statements, available with him on record as on date of assessment order, and the date-wise cash deposit and withdrawn summary (paper book page no. 81-82) furnished by the assessee during assessment. The cash summary contains details such as date of transaction, activity i.e. either cash withdrawal or deposit, instruments no., if any, amount deposited, amount withdrawn, balance after considering opening balance increased by cash withdrawn and reduced by cash deposited into the bank account and last column indicate the name of bank with which transaction was made. The said summary is self- explanatory, however, for sake of convenience, bank name and account number (last four digit of the account no.) has been written in short.

5.4 The Ld. Assessing Officer, in her order at para 3, page no.-2 & 3, depicted a chart showing cash deposit and consequent investment made by assessee. It reveals that, deposit of cash is to the extent of Rs. 15,31,500/- and investment made is to the extent of Rs. 22,68,275/-. Figure of investment as shown in chart and narrated at para 3.2 of the order is misleading to the extent that Rs. 2,00,000/- which was the cash withdrawal has been considered as an investment. However, even if the logic or observation of the Ld. AO is believed to be true, an investment of Rs. 20,68,275/- could not be made by depositing only Rs. 15,31,500/- in bank account. This anomaly ought to be verified by the Ld. AO before she proceed to frame the assessment order. Bank statement of other banks

was also on record. Bank statement of State Bank of India reveals that there is cash withdrawal of Rs.10,50,000/- from the account. This cash is used to fund the OBC bank account from where investment was made. Likewise, Rs. 2,55,750/- was withdrawn from the same bank account in which cash to the extent of Rs. 15,31,500/- was deposited. The said cash withdrawal, once again ignored by the Ld. AO. Assessee was having a saving bank account with State Bank of India (A/c No. - 10141951643) with opening balance of Rs. 20,37,515/- and deposited Rs. 5,00,000/- which was refund of application money from HUDA and Rs. 47,000/- from business receipts prior to payment for construction of house (advance payment) of Rs. 15,00,000/- on 15/06/2007 and leaving a balance of Rs. 10,84,515/- which was available for withdrawal. Further, business receipts are continuously being received during the year.

5.5. The cash deposit summary which is self-explanatory, make it very clear that the cash is deposited out of cash withdrawal from the bank. We would like to co-relate the cash in hand (without considering business receipt) with the dates of cash deposited into the bank account as mentioned in her order.

Date of cash deposit (As per AO order)	*Amount (Rs.)*	*Cash balance available for deposit. (as per cash withdrawal and deposit summary)*
30/07/2007	*45000/-*	*181036/-*
31/07/2007	*30000/-*	*136036/-*
14/11/2007	*45000/-*	*991036/-*
15/11/2007	*45000/*	*946036/-*
16/11/2007	*45000/*	*901036/-*
17/11/2007	*45000/*	*856036/-*
20/11/2007	*45000/*	*811036/-*
21/11/2007	*45000/*	*766036/-*
22/11/2007	*45000/*	*721036/-*
27/11/2007	*45000/*	*676036/-*

29/11/2007	*7000/-*	*It was cheque deposit*
17/01/2008	*48000/-*	*730036/-*
18/01/2008	*227000/-*	*682036*
21/01/2008	*300000/-*	*455036/-*
22/01/2008	*300000/-*	*155036/-*
23/01/2008	*10000/-*	*-144964/-*
28/01/2008	*7000/-*	*It was cheque deposit*
11/02/2008	*200000/-*	*145036*
25/02/2008	*5000/-*	*-54964/-*
24/03/2008	*6500/-*	*40036/-*
Total	*15,45,500/-*	

5.6. From the table given above, it may been seen that while recording cash deposit in her assessment order, the Ld. AO has also recorded cheque deposit as cash deposit on two occasions. We would like to make it abundantly clear that this cash summary of deposit and withdrawal is based on banking transaction only and the business receipt is not considered at all. This summary also reveals that, only Rs. 1,54,964/- (maximum negative balance at any time during the year on 23/01/2008) that falls short of cash deposited into the bank over cash withdrawal. If there is so huge cash withdrawal which is vivid from the bank statement, as to why Ld. AO failed to consider such cash withdrawal? Further, assessee was carrying on business activity and the balance amount of cash which fall short of cash withdrawn, has been met out of business receipts. During the assessment, assessee has well explained to Ld. AO that the payment by cheque was given against construction of residential house which is totally ignored and labelled a charge that assessee has deliberately desisted from giving narration of the entries of bank account is totally unjustified.

5.7 Non-consideration of the documents and evidence, which was available on record as on that of order and explanation offered to him during assessment, shows a biased intention of the Ld. AO and hence

assessment order so framed by making an addition of Rs. 15,31,500/- on account of cash deposit remained unexplained is not justified on facts.

5.8 Ld. AO has tried to justify that certain investment was made after cash deposit, but completely failed to find the facts that the cash has also been withdrawn from the bank account. Between cash withdrawal and cash deposit, there may be some delay, but the Ld. AO has failed to bring evidence on record that the withdrawn cash has been invested anywhere else before it was deposited into bank account. The Ld. AO failed to bring any evidence or documents on record that shows that the withdrawn cash has been used otherwise. In absence of such a clean and clinching evidence, it could not be said that the amount withdrawn from the bank has not been deposited into the bank. The time gap between the withdrawals and corresponding to cash deposits cannot be made a basis for addition. Therefore, addition made by the Ld. AO by ignoring the cash withdrawn from bank is arbitrary and not justified and need to be deleted. We rely on the following decision of the courts:

1. In the case of ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) it is held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.

2. In the case of Gordhan, Delhi v/s DCIT dated 19/10/2019, Ld. Delhi Tribunal (paper book page no. 193-196) held that "no addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account, unless the AO demonstrate that the amount in

question has been used by the assesse for any other purpose. In my view addition is made on inferences and presumptions which is bad in law."

3. Hon'ble Delhi High Court in the case of CIT vs KuIwantRai in 291 ITR 36 wherein the Court has held as under

"This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent.

4. Moongipa Investment Ltd. vs. ITO: [2013] 30 taxmann.com 113 (Delhi Trib)

Held that where deposits in bank were from cash balance available to assessee in its books of account, no addition could be made under section 68. It was further held that the addition could not be made on the basis that there was time gap between withdrawal and deposits.

5. Anupama Chaudhary Vs. Income Tax Officer: ITA No. 4155(Del)/2009, decision dated 27/12/2010

(paper book page no. 197-203)

Relying on the decision of Ld. ITAT in case of ACIT Vs. Baldev Raj Charla & others (2009) 121 TTJ 366, the Ld. Court held that "simply because there was a time gap, the explanation of the assessee cannot be rejected and hence the addition confirmed by the learned CIT(A) is not correct. We, therefore, delete the same. This ground of the assessee is allowed."

6. Sh. Baljit Singh Vs. ITO (ITA No 986/CHD/2018)

(paper book page no. 204-208)

"No evidence has been made available by the Revenue to support the possibly unarticulated suspicion that the funds have been utilised elsewhere. Accordingly, considering the peculiar facts and circumstances of the present case ground No. 2 raised by the assessee is allowed. The addition sustained is directed to be deleted."

7. Dy. CIT Vs. Smt. Veena Awasthi (ITA No 215/LKW/2016)

(Paper book page no. 209-219)

"We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioral pattern of frequent withdrawal and deposits by the assessee. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. We have also examined the order of ld. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of ld. CIT(A) and accordingly we uphold the findings of the ld. CIT(A) sustaining relief granted to the assessee."

5.9 Keeping in view of the facts and in circumstances of the case, that the cash withdrawn from bank has not been utilised anywhere else other than deposit in the bank account i.e. cash has been withdrawn from three saving account and majorly deposited in a single bank account, can't be treated as unexplained money u/s 69A of the Act and hence we request your honour to delete the addition made by Ld. AO which is solely based on the presumption that the nature of deposit speaks that these may not be the extent of Rs. 14,85,750/- has also been withdrawn from the bank and Ld. CIT(A) also failed to appreciate this facts and thus, the addition of

Rs. 15,31,500/- made by the Ld. AO and later on confirmed by CIT(A) may kindly be deleted.

Prayer: *-*

In view of the facts and in circumstances of the case and legal submissions made herewith, it is prayed that this Hon'ble Appellate Tribunal may be pleased to

(i) Set aside the impugned assessment order dated 29/03/2016 passed by

(ii) Pass such other order/ orders, which this Appellate Tribunal may deem fit and proper."

9. Ld. Counsel for the assessee reiterated the submissions as made in the written submission as raised in respect of the additional grounds. The relevant contents of the written submission are reproduced as under:-

SUBMISSION OF THE ASSESSEE (On additional grounds)

"The applicant has filed an application dated 11/03/2022 under Rule 11 of the ITAT Rules wherein two additional grounds have been raised which are legal in nature and goes to the root of the matter. One of them relates to the matter of jurisdiction (Additional Ground-I), and another relates to issue of notice u/s 143(2) of the Act on the date of filing of return of income without following the scheme section 143(2) (Additional Ground- 2). Considering the generosity and the precedents of the Learned Tribunal, we believe that additional ground raised by applicant be admitted and hence, we are making our submission accordingly.

1. Additional Ground -1 (Related to jurisdiction of AO)

"That on the facts and circumstances of the case, the notice u/s 148 dated 29/03/2016 issued by Ld. AO, Ward 65(5), New Delhi is invalid and without jurisdiction as the said notice was issued by non-jurisdictional assessing officer. The Ld. AO, Ward 65(5), New Delhi did not have jurisdiction over the assessee as per provisions of the law and the related

Notification No. 70/2014 dated 13/1112014 (applicable from 15/1112014) and thus, the assessment order framed u/s 143(3)/147 of the Act pursuant to such invalid notice is bad in law and void-ab-initio and liable to be quashed."

1.1 Section 148 mandates issue of notice before assessment, reassessment or computation of income u/s 147. As per section 148, it is mandatory that the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of income. The expression "Assessing Officer" used in the section 148 means 'the Assessing Officer vested with the jurisdiction over the assessee as stipulated in the definition u/s 2(7A), by virtue of the directions 1 orders passed u/s 120, sub-section (1) & (2)'. Thus, the notice u/s 148 is required to be issued by the Assessing Officer who is vested with the jurisdiction over the assessee on the basis of the criteria of territorial area, a person or classes of persons, income or classes of incomes and cases or classes of cases as enumerated in sub-section 3 of section 120 of Income Tax Act.

l.2.1 It is an admitted fact that notice u/s 148 of the Act has been issued by Assessing Officer, Ward 65(5), New Delhi and assessee is in receipt of the said notice through a person to whom it is served. That is, notice is not directly sent to assessee at his last known address by the Ld. AO but deliberately sent on the address which fall under the territory of Delhi. Assessee is a retired employee of Delhi Police and after his retirement from service, he is residing in Gurgaon (Now Gurugram) since mid of 2008. It is being informed that the assessee is already assessed to tax by the same Ld. AO for AY 2008-09 and the assessee is in Second Appeal before this Learned Tribunal vide ITA NO. 799/DEL/2020. Here is brief facts about the notice issue date and address of the assessee in tabular form (for both assessment year):

Particulars	***Assessment Year 2008-09***	***Assessment Year 2008-09***

Address on the reasons recorded for reopening of the case u/s 147	*8-23. Masoodpur, New Delhi*	*H.No.- 415, Sector-22, Gurgaon- 122016*
Notice issued at the address	*8-23, Masoodpur, New Delhi*	*8-23, Masoodpur, New Delhi*
Subsequent notice uls 142(1) issued by the Ld. AO	*H.No.- 415, Sector-22. Gurgaon- 122016*	*H.No.- 415, Sector-22 Gurgaon- 122016*
	(not all but majority of them)	
Address mentioned by Ld. AO on assessment order	*H.No.- 415, Sector-22, Gurgaon- 122016*	*H.No.- 415, Sector-22, Gurgaon- 122016*
Date of passing of the Assessment Order	*29103/2016*	*14112/2016*
Date on which notice uls 148 was issued	*30103/2015*	*29103/2016*

1.2.2. The Ld. AO while recording reasons for the purpose of issue of notice u/s 148, has used the address which is not of assessee and the correct address was well known to Ld. AO on the date of issue of notice u/s 148, as the same AO has completed the assessment for the A Y 2008-09 mentioning the correct address of the assessee and furthermore, prior to issue of notice u/s 148 of the Act for AY 2009-10, the same Ld. AO has issued many notices u/s 142(1) of the Act for A Y 2008-09 at the correct address of the assessee. Even the non- statutory enquiry letters dated 09/02/2016 and 23/02/2016 (paper book page no. 11 & 12) has been issued on the correct address of the assessee. Reasons recorded by the Ld. AO and supplied to us after filing of the Return of Income on 08/11/2016 available at page no. 1-5 of the paper book makes it amply clear that the notice u/s 148 issued at wrong address and the action of using such a wrong address was to ensure that the assessee fall under the jurisdiction of the Ld. AO. But, the facts is that the jurisdiction of the any AO is determined on the basis of provisions of law and notification and not on the basis of will of the Ld. AO who has issued the notice.

1.3. The Ld. AO has already completed the assessment for A Y 2008-09 of assessee u/s 147/143(3) of the Income Tax Act, 1961 on 29/03/2016 and the assessee being aggrieved with the assessment is in appeal before your honor vide ITA No. 799/DEL/2020. Copy of the assessment order is already available on record with Memo of Appeal (A.Y. 2008-09). The Ld. AO has mentioned address of the assessee in her order as mentioned the address of House No.-415, Sector-22, Gurgaon, Haryana- 122001. Further, during assessment of A Y 2008-09, so many notices u/s 142(1) has been issued by the Ld. AO on the same address i.e. of Gurgaon. It does mean that, while issuing notice u/s 148, the Ld. AO was well aware of the address of the assessee as regards to his present residence and also she was well aware of the 'facts that she did not have jurisdiction over a person who is retired employee of Delhi Police and residing at Gurgaon. Despite knowing the facts that she did not have jurisdiction over a person who is pensioner and living in Gurgaon (Now Gurugram), she issued notice u/s 148 of the Act which is contrary to the provisions of the law.

1.4 According to Section 124(1) "Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction.

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situated within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situated within the area, and

(b) in respect of any other person residing within the area."

1.5 Section 120 of the Income Tax Act, 1961 is mentioned hereunder:

Section 120 (1):- Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this

Act in accordance with such directions as the Board may issue for exercise of the powers and performance of the functions by all or any of those authorities.

Section 120 (2):- "The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it." Section 120 (3):- "In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to anyone or more of the following criteria, namely

(a) Territorial area;

(b) Persons or classes of persons;

(c) Incomes or classes of income; and

(d) Cases or classes of cases."

1.6 In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961, the Central Board of Direct Taxes (hereinafter referred as The Board) issued a notification (NOTIFICATION NO. 70/2014 [F. NO. 187/37/2014 (lTA-I)]/SO 2915(E). DATED 13-11-2014) (page no. 22-24) which is made applicable from 15/11/2014 whereby the Board authorises the Director General of Income-tax or the Chief Commissioner of Income-tax, or the Principal Commissioner/Commissioner of Income-tax, to issue orders in writing, vesting jurisdiction to exercise powers and perform functions of an Assessing Officer as defined under clause (7 A) of Section 2 of the said Act, to the Deputy Commissioner of Income-tax or Assistant Commissioner of Income-tax or Income-tax Officer who are subordinate to them. Accordingly, order vesting jurisdiction to exercise powers and perform functions of an Assessing Officer as defined under clause (7 A) of Section 2 of the

Act has been made applicable w.e.f. from 15/11/2014 which is attached herewith for your perusal.

1.7. As per Notification No. 70/2014 dated 13/11/2014 (Paper book page no. 220-246 of AY 2008-09) which is applicable from 15/11/2014, jurisdiction of the assessee was decided by that notification and relevant extract of the list/notification are reproduced to the extent applicable in the matter at hand:

New Jurisdiction of Income-tax in Delhi w.e.f. 15.11.2014				
B	*Non- Corporate Charges*			
	1	*For the purpose of jurisdiction of Non Corporate Charges (a) 'persons other than companies deriving income from sources other than income from business or profession and residing within the territorial* area *mentioned in column (4); (b) Persons other than companies deriving income from business or profession and whose principal place of business or profession is within the territorial area mentioned; in column (4) i.e., Municipal Wards of MCD of Delhi or other areas as mentioned.*		
	11	*Cases or classes of cases has been defined as (a) All cases of persons referred to in corresponding entries in item (a) and (b) above other than:* *(i) Persons whose principal source of income is from salary.* *(ii) Persons falling under jurisdiction of Principal Commissioner I Commissioner of Income Tax, Delhi-21*		
	III	*Jurisdiction over residual cases in respect of the entire NCT of Delhi including corporate and non- corporate cases lies with Pr. CITI CIT -3, New Delhi*		
S. No	*Charge*		*Rangel Assessment Unit*	*Jurisdiction (Alphabetical)*
11	Pr. Commissioner/ Commissioner of Income Tax, Delhi-II		Range 33/ Ward 33(3)	Falling under ward name of Vasant Kunj under MCD and number is 171.
22	Pr. Commissioner/ Commissioner of Income Tax, Delhi-22		Range 65/ Ward 65(5)	All Employees/ Pensioners of following Ministries/Departments: 1. Delhi Police, DDA, NDMC

1.8. Assessee has filed his Income Tax Return in response to notice issued u/s 148 declaring income which includes income from business/profession (u/s 44AF of the Act), salary income (being pension received after retirement from service) and income from

other sources (being bank interest). In this case, Income Tax Officer, Ward 33(3), New Delhi i.e. under Range- 33, New Delhi is vested with jurisdiction on the basis of territorial jurisdiction as the assessee is having business income and the business was carried in the state of Delhi and considering the principal place of business at B-23, Masoodpur, New Delhi that is the address as per PAN database. Otherwise, as the assessee is residing in Gurgaon, Haryana since mid of 2008, Income Tax Officer at Gurgaon is vested with the jurisdiction over the assessee on the basis of territorial criteria. When we have demanded copy of the order sheet of the assessment proceeding, the file of the assessee is transferred to Assessing Officer in Gurgaon. This action of the Ld. AO justify that he was not having jurisdiction over the assessee. Ld. AO, Ward 65(5) was not having jurisdiction and thus, the notice u/s 148 was issued by non-jurisdictional Assessing Officer. Before the date of issue of the impugned notice, assessee has filed his ITR with the department mention his PAN and address at House No. 415, Sector-22, Gurgaon, Haryana- 122001. Return filing date and the related assessment year is tabulated hereunder:

Assessment Year	*Date of filing return of income*
2011-12	*30/03/2012*
2012-13	*29/08/2012*
2013-14	*31107/2013*
2014-15	*12/09/2014*

(Related copy of acknowledgement IS at page no. 82-85 of the Paper Book)

From the table, it is amply clear that assessee was filing his ITR with the address of Gurgaon and not of Delhi. In K.A. Wires Ltd. Vs. ITO, [ITA 1149/KoI/2019, order dated 22.01.2020, Page no. 25-37], the hon'ble Tribunal observed that "Under the scheme of "e" filing of return, the assessee has to fill PAN on the return. It has to also fill its address and some of the details are picked-up by the assesse. If the Department's

system fails to correctly transfer the return to the jurisdictional Assessing Officer and transfer the same to a Assessing Officer though who has no jurisdiction as per the CBDT's notification, such mistake cannot confer the jurisdiction on such an Assessing Officer. Jurisdiction can be conferred only by notification u/s 120(1) and 120(2) of the Act only."

1.9. Hence, the impugned notice u/s 148 under the Act which was issued by Ld. Assessing Officer Ward 65(5), New Delhi was without jurisdiction and hence it is an invalid notice in the eye of law and thus, assessment order passed by Ld. Assessing Officer, Ward 65(5), New Delhi pursuant to such notice is void-ab-initio.

l.10.1.In CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.)

It was held by the Hon'ble Allahabad High Court that "the notice issued by an Officer who had no valid jurisdiction for the assessee is invalid."

l.10.2.In Smt. Smriti Kedia Vs. Union of India and Others, [2011] 339 ITR 37 (Cal.) and in Indorama Software Solution Ltd. Vs. Income Tax Officer, [2013] 29 taxmann.com 78 (Mumbai), In both cases, the hon'ble courts have held that

"When it is apparent that the notice u/s 148 was issued by the AO who was not vested with the jurisdiction over the assessee then, the same is illegal and void. Consequently, the reassessment proceedings and order in pursuant to the illegal notice u/s 148 are also void ab initio and liable to be set aside. Hence, we hold that the reassessment on the basis of an illegal notice u/s 148 is not sustainable and accordingly the same is set aside."

1.11.The courts on several occasions have settled the issue of jurisdiction and accordingly, valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act, therefore, the assessment made pursuant to invalid notice is bad in law. The courts have consistently held that the precondition is jurisdiction

conferring on the AO to reopen the assessment and their non-fulfilment renders the initiation itself ab-initio void.

The above proposition of the law has been followed in number of cases, a few of them is mentioned hereunder:

A. *In Mukesh Kumar Vs. ITO (ITAT Delhi, "E" Bench), I.T.A. No. 2358/De1/2012, [Assessment Year: 2004-2005] Date of pronouncement: 12.06.2015, (Paper book No. 83-86 of FY 2008-09), where notice u/s 148 was issued by AO, Ward 26(4), New Delhi and file was transferred to AO ward 26(3), New Delhi who was having valid jurisdiction and assessment order was passed by AO ward 26(3), New Delhi. The Hon'ble ITAT has quashed the assessment proceeding since there was no valid notice pursuant to which assessment was made. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act, therefore, the assessment made pursuant to such notice is bad in law.*

B. *ITO vs. Krishan Kumar Gupta (2008) 16 DTR (Del)(Trib) (Paper book No. 98-102 of FY 2008-09)*

C. *Ranjeet Singh vs. Asstt. CIT (2009) 120 TT J (Del) 517 (Del)(Trib)*

D. *GK Business Centre (P) Ltd. Vs ITO Ward - 10(4), I.T.A. No.828 /DEL/2020. «Paper book page no. 92-97 of FY 2008-09).*

E. *ITO, Ward 2(2), New Delhi Vs. Almak Finance Pvt. Ltd. [ITA No. 4504/DEL/2017, order dated 14110/2020] (Page no. 38-54)*

l.12. The notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void.

In support of this proposition we also rely upon the cases of Hon'ble Apex Court and other Hon'ble Courts in the cases of:

a) Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC);

b) CIT Vs. Maharaja Pratap Singh Bahadur, 41 ITR 421 (SC);

c) CIT Vs. Robert, 48 ITR 177 (SC).

d) CIT v. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)

e) CIT v. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)

f) DR. (MRS.) K.B. Kumar vs. Income Tax Officer (2010) 131 TTJ (Del) 511

2. Additional Ground -2 [Related to issue of notice u/s 143(2) of the Income Tax Act on the date of filing of Return)

"That on the facts and circumstances of the case, the Ld.AO has erred in law while issuing notice u/s 143(2) of the Act, (on 08/11/2016, that is the day of filing of ITR in response to notice u/s 148 and notice u/s 143(2) handed over to AR of the assessee), which is issued in gross violation of the scheme of section 143(2) and thus the assessment order passed by the Ld. AO liable to be quashed in view of the decision of Hon'ble Jurisdictional High Court (Delhi) in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249."

AR of the assessee, Mr. Betab Ahmad, who was appearing for the assessee has categorically explained that the notice u/s 143(2) has been issued instantly and handed over to me along with reasons recoded. Request for copy of order sheet maintained by the Ld. AO was sought from the Ward 65(5), New Delhi, but we have not been given copy of order sheet pretending that a lot files has been transferred from various ward and thus I am unable to locate the file. Assessee has also filed an RTI application asking for copy of order sheet as well as copy of notice u/s 143(2), request is turned down by the CPIO (the ITO) citing the reason that this is not in public interest and hence information could not be furnished. When another attempt is made to get the copy of the same, the file of the assessee is transferred to Jurisdictional ward in Gurgaon.

2.2. It is an admitted fact that notice u/s 143(2) was issued on the same time and at the time when the return of income was filed by the

assessee and copy of notice was handed over to the Authorised Representative of the assessee. Section 143(2) of the said Act clearly indicates that where a return has been furnished under Section 139, or in response to a notice under Section 142(1), the Assessing Officer shall- (i) Where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim.

(ii) Notwithstanding the aforesaid, if the Assessing Officer considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, he may serve the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support return.

2.3 Thus the said notice u/s 143(2) of the Act has been issued without application of mind and without examination of the return on the part of Ld. AO and in gross violation of the scheme of the section 143(2) which vitiate the entire proceeding and hence, the order passed by the Ld. AO is liable to be quashed.

2.4 ***The Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.)*** *(page no. 55-57) has held as under:*

"Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the

first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice under s. 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23rdMarch, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it dear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is dear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2):"

2.5. ***The Learned ITAT, Delhi in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi in ITA.No.1262 and 1263/DeI.l2017 dated 17.10.2017*** *(page no. 58-61) has held as under:*

"It was further argued by the Id. counsel for the assessee Dr. Rakesh Gupta that notice u/s 143(2) of the Act, was issued on 17.09.2014 and which is the same date on which return was filed. This is apparent from the Assessing Officer's order in para 3 at page 1. Therefore, the Assessing Officer has not applied his mind independently while issuing notice u/s 148 of the Act. On this count also, the assessment deserves to be quashed. Accordingly, under the facts and circumstances of the case, the legal grounds of the assessee are allowed."

2.6. The Learned IT AT, Delhi Bench in the case of ***Micron Enterprises Pvt. Ltd. vs. ITO ITA No. 80l/Del/2016 (A Y 2006-07)*** *vide order dated 14.5.2018 (page no. 62-65) has held as under:-*

"5. Learned Counsel for the Assessee submitted that assessee filed reply to the notice under section 148 of the I.T. Act on dated 26.1l.2013 which is noted in the assessment order, copy of which, is filed at page-l l of the Paper book, in which, assessee explained that the return already filed under section 139(1) may be treated as return filed in response to notice under section 148 of the I.T. Act. He has submitted that on the same day A.O. issued notice under section 143(2) i.e., on 26.11.2013, copy of which, is filed at page-12 of the paper book. He has, therefore, submitted that the A.a. has not validly assumed jurisdiction under section 147 and 143(3) of the LT. Act to pass the assessment order against the assessee. He has submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) in which it was held as under: "Both the CIT(A) and the Tribunal have returned a concurrent and clear finding of fact that the notice under s. 143(2) was issued on 23rd March, 2000 and since the return was filed on 27th March, 2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time that the counsel for the appellant contends that the notice, in fact, was issued on 27th March, 2000 and not on 23rd March, 2000, the date which is recorded on the notice itself. No such contention was raised before the lower appellate authorities. Consequently, the said contention cannot be raised before the Court for the first time. The appellant has stated that the return was filed by the assessee on 27th March, 2000 and the notice under s. 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23rd March, 2000. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing

the return which clearly indicates that the notice was ready even prior to the filing of the return. The provisions of s. 143(2) make it dear that the notice can only be served after the AO has examined the return filed by the assessee. Whereas it is dear that when the assessee came to file the return, the notice under s. 143(2) was served upon the Authorized Representative by hand. Thus, it would amount to gross violation of the scheme of s. 143(2)."

2.7. In ***Satish Kumar Vs. ITO [ITA No. 3586/DEL/2018, order dated 14/01/2019, page no. 66-80],*** *the Learned Delhi Tribunal observed that"*

"8. After considering the rival submissions, I am of the view that the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (supra) and Order of ITAT, Delhi Bench in the case of Shri Harsh Bhatia, New Delhi vs. ITO, Ward-50(3), New Delhi (supra). It is an admitted fact that assessee filed reply in response to the notice under section 148 of the I.T. Act on 26.11.2013 and submitted before A.O. that original return filed before him may be treated as return filed in response to the notice under section 148 of the LT. Act. The A.O. on the same day served notice under section 143(2) upon assessee-company whose signature tally on the said notice. Therefore, notice issued under section 143(2) is invalid and resultantly, the assessment is vitiated and is liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the re-assessment proceedings in the matter. Resultantly, all additions stands deleted. In view of the above, there is no need to decide other contentions raised by Learned Counsel for the Assessee."

2.8. In ***Ashtech Industries Private Limited Vs. DCIT, Circle 3(2), New Delhi [ITA No. 2332/De1/2018, order dated 20/12/2018, page no -81-92],*** *the hon'ble Tribunal held that:*

"7.6 Further we also find force in argument of Ld. counsel for the assessee that language of section 143(2) of the Act in so far as it uses the phrase "if considers it necessary or expedient" pre-supposes application of mind on part of Ld. AO before notice uls 143(2) of the Act is issued which words have been explained by Hon'ble Apex court in case of Bhikubhai Patel vs. State of Gujarat (4 SCC 144) relevant extract of which is reproduced above where it is observed by Hon'ble Apex court that " ... The expression: so considered necessary is again of crucial importance. The term consider means to think over, it connotes that there should be active application of the mind. In other words the term consider postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word necessary means indispensable, requisite, indispensably requisite, useful, incidental or conducive, essential, unavoidable, impossible to be otherwise, not to be avoided, inevitable. The word necessary must be construed in the connection in which it is used. (See-Advanced Law Lexicon, 3rd Edition, 2005; P. Ramanatha Aiyar) .. " which fits in present case fully. Guided by these felicitous observation of Hon'ble Supreme court we have no hesitation in our mind in accepting the legal plea raised by Ld. AR before us and thus holding that notice u/s 143(2) issued at same time and date of return filing u/s 148 (vide order sheet entry dated 27/04/2016) vitiates the entire exercise and accordingly all subsequent proceedings are held to be invalid in eyes of law and therefore we quash the orders passed by AO and Ld CIT(A) and allow additional ground raised by assessee."

2.9. Therefore, in view of the decision of the Hon'ble Jurisdictional High Court, Delhi in the case of Director of Income Tax Vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249 (Del.) [ITA No. 44112010, reported at 323 ITR 249] and later on followed by the hon'ble Tribunal in the case of Micron Enterprises

Pvt. Ltd. Vs. ITO in I.T.A No. 90l/DEL/2016, in Harsh Bhatia in ITA Nos. 1262/& 1263/DEL/2017, in Ashtech Industries Pvt. Ltd. vs. DCIT in ITA No. 2332/Del/2018, and in Satish Kumar Vs. ITO [ITA No. 3586/DEL/2018, the assessment framed without proper issue of notice u/s 143(2) which is considered as invalid and thus the assessment so framed is liable to be quashed.

Prayer:-

In view of the facts and in circumstances of the case and legal submissions made herewith, it is prayed that this Hon 'ble Appellate Tribunal may be pleased to

(i) Set aside the impugned assessment order dated 14/12/2016 passed by Ld. AO, Ward 65(5), New Delhi, or

(ii) Pass such other order/ orders, which this Appellate Tribunal may deem fit and proper."

10. The assessee has also taken additional grounds challenging the validity of the assessment order. Therefore, all the grounds challenging the validity of the reopening of the assessment being disposed of together for the sake of brevity.

11. Ld. Sr. DR opposed these submissions of the assessee in respect of validity of the assessment. He submitted that the assessee did not inform about the changed address to the Assessing Authority and participated into the reopened assessment proceedings. Therefore, at a such belated stage, raising of question of jurisdiction of Assessing Authority is after thought and just to gain under advantage. He contended that the assessee has no case. Therefore, he is raising such technical issue.

12. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. The assessee has raised question of

jurisdiction of proceedings which goes to the root of any proceedings. It is well settled that initiation of proceedings by an Authority which has no jurisdiction would vitiate the order passed in consequence to such proceedings. The assessee has relied on various case laws on the validity of the proceedings. The reliance was placed by the Ld. Counsel for the assessee on the decision of the Tribunal rendered in the case of ***Mukesh Kumar vs ITO in ITA No.2358/Del/2012 order dated 12.06.2015.*** It is contended that the decision of the Tribunal squarely applies on the facts of the present case. Ld. Counsel for the assessee submitted that in the light of the binding precedents where it has been categorically held that the notice issued u/s 148 of the Act by the Assessing Authority who was not vested with the requisite jurisdiction and in that event, issuance of such notice is *ab-initio* void hence, nullity in the eyes of law. Therefore, he submitted that the impugned assessment order deserves to be quashed on this ground.

13. During the course of hearing, the Revenue was asked to produce the order conferring the jurisdiction on the AO who passed the impugned assessment order and also a report from the Assessing Authority in this regard. It is seen from the records that as per the assessment order, the residential address noted by the AO is House No.415, Sector-22, Gurgaon (Haryana). The Revenue failed to furnish the assessment records and a letter has been field stating that the record is not traceable. I find that a specific objection was raised by Ld.CIT(A) regarding the question of jurisdiction. However, Ld.CIT(A) has decided the issue by observing as under:-

> *4.3. "Ground Nos.1 & 2 states that the notice u/s 148 was not issued by the jurisdictional AO, Ward -65(5). As reported by the AO, the notice was*

issued from ITO, Ward-65(1) who was in respect of the AIR information. This sharing of information was PAN based. Since no ITR was filed, it is obvious that the final jurisdiction would not been ascertained. It is only when the appellant filed a reply on 07.12.2015 that the actual correct jurisdiction was ascertained and accordingly it was transferred the very same day to the jurisdictional AO that is ITO, Ward-65(5). Moreover, this objection was not raised before the AO which was permissible within one month of receiving the notice. In any case no prejudice was caused to the appellant. Hence, this ground of appeal has no merit and is hereby dismissed."

14. From the decision of Ld.CIT(A), it is clear that notice u/s 148 was not issued by the jurisdictional AO. However, as per Ld.CIT(A), the assessment was framed by Jurisdictional AO i.e. ITO, Ward-65(5), New Delhi. *"The Revenue has miserably failed to answer the question of jurisdiction as Ld.CIT(A in the impugned order himself states that the notice u/s 148 of the Act was not issued by the jurisdictional AO".* Therefore, it can be safely inferred that notice u/s 148 of the Act was issued by the Authority which has no jurisdiction for the assessee. The Revenue has not brought any order by the Competent Authority whereby the jurisdiction was conferred on the Authority who issued notice u/s 148 of the Act. In the absence of such order, I hold that assessment order passed by the AO was based on invalid notice hence, it also vitiated the assessment order in the light of binding precedents as cited by the assessee. The assessment order is hereby, quashed.

15. Other grounds are related to addition on merits. Before the Lower Authorities, it was stated by the assessee that there were cash withdrawals and deposits. Before Ld.CIT(A), it was stated that the cash was withdrawn and deposited in the bank account. Ld. Counsel for the assessee has pointed out

that a sum of Rs.14,85,750/- was available out of withdrawals on the bank account for making the deposits. I find that Ld.CIT(A) has not given any findings. Therefore, looking to the totality of the facts or findings of the Lower Authorities are based on conjectures and surmises and ignored the facts placed on record. Therefore, in my considered view, the AO was not justified in making the addition. The grounds raised by the assessee are allowed on merit.

16. In the result, the appeal filed by the assessee is allowed.

ITA No.800/Del/2020 [Assessment Year : 2009-10]

17. Now, I take up ITA No. 800/Del/2020 filed by the assessee pertaining to Assessment Year : 2009-10. The assessee has raised following grounds of appeal:-

1. *"That the notice U/S 148 of the IT Act dated 29103/2016 is bad in law and without jurisdiction in as much as there was no cogent material or evidence on record to form a reason to believe that any income of the assessee, for the concerned assessment year has escaped assessment. The information received (AIRICIB information) in itself was insufficient and could not be cogent material to assume a valid jurisdiction u/s 147/148 of IT Act. Learned CIT(A) turned down the submission of the assessee without looking into the detail.*
2. *That the learned CIT(A) has erred both on facts and in law by upholding the addition u/s 69A of the Act, failing to appreciate that provisions of section 44AF of the Act is presumptive and assessee is not required to maintain books of account and records and further failed to appreciate that the evidence submitted remained unverified and the addition was made based on presumptions, surmises and farfetched.*

   Without prejudice to above

3. *That the learned CIT(A) has erred both on facts and law by upholding the addition of Rs. 11,61,500/- U/S 69A of the Act without appreciating the facts that Rs. 12,00,000/- has been withdrawn from banks during the concerned period.*

4. *That in any case, the impugned assessment has been framed in violation of the principles of natural justice without granting to the assessee a fair, proper and reasonable opportunity to the instant case. "*

18. Apart from these grounds, Ld. Counsel for the assessee raised two additional grounds which read as under:-

1. *"That on the facts and circumstances of the case, the notice u/s 148 dated 29/03/2016 issued by Ld. AO, Ward 65(5), New Delhi is invalid and without jurisdiction as the said notice was issued by non-jurisdictional assessing officer. The Ld. AO, Ward 65(5), New Delhi did not have jurisdiction over the assessee as per provisions of the law and the related Notification No. 70/2014 dated 13/11/2014 (applicable from 15/11/2014) and thus, the assessment order framed u/s 144/147 of the Act pursuant to such invalid notice is bad in law and void-ab-initio and liable to be quashed.*

2. *That on the facts and circumstances of the case, the Ld.AO has erred in law while issuing notice u/s 143(2) of the Act, (on 08/11/2016, that is the day of filing of ITR in response to notice u/s 148 and notice u/s 143(2) handed over to AR of the assessee), which is issued in gross violation of the scheme of section 143(2) and thus the assessment order passed by the Ld. AO liable to be quashed in view of the decision of Hon'ble Jurisdictional High Court (Delhi) in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunications (2010) 323 ITR 249."*

19. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. I find that the facts and issues are similar

and identical to the **ITA No.799/Del/2020 [AY 2008-09].** Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal alongwith additional grounds. Since the facts are identical and no change into the facts and circumstances has been pointed by the Revenue in the year under appeal, the grounds raised in this appeal filed by the assessee are allowed. My decision in **ITA No.799/Del/2020 [AY 2008-09]** in para 14 and 15 of this order would apply *Mutatis Mutandi* in this appeal filed by the assessee as well.

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

21. In the final result, both appeals filed by the assessee in **ITA Nos. 799 & 800/Del/2020 [Assessment Years 2008-09 to 2009-10]** are allowed.

Order pronounced in the open Court on 15th May, 2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI