IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 61/JODH/2019
Assessment Year: 2012-13

M/s Steecon Infrastructure 85, Subhash Nagar, Pal Road, Jodhpur- 342008	***Vs.***	Income Tax Officer 1(4) Paota Jodhpur- 242008
PAN NO. ACDFS3423Q **Appellant**		**Respondent**

Assessee by	**:**	Mr. Piyush Chajed and Mr Sumit Mantri
Revenue by	**:**	Mr. Virabhadra S. Mahajan, AR
Date of Hearing	**:**	10/04/23 and 23/06/2023
Date of pronouncement	**:**	18/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30/11/2018 passed by the learned Commissioner of Income Tax (Appeals)-1, Jodhpur [in short the Ld. CIT(A)] for assessment year 2012-13, raising following grounds:

> *1) On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in confirming the assessing officer's action of issuing the Notice u/s.148 of the Income Tax Act without recording the reasons if any and supplying the same to the Appellant Firm along with the Notice.*

2) On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in confirming the assessing officer's action of passing the Assessment Order u/s.143(3) r.w.s. 147 without disposing off the objections raised by the appellant firm by way of passing the speaking order and therefore the assessment order is bad in law and void-ab-initio as held by Honourable Supreme Court in case of G.K.N. Driveshafts India Ltd, 259 ITR 19.

3) On the facts and circumstance of the case, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.1,44,00,000/- as Undisclosed Income in the hands of the Appellant Firm without any corroborative evidence. Further, the Id. Commissioner of Income Tax (A) failed to appreciate that the appellant firm had categorically denied in the statement recorded u/s.131 of any such payments and also the Seller of Property has denied receipt of any such amount.

4) On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the facts that the addition of Rs.1,44,00,000/- is not sustainable in law only on the basis of assertions made in the Plaint filed before the District Court without any corroborative evidence in respect of such payments.

5) On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant was formed during the current assessment year itself and there were no operations carried out any time before and therefore the same could not be held as income in hands of appellant.

2. This appeal was filed at Jodhpur bench of the ITAT on 05/03/2019. Subsequently, on a request on behalf of the assessee for transfer of appeal to Mumbai, by the order of the Hon'ble President ITAT dated 05/10/2020, this appeal has been transferred to Mumbai benches of the ITAT.

3. Briefly stated facts of the case as culled out from the order of the lower authorities and submission of the assessee are that the assessee, a registered partnership firm, was constituted vide partnership vide dated 12/04/2011 by three partners namely (i) M/s Steecon infrastructure Private Limitd (1/3rd share of profit) through its Director Shri Vijay Bholanath Sharma, (ii) Shri Manish Prakash Mutha (1/3rd share of profit) and (iii) shri Ashok Mohanraj Chhajed (1/3rd share of profit). In the case of the assessee, no regular return of income for the year under consideration i.e. AY 2012-13 was filed by the assessee. Subsequently, the Assessing Officer received an information from the Investigation wing of the Income-tax department Jodhpur, dated 15/07/2014 that assessee in the civil suit filed before the Additional Civil Judge, Jodhpur, has claimed to have paid an amount of ₹ 1,44,00,000/- in cash, which was paid to shri Gulab Singh Bhandari, as an advance for purchase of a property in addition to the payment of ₹ 3,56,00,000/-made through cheques,. As no return of income was filed by the assessee, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') on 08/09/2014, asking the assessee to file return of income, but no compliance was made by the assessee. Subsequently notices under section 142(1) of the Act were issued calling for details and information in respect of the transaction of the property. The Assessing Officer rejected the contention of the assessee that no payment in cash was made for purchase of the property and in

reassessment order passed under section 147 r.w.s.143(3) of the Act on 30/03/2016 , he assessed total income at ₹ 1,44,00,000/-,. Aggrieved, the assessee filed appeal before the Ld. CIT(A), however could not succeed, both on the legal ground challenging the validity of the reassessment as well as on merit of the addition. Not satisfied with the finding of the Ld. CIT(A), the assessee is in appeal before the ITAT by way of grounds as reproduced above.

4. Before us, the learned counsel of the assessee filed an application on 30/03/2022 raising an additional ground on behalf of the assessee, which is reproduced as under:

> *"On the facts and circumstances of the case, the notice issued u/s 148dated 08.09.2014on no-existing entity is illegal, invalid and void-ab-initia, as the appellant firm was dissolved on 01.01.2013".*

5. We have heard rival submission of the parties on the issue of admissibility of the additional ground. We find that additional ground raised being purely legal in nature and no investigation of the fresh facts is required, therefore additional ground raised is admitted for adjudication relying on the decision of the Hon'ble **Supreme Court in the case of National thermal Power Corporation Ltd reported in 229 ITR 383 (SC).**

6. In support of the additional ground raised, the learned counsel of the assessee submitted that the firm was dissolved vide deed of dissolution dated 01/01/2013 and therefore notice under section 148 of the Act has been issued on non-existent entity, which is illegal, invalid and void ab-initio, in view of the decision of the

Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd (2019) 107 taxmann.com 375 (SC).

7. The learned Departmental Representative (DR) on the other hand submitted that assessee has filed the dissolution deed dated 1/1/2013 for the first time before the Assessing Officer on 15/10/2015 (i.e. after issue of notice u/s 148 of the Act) . A copy of the said letter of the assessee along with copy of dissolution deed dated 01/01/2013 is available on assessee's paper-book pages 87 to 91. According to him, the assessee did not brought the fact of the dissolution of the firm to the notice of the Assessing Officer within 15 days of the discontinuance of business/dissolution of firm as required under section 176(3) of the Act, therefore Assessing Officer cannot be faulted for issuing notice for reopening of the assessment in the name of the firm.

8. Regarding the dissolution deed, he submitted that said deed is neither registered nor notarized. He further submitted that in the main part of the deed (on paper book page 89), effective date of dissolving of the firm is left blank. He also pointed out that on the said dissolution deed, signature of the partners are appearing on the last page and not on all pages. He emphasized that signature of the partners on the last page of the dissolution deed were not matching with the signature of the partners on the partnership deed dated 12/04/2011.

9. He further referred to section 189 of the Act and submitted that where a firm has been dissolved, assessment could be done by

the Assessing Officer as if no such dissolution had taken place. He submitted that the partnership firm has been dissolved for subsequent acts but as far as the business which was carried out by the firm prior to its dissolution, all the partners are in existence and they are responsible for all the past acts of the firm jointly and severely. The learned DR also relied on the decision dated 5/04/2022 of the Hon'ble Supreme Court in the case of **PCIT Vs Mahagun realtors P Ltd CIVIL APPEAL NO.OF 2022(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 4063 OF 2020)**

10. The Ld. Counsel of the assessee in the rejoinder referred to the provisions of section 189 of the Act and submitted that the subsection 1 of section 189 states that the reassessment order or the notice can be issued on firm name or firm PAN which was already dissolved. He further referred to subsection 4 of section 189 and submitted that said subsection clarifies the position as laid down in subsection 1, where the Assessing Officer is required to commence or conclude the assessment against the persons referred to in subsection 3 in case of dissolution of firm. In view of the learned counsel of the assessee, since the firm was already dissolved before the issuance of notice under section 148 of the Act, thus notice is bad in law because the notice could have been issued only on legal representatives i.e. the partners of the firm who were partners at the time of dissolution as required under subsection 3 of section 189.

11. Further, the learned counsel submitted that in the case, for a moment, it is presumed that the Assessing Officer was not aware of the fact of dissolution but that is not relevant for deciding the legality of the notice as an illegal notice cannot be considered to be legal due to non-awareness. He further submitted that in any case, the note sheet of assessment record mentions that Assessing Officer asked the assessee to submit copy of the dissolution deed, which means the Assessing Officer was made aware of the fact of the dissolution and therefore he had asked to submit a dissolution deed on or before 14/09/2015. He further submitted that in response to the said order sheet query, the assessee submitted a dissolution deed along with a letter, a copy of which is available on paper book page 87. He submitted that the Assessing Officer was aware of the dissolution of the firm on 24/08/2015, therefore he should have thereafter continued the reassessment only in the name of the legal representatives and not in the name of the firm, therefore all the notices issued after 24/08/2015 are null and void and the assessment order issued on 31/03/2016 on the dissolved firm is bad in law and deserved to be quashed. The learned counsel relied on following decisions in support of his contention:

> *1. Income Tax Officer Vs. Bhupendra Bhikhalal Desai (2021) 131 taxmann.com 40 (SC)*
> *2. Bhupendra Bhikhalal Desai Vs. Income Tax Officer (2021) 196 taxmann.com 529 (High Court of Gujarat)*
> *3. Rupa Shyamsundar Dhumatkar Vs. Assistant Commissioner of Income Tax (2020) 120 taxmann.com (High Court of Bombay)*

4. PCIT, Delhi Vs. Maruti Suzuki India Ltd (2019) 107 taxmann.com 375 (SC)
5. ACIT Vs. Neha Enterprises ITA No. 3666/M/2015 (Mumbai Tribunal)
6. ACIT Vs. DLF Cyber City Developers Ltd (2015) 53 taxmann.com 81 (Delhi Tribunal)

12. Further, decision of the **Hon'ble Bombay High Court in the case of Commissioner of Income-tax Vs Devidayal & Sons reported in 68 ITR 425 (Bombay)** was specifically brought to the knowledge of the learned counsel of the assessee by way of note-sheet entry dated 7/6/23 and ld counsel was heard on the same on 23/06/23. . The learned counsel of the assessee responded that said decision is distinguishable as it pertains to provisions of section 44 of Income-tax Act, 1922 and not to provisions of section 189 of Income-tax Act, 1961, which is in question in the case. He further submitted that in the case notice was neither issued to any of the partners nor it was addressed to any of the partners, who were partners at the time of the dissolution. Thus, he reiterated his arguments that notice issued by the Assessing Officer in the case of the assessee is invalid and therefore assessment order is void ab-initio.

13. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case date wise event chart submitted by the assessee is reproduced as under:

Sr. No	Particular	Date of Event
1.	Date of incorporation of	12.04.2011

	Partnership Firm	
2.	Date of Agreement of purchase the land	13.04.2011
3.	Date of Dissolution of Partnership firm	01.01.2013
4.	Date of notice issued under section 148	08.09.2014

Date of Payment made

Sr No.	Partner who paid	Date of payment	Amount	Payment Mode
Before MOU/Agreement (As advance)				
1.	03.01.2011	Ashok Chhajed	11,00,000/-	RTGS
2.	07.01.2011	Manish Mutha	15,00,000/-	RTGS
3.	12.02.2011	Manish Mutha	30,00,000/-	RTGS
4.	17.02.2011	Vijay Sharma	1,75,00,000/-	RTGS
After Mou/Agreement				
5.	28.04.2011	Manish Mutha	20,00,000/-	BOI Cheque No 106
6.	22.08.2011	Vijay Sharma	50,00,000/-	Cheque No. 1624
7.	06.09.2011	Manish Mutha	55,00,000/-	Cheque No. 236923

14. In the additional ground the assessee has challenged validity of the reassessment notice issued under section 148 of the Act dated 8/9/2014 on the ground that same was issued on non-existent entity as the firm was dissolved on 1/1/2013. The learned counsel of the assessee has relied on decisions, which are listed above. In Bhupendra Bhikabhai Desai (supra), the case is of individual and notice under section 153C of the Act was issued on dead person instead of his legal heir and therefore Hon'ble Gujrat

High Court set aside that notice under section 153C of the Act and a SLP filed by the Department was dismissed by the Hon'ble Supreme Court. In the case of Rupa Shyamsunder Dhumakar (supra) also the assessee was individual and notice under section 148 of the Act was issued on dead person and therefore the Hon'ble High Court held the reopening proceeding as invalid. In the case of Maruti Suzuki India Ltd (supra) during pendency of the proceeding, the company amalgamated with another company and therefore the Hon'ble Supreme Court upheld that said company lost its existence and assessment order passed subsequently in the name of the said non existing entity would be without jurisdiction and accordingly set aside. All the three decisions are in respect of either individual or a company and not in respect of a partnership firm for which specific provisions of section 189 have been introduced for dealing with the assessment of the dissolved firms. In the case of the dissolved form Hon'ble Bombay High Court, in the case of **Devi dayal and sons** (supra) has given a specific finding in view of the section 44 of Income-tax Act, 1922, that notice could have been validly issued on dissolved form in respect of the assessment prior to dissolving of the firm. The learned counsel of the assessee has attempted to distinguish the section 44 of Income-tax Act, 1922 with the section 189 of the Income-tax Act, 1961 (in short the Act). Therefore, it is relevant to reproduce both the referred sections as under:

Section 44 of income-tax Act , 1922

(1) Where any business, profession or vocation carried on by a firm or other association of persons has been discontinued or where a firm or other association of persons is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm or other association of persons as such as if no such discontinuance or dissolution had taken place.

(2) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act in respect of any such firm or other association of persons as is referred to in sub-section (1) is satisfied that the firm or other association is guilty of any of the acts specified in clause (a) or clause (b) or clause (c) of sub-section (1) of section 28, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that section.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm or a member of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable, and all the provisions of Chapter IV so far as may be, shall apply to any such assessment or imposition of penalty.]

Section 189 of Income-tax Act, 1961

(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the [Assessing] Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the [Assessing] Officer or the Joint Commissioner (Appeals) or the] [Commissioner (Appeals)] in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may

impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum. Explanation. Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159

15. Thus, when we compare both sections we find that both are pari materia and no substantial changes as far as the provision that proceeding against the dissolved firm would continue as if the said firm continued, which is the moot question in dispute before us. Accordingly, we reject the contention of the assessee that ratio in the case of Devidayal & Sons (supra) is not applicable over the facts of the assessee.

16. We feel it appropriate to reproduce the facts of case of Devidayal & Sons (supra) and the ratio laid down.

17. In the said case (Devidayal & Sons), the firm which consisted of a father and his three sons, was dissolved and its business was discontinued with effect from 30th October 1951. Subsequently, on

the basis of the information received by the Income-tax officer, he had reason to believe that certain income of the firm had escaped assessment and he issued notice under section 34(1)(b) of the Income-tax Act, 1922, which was served on 03/12/1956. This notice was issued in the name of the firm M/s Devidayal & Sons and it was served on Shri Amirchand, one of the erstwhile partners. In the said reassessment proceeding, the Income tax officer made an addition of ₹ 3,00,926/- to the original assessed income. On appeal, learned first appellate authority upheld the order of the Assessing Officer, but before the Tribunal the assessee raised a fresh ground that proceeding initiated by the Income-tax officer under section 34(1)(b) of Income tax, Act 1922 was bad in law. The Tribunal accepted the contention of the assessee and allowed the appeal. The Hon'ble High Court has summarized the order of the Tribunal as under:

> *The contention, which was urged before the Tribunal and accepted by it, was that since the assessee-firm was dissolved in October, 1951, and the business of the firm was discontinued, the assessment should have been made under section 44 of the Indian Income-tax Act only on the individual partners and since in the present case the assessment had been made on the firm itself, the assessment is invalid, unauthorised and void in law. Reliance, on behalf of the assessee, was placed on R.N. Bose v. Manindra Lal Goswami [1958] 33 ITR 435 and Sumat Parshad v. Income-tax Officer [1960] 40 ITR 692. In R.N. Bose's case (supra), there was an unregistered firm of three partners, which did business from 1st April, 1940, to 31st March, 1944. Subsequent to the dissolution of the firm notices were issued under section 34 of the Indian Income-tax Act to two of the three partners on November 25, 1944. In each of the said two notices, the*

person, to whom the notice was issued, was described as a partner of the firm and the income, which had been discovered as having escaped assessment, was described as his income and he was required to submit a return of his total income and world income assessable for the year ended on 31st March, 1944. One of the two partners, on whom the notices were served, submitted a return disclosing a loss, which was not accepted and the Income-tax Officer determined the total income of the firm under section 23(4) and made an assessment on the firm and on the basis of that assessment, proceedings for recovery of tax were initiated. When the said recovery proceedings were sought to be enforced against the third partner, who had not been served with a notice under section 34, he made a writ petition to the High Court for a writ of certiorari and a writ of mandamus for quashing the assessment orders and for restraining the department from taking any further steps in connection with the said recovery proceedings. The contentions raised were that the notices, which were issued under section 34 to the individual partners, could not form the basis of a valid assessment of the firm or the firm's income and the partners could not be proceeded against for the recovery of tax under that assessment. The second contention raised was that section 44 of the Income-tax Act was not applicable to the case inasmuch as it did not apply to cases of firms which had been dissolved and assuming that it was applicable to the cases of firms that had been dissolved, an assessment to income-tax of its pre-dissolution income can be made only on the persons, who were the partners of the firm at the time of the dissolution jointly and severally and cannot be made on the firm itself. Both these contentions were accepted by the Calcutta High Court. This case of the Calcutta High Court was followed by the Punjab High Court in Sumat Parshad's case (supra). In view of these two decisions, which, in the opinion of the Tribunal, were clearly applicable to the present case, the Tribunal held that the reassessment which was made in the present case on a dissolved firm whose business was discontinued, without notices having been served on each of the individual partner, was invalid and the assessment made was void.

18. On an application by the Commissioner of income-tax, the Tribunal drew up a statement of the case and referred following question to the Hon'ble Bombay High Court:

> *"Whether, on the facts and in the circumstances of the case, the notice under section 34 issued in the name of the assessee-firm and served on one of the partners on December 3, 1956, and the reassessment made in pursuance thereto are valid and legal ?"*

19. Before the Hon'ble High Court, the learned counsel of the Income-tax department referred to the decision of the Hon'ble Supreme Court in the case of CA Abraham Vs ITO Kotiayam (supra), CIT V Raja Reddy Mallaram (supra) and Shivram Poddar Vs ITO (supra).

20. The Hon'ble High Court analysed those decisions as under:

> *It is no doubt true that the cases referred to by the Tribunal support the contentions raised by the assessee with regard to the validity of the reassessments, Mr. Joshi, the learned counsel appearing for the department, however, has pointed out that having regard to certain subsequent decisions of the Supreme Court, the view taken in those assessee is not correct. The decisions of the Supreme Court, to which he has invited our attention, are C.A. Abraham Income-tax Officer, Kotiayam [1961] 41 İTR 425 (SC) Commissioner of Income-tax v. Raja Reddy Mallaram [1964] 51 ITR 285 (SC) and Shivram Poddar v. Income-tax Officer, Calcutta [1964] 51 ITR 823 (SC) In Abraham's case (supra), the question before the Supreme Court related to the validity of the penalty orders made against the partners of a firm, which had been dissolved and had discontinued its business and the question was whether, if in the process of assessment of the income, profits or gains of a firm, which had discontinued its business, any other liability, such as payment of penalty under section 28 of the Income-tax Act or under section 25(2) or of penal interest*

under section 18A(4), (6), (7), (8) and (9) is incurred, such penalty was, by virtue of the provisions of section 44, capable of being imposed on the partners notwithstanding the discontinuance of the business? The notice for the imposition of the penalty under section 28 was issued on the day on which the reassessment proceedings in respect of the escaped pre-dissolution income was completed and the said escaped income was brought to tax. In that case, the reassessment was not challenged but the contention urged was that while section 44 might permit the reassessment, it did not permit a further imposition of penalty. It was argued that a proceeding for imposition of penalty and a proceeding for assessment of income-tax were matters distinct and while section 44 might be resorted to for assessing tax due and payable by a firm, business whereof had been discontinued, an order imposing penalty under section 28 of the Act could not be passed by virtue of section 44. In dealing with the said contention, the Supreme Court had to consider the scheme of section 44, the material portion of which is as follows:

> *"Where any business... carried on by a firm... has been discontinued...every person who was at the time of such discontinuance... a partner of such firm.... shall in respect of the income, profits and gains of the firm... be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment".*

Their Lordships pointed out that section 44 sets up a machinery for assessing the tax liability of a firm which had discontinued its business and provides for the consequences, namely: (1) that on the discontinuance of the business of a firm every person who was at the time of its discontinuance a partner is liable in respect of the income, profits and gains of the firm to be assessed jointly and severally, (2) that each partner is liable to pay the amount of tax payable by the firm, and (3) that provisions of Chapter IV so far as may be apply to such assessment. In the context of the argument, which was advanced before them, namely, that section 44 might be resorted to for assessing tax due and payable by a firm,

business whereof had been discontinued, an order imposing penalty under section 28 of the Act could not be passed by virtue of section 44, their Lordships pointed out that, although the liability declared by section 44 was to assessment under Chapter IV, the expression "assessment" used therein did not merely mean computation of income. The joint and several liability to assessment of the partners declared by section 44 was not restricted to the liability to computation of the income under section 23 but included the application of the procedure for declaration and imposition of the tax liability and the machinery for the enforcement thereof. Their Lordships held that by the expression "all the provisions of Chapter IV shall so far as may be apply to such assessment" the section in terms provided that all the provisions of Chapter IV would apply so far as may be to assessment of firms which had discontinued their business and the words "so far as may" occurring in the expression were merely intended to enact that the provisions of Chapter IV which from their nature had no application to firms would not apply thereto by virtue of section 44. Summarising their conclusions on the analysis and examination of the provisions, their Lordships observed C.A. Abraham's case (supra):

> *"In effect, the legislature has enacted by section 44 that the assessment proceedings may be commenced and continued against a firm of which business is discontinued as if discontinuance has not taken place. It is enacted manifestly with a view to ensure continuity in the application of the machinery provided for assessment and imposition of tax liability notwithstanding discontinuance of the business of firms. By a fiction, the firm is deemed to continue after discontinuance for the purpose of assessment under Chapter IV."*

In Shivram Poddar v. Income-tax Officer, Calcutta [1964] 51 ITR 823 (SC), subsequent to the discontinuance and dissolution of an unregistered firm, a notice under section 34 read with section 22(2) of the Indian Income- tax Act was

addressed to a partner at the time of its dissolution calling upon him to submit a return of the income of the firm for the relevant year. The partner, to whom the notice was issued, moved the High Court for a writ of mandamus restraining the income-tax authorities from taking any action under the said notice on the ground that the proceedings were invalid. It was argued that after the dissolution of the firm, its to tax under section 44 of the Indian Income-tax Act. The Supreme Court, after having referred to its earlier decision in C.A. Abraham's case (supra) held that where the business of the firm was discontinued and the firm was dissolved, the provisions of section 44 were attracted. Their Lordships pointed out that whereas in the case of an association, discontinuance of business for whatever cause and dissolution with or without discontinuance of business both attracted the application of section 44, it was only where there was discontinuance of business whether as a result of dissolution or other cause that the liability to assessment in respect of the income of the firm under section 44 arose. Since the case before them was one of discontinuance of business by dissolution, the Supreme Court held that section 44 was attracted to the case. In dealing with the application of section 44 to a firm after it had discontinued its business, their Lordships observed Shivam Poddar's case (supra):

> *"A firm, after it has discontinued its business, whether it is dissolved or not, will, therefore, be assessed either under section 25(1) prematurely or in the year of assessment; in both cases the procedure of assessment is as under section 23(3) and (4) supplemented by sub-section (5). Section 44 provides an added incident that all persons who were partners at the time of discontinuance are jointly and severally liable to pay the tax payable by the firm."*
>
> *With reference to the case before them, they observed:*
>
> *"Balmukund Radheshyam was an unregistered firm and by the discontinuance of the business it neither ceased to be liable to pay tax on the income earned by it, nor could a procedure different from the one*

prescribed under Chapter IV apply for the assessment of the income of that firm."

The other case, viz Commissioner of Income-tax v. Raja Reddy Mallaram [1964] 51 ITR 285 (SC) was a case of an association, which had been dissolved. After the dissolution of the association a notice under section 34 of the Income-tax Act was issued to one of the members of the association to file a return of the pre-dissolution income of the association and on the said member having failed to file a return, the taxable income of the association was determined under section 23(4) and tax was assessed on the said income. When the order of assessment was sought to be enforced against another member of the association, he applied under section 27 of the Indian Income-tax Act for cancellation of the assessment. His application was rejected by the Income-tax Officer, but the Appellate Assistant Commissioner allowed his appeal and set aside the order of the Income-tax Officer. In the appeal before the Tribunal, the order was modified to a certain extent and on a reference arising out of the said order of the Tribunal, questions as to whether the order of assessment made by the Income-tax Officer under section 23(4) was bad in law and whether the applicant was liable for the amount of tax payable as determined under that order by reason of the terms of section 44 of the Indian Income-tax Act, were referred to the High Court. The High Court held that the order of assessment made by the Income-tax Officer under section 23(4) was bad in law (1) absolutely because he had made the assessment of the association and not of those who were members of the association at the time of the dissolution jointly and severally and (2) particularly as against any member on whom notices under sections 34 and 22(4) were not served because of such failure to serve notices on them. According to the High Court, the assessment was not binding on the assessee as no notice under section 22 was issued to him and as he was not assessed severally or jointly with others referred to above and he was also not liable for the amount of tax payable as determined in the order of assessment dated September 30, 1953, as that assessment was not made in conformity with section 44 of

the Indian Income-tax Act. In support of the conclusions arrived at by the High Court, it was urged before the Supreme Court that, in the first place, the assessment on the association could not be made after its dissolution and even assuming that such an assessment could be validly made it was binding only on those persons, who were served with a notice calling for a return. It was urged that under section 44 it was provided that every person who was at the time of the dissolution a member of the association shall in respect of the income of the association be jointly and severally liable to assessment. "Every person" appearing in section 44, it was contended, meant all persons and by enacting that such persons were to be liable to assessment jointly and severally, it was intended that after the association was dissolved only members at the date of the dissolution could be assessed in respect of the association and consequently all members who were sought to be assessed must be individually served with notices of assessment and those not served would not be bound by the assessment. The Supreme Court held that the arguments urged before them were not tenable. It was pointed out that by section 44 continuity of the firm or association for the purpose of assessment was ensured and, therefore, there was no question of assessing the individual members of the association. All the provisions of Chapter IV of the Indian Income-tax Act were to be applicable to the assessment made after the dissolution of the association and consequently an association of persons was to be assessed as a unit of assessment, or the individual members were to be assessed separately in respect of their separate respective shares of the income, but there was no provision in Chapter IV for assessing the income received by an association in the hands of its members collectively. The unit of assessment in respect of the income earned by the association was either the association or each individual member in respect of his share of the income. This was so when the association was existing and it would be so even after it was dissolved. Their Lordships pointed out that the effect of section 44 was merely to ensure continuity in the application of the machinery provided for in Chapter IV of the Act for assessment and for imposition of tax liability

> *notwithstanding discontinuance of the business of the association or its dissolution. By virtue of section 44 the personality of the association was continued for the purpose of assessment and Chapter IV applies thereto. Although the case before the Supreme Court was of an association, the reasoning adopted by them on the interpretation of the provisions of section 44 was equally applicable to the case of a firm. Having regard to these decisions, there can be no doubt whatsoever that the view expressed in the Calcutta and Punjab decisions followed by the Tribunal cannot be regarded as the correct view. The result of the Supreme Court decision referred to above is that even after the discontinuance of the business of the firm either by dissolution or otherwise, the firm can be treated as continuing so far as the assessment of its pre-dissolution income is concerned and the assessment or reassessment of such a firm after dissolution under section 44 of the Act could be made in the same manner under Chapter IV as if it had not discontinued its business. In the present case therefore, the assessment made on the firm could not be treated as invalid as held by the Tribunal.*

21. The Hon'ble High Court thereafter considered the submission of the learned counsel of the assessee and rejected the same observing as under:

> *Mr. Kolah, the learned counsel for the assessee, has argued that a firm, which has discontinued its business as a result of its dissolution, is a firm which is dead and no assessment can be made on an assessee that is dead. It is no doubt true, he says, that the discontinuance of the business of the firm will not involve the consequence of escapement of assessment of the pre-dissolution income but in order to bring such income to assessment the provision of the Income-tax Act, which is enacted in section 44, has got to be followed and the income can be brought to assessment only under the said provision. Mr. Kolah's interpretation of the said provision is that the said section provides that the partners shall be jointly and severally liable to assessment under Chapter IV*

and for the amount of tax payable, and the provisions of Chapter IV shall have to be applied for the assessment of the said partners. In other words, according to him, under section 44, the process of assessing the pre-dissolution income of a dissolved firm, which has discontinued its business, is not by making an assessment on the firm but by making joint and several assessments on the members of the firm. Mr. Kolah argues that the application of the provisions of Chapter IV for the assessment provided by the said section is not to the assessment of the firms but to the joint and several assessment of the partners of the firm. Mr. Kolah's argument, therefore, is that there can be no assessment on a firm which has discontinued its business after such discontinuance and the view taken by the Calcutta High Court is the correct view. In view of the Supreme Court decisions, to which we have already referred, it is not possible to accede to this submission of Mr. Kolah. Although the learned counsel submitted that each of the Supreme Court cases was decided on its own facts, he conceded that the conclusions arrived at by their Lordships on the scheme of the section and its effect are against him. His argument, however, was that the view expressed in the said cases would not accord with the language used in the section itself. We are afraid, we cannot entertain these arguments of Mr. Kolah and he also fairly concedes that we are bound by the decisions of the Supreme Court and his only object in raising the arguments was to ensure his being able to agitate them before the Supreme Court if a further appeal is taken to it from our decision. In our opinion, therefore, the contention of the assessee that the assessment made on the firm is invalid in law, which was accepted by the Tribunal, is not correct.

It is then argued that even though the assessment on the firm may be permissible, the assessment made in the present case is invalid for want of a proper and valid notice as required by section 63 of the Act. Reliance in this connection is placed on Y. Narayana Chetty v. Income-tax Officer, Nellore [1959] 35 ITR 388 (SC), where it has been held by the Supreme Court that the notice prescribed in section 34 for the purpose of initiating reassessment proceedings is not a mere

procedural requirement. The service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made under section 34 of the 'Act. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income-tax Officer without a notice or in pursuance of an invalid notice would be invalid and void. Mr. Kolah's argument is that section 63(1) requires that service of a notice has to be effected in the same manner as if it were a summons issued by the court under the Code of Civil Procedure. Service of notice in the case of firms, therefore, must be effected in the same manner in which service of summons is directed to be made persons are sued as partners in the name of the firm. Rule 3 of Order XXX of the Code of Civil Procedure, which prescribes for the service of summons in the case of firms, provides that the service will be required to be made not only on the firm but also on the plaintiff whom the plaintiff seeks to make liable in cases where the firm is dissolved to the knowledge of the plaintiff before institution of the suit. According to Mr. Kolah, therefore, since the firm was dissolved to the knowledge of the Income-tax Officer before the issuance of the notice and he seeks to make every partner liable on the assessment proposed to be made, notice had to be served on every partner Since that has not been done in the present case, there is no proper and valid service of the notice and the proceedings taken by the Income-tax Officer are invalid and void.

We cannot accept the argument advanced by the learned counsel. Under rule 3 of Order XXX of the Code of Civil Procedure, to which he referred, service of the summons is to be made as specified in clause (a) or (b) as directed by the court and such service is a good and proper service on the firm. The additional service on the partners individually is a further requirement necessary to be complied with in the case of dissolved firms, if, in a suit brought in the name of such a firm the plaintiff wants a decree not only against the firm but also against the partners personally. The additional service of the summons on the partners individually is a requirement

of the procedure prescribed for suits against firms to enable the plaintiff to obtain certain additional reliefs apart from a decree against the firm and is not a part of the service of summons on the firm Section 63(1) merely prescribes the mode of service of the notice to be the same as if it were summons issued by the court under the Civil Procedure Code. The requirement of the service on the partners individually as provided by the proviso to rule 3 of Order XXX is not a part of the mode of service of summons on the firm but an additional requirement of the suit permitted to be brought in the name of the firm under Order XXX of the Code Whether the partners are required to be served individually in the case of the assessment of dissolved firms as in suits brought under Order XXX of the Code, will have to be ascertained from the provisions of the Income-tax Act, which permit assessments to be made in the name of the firm in the case of firms which are dissolved. That provision is section 44 of the Act, which, as we have seen, makes no distinction between a dissolved firm and a continuing firm. As has been held in the cases already referred to, the section in effect has enacted that the assessment proceedings may be commenced and continued as if the firm is continuing. As observed by the Supreme Court in Abraham's case (supra): "By a fiction, the firm is deemed to continue after discontinuance for the purpose of assessment under Chapter IV. Under section 44 of the Income-tax Act, therefore, the assessment of a firm which has discontinued its business as a result of dissolution or otherwise, is in precisely the same manner as in the case of a continuing firm and the same procedure has, therefore, to be adopted even in the matter of the service of the notice under section 63(1) as in the case of a continuing firm. It is not denied that in the case of a continuing and existing firm, service of the notice on a partner of the firm is sufficient. The argument of Mr. Kolah that the service of the notice not having been effected on all the partners individually is not valid and proper, cannot therefore, be accepted. In our opinion the service of the notice issued in the name of the firm and served on one of the partners is quite valid and proper. The view that we are taking is supported by the decision of this court in Ramniwas Hanuman-bux Somani v.

Income-tax Officer [1961] 43 ITR 152, where it has been held that in a case falling under section 44 of the Income-tax Act notice of reassessment could be issued against the firm and need not be issued against the persons, who were partners at the relevant time.

Mr. Kolah has then argued that the notice does not comply with the requirement of section 63(2) inasmuch as it is not addressed to a partner of the firm as required by the said provision. There is no substance in this contention also. The provision of section 63(2), which requires that in the case of a firm the notice to the firm may be addressed to any partner of the firm merely prescribes a permissive mode of service and is not intended to be either mandatory or exhaustive. Consequently, the circumstance that the notice to the firm is not addressed to a partner will not be sufficient to render it invalid when in fact it is served on the partner and accepted by him and a return of the firm submitted in pursuance thereof as in the present case: (See Ramanathan Chettiar v. Commissioner of Income-tax [1927] 2 ITR 474, Ram Khelwan Ugamlal v. Commissioner of Income-tax [1928] 3 ITR 225 and Law and Practice of Income-tax by Palkhivala and Kanga, 4th edn., page 830).

Our answer to the question referred to us is that the notice issued and the assessment made in pursuance thereof in the present case are legal and valid.

22. Thus, we find that Hon'ble Bombay High Court (supra) relying on the decision of the Hon'ble Supreme Court in the case of Abraham (supra) and decision of Hon'ble Bombay High Court in the case of Ramniwas Hanuman bux Somani (supra) held that in view of section 44 of the income tax Act, 1922, the assessment of a firm which has discontinued its business as a result of dissolution or otherwise, notice under section 63(1) of the Income-tax Act 1922, could be issued on the dissolved firm as if it was a continuing firm

and notice of reassessment need not be issued against the persons, who were partners at the relevant time. The section 44 of Income-tax Act, 1922 being pari materi with the provisions of section 189 of Income-tax Act, 1961 and therefore ratio of the said decision is applicable over the facts of the instant case.

23. The other three decisions relied upon by the learned counsel of the assessee are of the Tribunal, whereas the decision in the case of being Hon'ble Bombay High Court, being of higher judicial forum the decision of the Tribunal being not inconsistent with the same, we are not required to rely upon those decisions.

24. Relying on the decision of the Hon'ble Bombay High Court in the case of Devidayal and sons (supra), we hold that notice under section 148 of the Act has been validly issued by the Assessing Officer in the name of the dissolved firm. Before the counsel of the assessee has admitted that the fact of dissolution of the firm was brought to the notice of the Assessing Officer only after issue of reassessment notice and not before. The Ld DR has brought our attention to the statutory requirement of supplying information by the assessee with 15 days of discontinuance of business as required u/s 176(3) of the Act. The learned DR has also pointed out various discrepancies in the said dissolution deed. He has pointed out the discrepancy of signature of the partner as well as pointed out that said dissolution did is neither registered nor notarised, whereas for dissolution deed, the assessee was required to follow procedure, same or identical to making of partnership deed. Since we have

already held that despite dissolution, the notice issued on the dissolved firm stands valid, we feel it not appropriate to restore the issue back for verification of genuineness of the dissolution deed. The additional ground of the appeal of the assessee is accordingly dismissed.

25. In ground No. 1(one), the assessee has challenged that notice under section 148 of the Act issued to the assessee was without recording the reasons and supplying the same to the assessee along with the notice. Thus, the ground raised by the assessee contains two parts. **First part** *is alleging non recording of the reasons*. **The second part** is *alleging non-supply of the reasons recorded along with the notice*.

26. As far as second part of the ground is concerned, the Hon'ble Supreme Court in the case of **GKN Drive shaft India Ltd 259 ITR 19** has laid down a detailed procedure to be followed in reassessment proceeding. According to the Hon'ble Supreme Court (supra), after issue of notice under section 148 of the Act, when an assessee file return of income in response to notice under section 148 of the Act ,thereafter on request by the assessee, the Assessing Officer is required to provide a copy of the reasons recorded to believe that income escaped assessment. In the case, it is undisputed that no return of income was filed by the assessee in response to notice under section 148 of the Act and therefore claim of the assessee for supplying the reasons recorded along with a notice under section 148 of the Act is without any basis or support

of law, therefore the second part of the ground No. one of the assessee is accordingly dismissed.

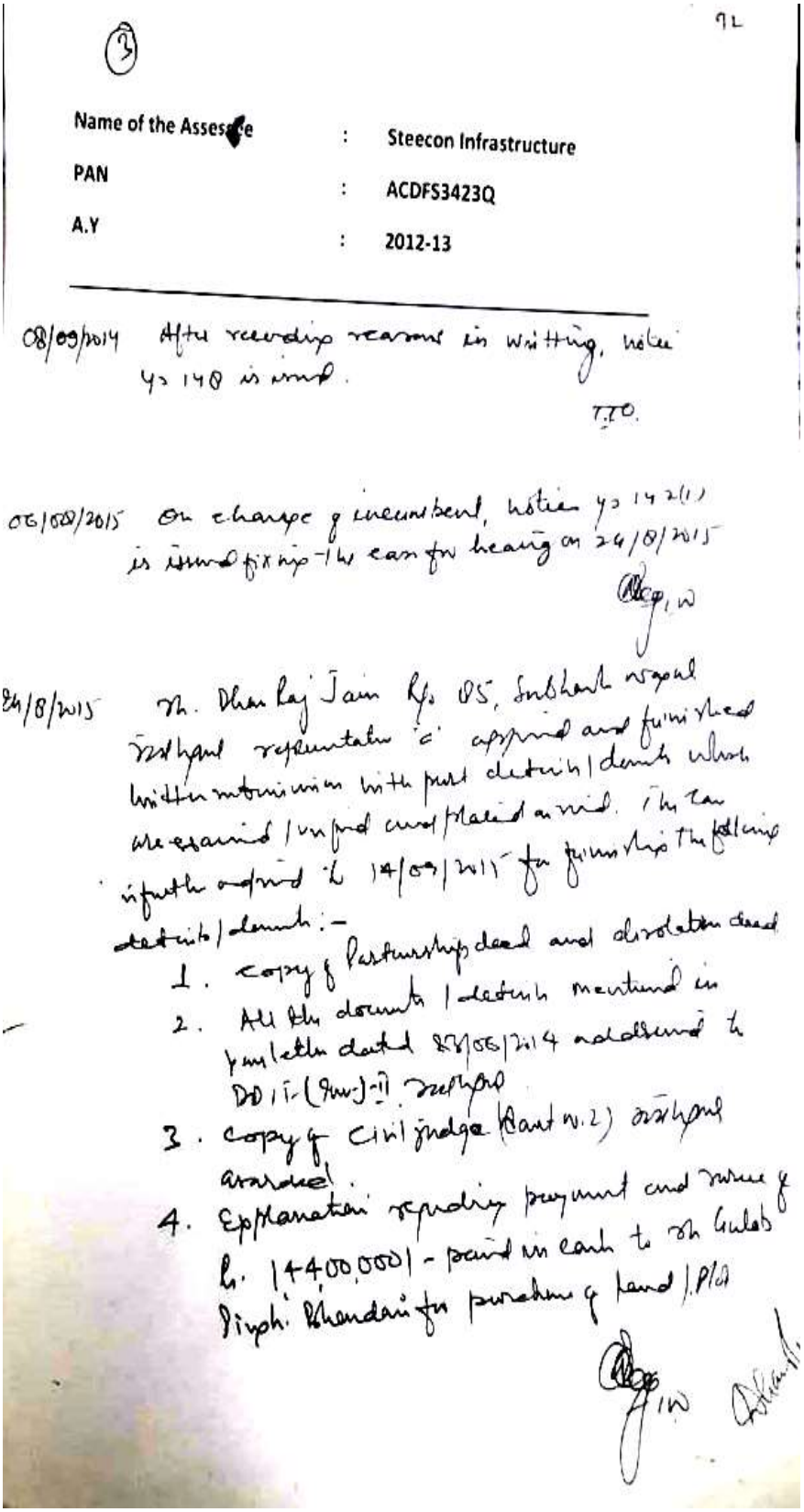
27. As far as first part of the ground that no reasons were recorded is concerned, the learned counsel of the assessee referred to a copy of email dated 11/11/2022 exchanged between the Income-tax officer Jodhpur and Departmental Representative, who was authorized to argue matter before the Tribunal. The learned counsel submitted that on the instruction of the bench, the learned departmental representative had written a email to ITO, Jodhpur and in response to which, the ITO Jodhpur intimated vide his email dated 11/11/2022 that copy of reasons recorded for issuance of notice under section 148 was not found. Subsequently, complete assessment record has been called for by the Departmental Representative from ITO Jodhpur, which was made available for inspection of the learned counsel of the assessee. After inspection, the learned counsel submitted that a copy of reasons recorded neatly signed by the relevant Assessing Officer is available on the assessment record. However, he doubted the genuineness of the reasons recorded on the ground that in the order sheet of the assessment folder, the relevant entry dated 08/09/2014 for recording reasons and issuing notice under was not signed either by the Assessing Officer or by the ITO. He also doubted the authenticity of the reasons recorded on the ground that a copy of such reasons recorded were not provided to the assessee in response to application filed under Right to information (RTI) Act on 01/09/2017.

28. On the contrary, the learned DR submitted that once the original copy of the reasons recorded is available on the assessment folder, which is duly signed by the Assessing officer, who recorded the reasons, therefore, same cannot be ignored just relying on a email of the present Assessing Officer i.e. custodian of the record, wherein he had merely informed that said reasons recorded were not found by him. He also submitted that merely non-compliance by the relevant officer to the application filed under RTI Act, the reasons recorded available on the assessment folder, cannot be ignored. He submitted that assessee did not file return of income in response to notice under section 148 of the Act and therefore assessee was not authorized to obtain reasons recorded during the course of the reassessment proceeding. He submitted that had the assessee filed return of income, the Assessing Officer would have supplied the reasons recorded to the assessee. Therefore, allegations of the assessee were merely speculations without any basis and same deserved to be rejected.

29. We have heard rival submission of the party on the issue in dispute and perused the relevant material on record. We find that the basis of the charges of the assessee that no reasons were recorded is manifold. Firstly, in response to email sent by the departmental representative , the ITO Jodhpur replied that said reasons recorded were not found on record. Secondly, the copy of reasons recorded sought by the assessee under Right to Information Act,2005 (RTI) was not responded by the Assessing Officer. Thirdly, the note sheet entry in respect of the reasons recorded is not signed

by the income tax officer or Assessing Officer. Fourthly, the assessee has doubted signature of the income tax officer on the reasons recorded.

30. We have examined the allegations of the learned counsel of the assessee. We find that as far as email exchanged between ITO Jodhpur and the Departmental representative is concerned, once the original assessment record containing the original copy of the reasons recorded has been made available for inspection of the learned counsel of the assessee, we do not find any justification for relying on the email exchanged that says that said reasons were not found on record. Secondly, regarding non-response of the application under RTI Act, we are opinion, if the Assessing Officer had not responded to the RTI application, the assessee should have taken the application to its logical end and should have filed further appeal under the RTI Act. Before us nothing has been brought on record that assessee preferred any appeal under the RTI Act, 2005 against the non-supply of information by the Assessing Officer. Further we note that this appeal has been transferred to the Mumbai jurisdiction only on the request of the assessee only, whereas the assessment folder was lying with the income tax officer at Jodhpur. Regarding the note sheet entry not signed by the income tax officer, we feel it appropriate to reproduce scanned copy of said order sheet for a reference is under:



(3)

Name of the Assessee	:	Steecon Infrastructure
PAN	:	ACDFS3423Q
A.Y	:	2012-13

08/09/2014 After recording reasons in writing, notice u/s 148 is issued.

T.O.

06/08/2015 On change of incumbent, notice u/s 142(1) is issued fixing the case for hearing on 24/8/2015

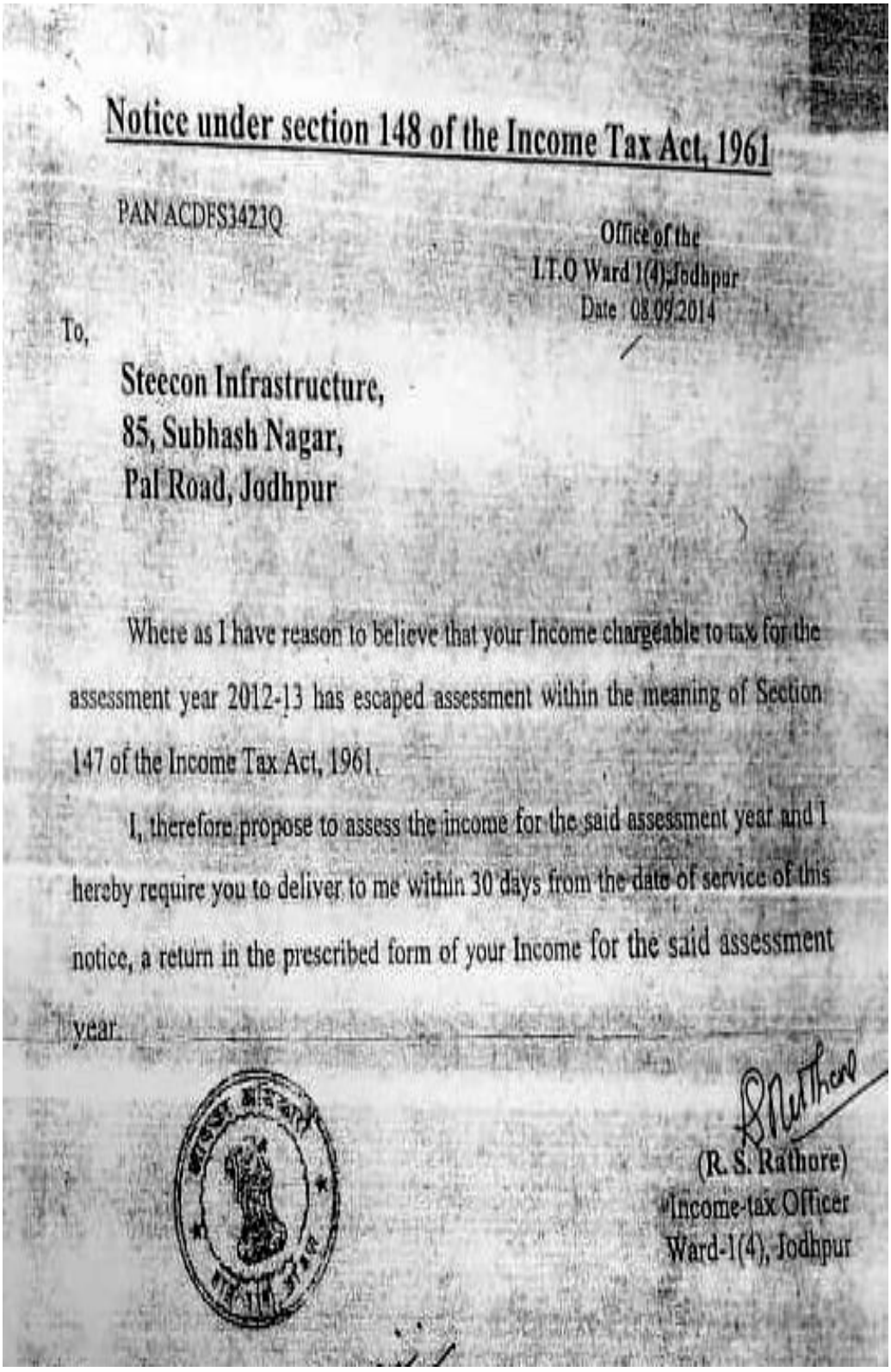
Addl. CIT

24/8/2015 Sh. Dhan Raj Jain Ld. DR, Subhash Agarwal authorised representative is appeared and furnished written submission with part details/details which are examined/verified and placed on record. The case is fixed for 14/09/2015 for furnishing the following details/documents:-

1. Copy of Partnership deed and dissolution deed
2. All the documents/details mentioned in submission dated 28/08/2014 addressed to DDIT(Inv.)-II Jaipur
3. Copy of Civil Judge (Cart No.2) Jaipur award.
4. Explanation regarding payment and source of Rs. 14400000/- paid in cash to Sh Gulab Singh Khandari for purchase of land/plot

Addl. CIT

31. We are of the opinion that after the note sheet entry for issue of the notice, the income tax officer/Assessing Officer has made handwritten entries. The subsequent entries and the entry of the issue of the notice seems to be in the same handwriting and therefore, we don't find any suspicion or malafide in entry recorded for issue of notice under section 148 of the Act. Similarly the allegation of the assessee regarding signature of the Income-tax officer on the reasons recorded , we find that identical signature of the income tax officer are available on the notice under section 148 of the Act issued which was already available with the assessee. For ready reference, scanned copy of reasons recorded and notice under section 148 of the Act issued are reproduced as under:



Notice under section 148 of the Income Tax Act, 1961

PAN ACDFS3423Q

Office of the
I.T.O Ward 1(4), Jodhpur
Date 08.09.2014

To,

Steecon Infrastructure,
85, Subhash Nagar,
Pal Road, Jodhpur

Where as I have reason to believe that your Income chargeable to tax for the assessment year 2012-13 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore propose to assess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your Income for the said assessment year.

(R. S. Rathore)
Income-tax Officer
Ward-1(4), Jodhpur

RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 148 IN THE CASE OF STEECON INFRASTRUCTURE (PAN ACDFS3423Q)

(2)

Information received from O/o DIT (Inv.)-II, Jodhpur vide letter no. 122 dated 15.07.2014 regarding financial transaction made by the firm M/s Steecon Infrastructure.

"M/s Steecon Infrastructure and Sh. Gulab Singh Bhandari had entered into an agreement for purchase of a property at Sardarpura, Jodhpur for Rs. 34,00,00,000/- on 13.04.2011. In the stay application filed before Hon'ble District Court, Jodhpur, M/s Steecon Infrastructure has claimed that it had paid Rs. 5,00,00,000/- to Sh. Gulab Singh Bhandari out of which Rs. 1,44,00,000/- was paid in cash as advance at the time of agreement in F.Y. 2011-12. A summon u/s 131 (1A) was issued to M/s Steecon Infrastructure asking it to explain the source of Rs. 5,00,00,000/- paid to Sh. Gulab Singh Bhandari and also to explain the source of cash of Rs. 1,44,00,000/- paid to him. Vide its reply dated 03.07.2014, M/s Steecon Infrastructure submitted that no cash was paid at the time of agreement. Although, M/s Steecon Infrastructure has denied to having made any cash payment to Sh. Gulab Singh Bhandari, but in stay application before the court, they have clearly mentioned at Para 4 that Rs. 1,44,00,000/- was paid in cash to Sh. Gulab Singh Bhandari.

By going through the information so received, it is apparent that M/s Steecon Infrastructure (PAN ACDFS3423Q) has paid cash of Rs. 1,44,00,000/- for purchase of immovable property. The source of such cash amount was not explained by the firm, M/s Steecon Infrastructure. Therefore, I have reason to believe that the said amount is unexplained income and income to the tune of the amount so paid in cash for purchase the property has escaped assessment for F.Y. 2011-12 i.e. A.Y. 2012-13.

Accordingly, notice u/s 148 of the I. T. Act, 1961 is being issued for A.Y. 2012-13.

Place: Jodhpur
Date: 01.09.2014

(R. S. Rathore)
आयकर अधिकारी,
वार्ड–1(4), जोधपुर

32. In our opinion all these allegations of the assessee are without support of any expert opinion, therefore same are dismissed and we hold that reasons have been recorded validly by the Assessing Officer. The second part of the ground No. 1 of the appeal of the assessee, is also accordingly dismissed.

33. The ground No. two of the appeal was not pressed by the assessee and therefore same is dismissed as infructuous.

34. The ground Nos. three and four of the appeal relates to addition of ₹ 1,44,00,000/- as undisclosed income in the hands of the assessee firm on merit.

35. The learned counsel of the assessee submitted that assessee entered into a memorandum of understanding (MOU) with Shri Gulab Singh Bhandari for purchase of property situated at Sardarpura Jodhpur and agreement was entered on 13/04/2011. The advance of Rs 2,31,00,000/- was transferred from the accounts of partners of the assessee firm as the assessee firm did not have any bank account. Subsequently dispute arose between both parties as shri Gulab Singh Bahndari sold the property to other persons and therefore the assessee had filed a civil suit before the Additional Civil Judge court, Jodhpur for getting the total money back including ₹ 3,56,00,000/- which consisted of Rs. 2,31,00,000/-paid before the MOU and Rs. 1,25,00,000/- paid after the MOU and cash of Rs. 1,44,00,000/-. The learned counsel submitted that the assessee made various allegations against shri Gulab singh Bhanadri for total sum of ₹ 5,00,00,000/-paid

including cash of ₹ 1,44,00,000/-although the assessee had paid only ₹ 3,56,00,000/-and the said allegation of cash paid of ₹ 1, 44,00,000/-was made only to recover the money from Shri Gulab singh Bhandari.

36. The learned counsel submitted that under the summon u/s 131 of the Act, the assessee firm has categorically denied that no such cash was paid. He further submits that subsequently Shri Gulab Singh Bhandari also denied that no such cash paid or received. The suit filed before the Civil court was resolved between both the parties and the amount of ₹ 3,56,00,000/-was received back by the assessee firm and its partners. The learned counsel submitted that the Assessing Officer himself has admitted that shri Gulab Singh Bhandari has denied received of any payment in cash as alleged in the assessment order.

37. The learned DR on the other hand submitted that it is the assessee who has made claim of payment of ₹ 1,44,00,000/-made in cash to Shri Gulab Singh Bhandari and asserted in the civil suit filed before the court of Additional Civil Judge, Jodhpur. The assessee has nowhere submitted before the court of the District Judge that claim of payment of cash to Shri Gulab Chand Bhandari was not true. The factual statement which has been made by assessee before the Hon'ble Civil Judge need not to be further proved by way of any other evidence. The refusal of receipt of such cash by shri Gulab Singh Bhandari in the statement before the Assessing Officer is not relevant, because both are interested party

and they have settled the matter out of court and it is most probable that said Shri Bhandari might have returned the amount in cash.

38. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. For ready reference the relevant part of the suit filed by the before the additional civil judge, Jodhpur (scanned copy) is reproduced as under:

> 1. *(एक) यह कि वादी एक पंजीबद्ध भागीदारी फर्म है जिसके श्री विजय शर्मा पुत्र श्री भोलानाथ शर्मा निवासी मुम्बई, श्री अशोक छाजेड़ पुत्र श्री मोहनराज छाजेड़ निवासी मुम्बई एवं श्री मनीष मूथा पुत्र श्री प्रकाशजी मूथा निवासी ठाणें-मुम्बई भागीदार हैं। वादी फर्म की ओर से सुनील कुमार शाह पुत्र स्व. श्री राधेश्याम जी शाह निवासी 104, बी. विंग, पाटिल सदन, एच.एम. पाटिल रोड़, शिवाजी पार्क, दादर, मुम्बई-28 को मौजूदा विवाद सम्बंधी न्यायालय में अपनी ओर से हस्ताक्षर कर तमाम आवश्यक कानूनी कार्यवाही करने हेतु बजरिये खास मुख्त्यारनामा (SPECIAL POWER OF ATTORNEY) दिनॉक 15.05.2012 (पन्द्रह मई दो हजार बारह) के द्वारा अधिकृत किया हुआ है, इसलिए वादी फर्म की ओर से यह वाद मुझ खास मुख्त्यार सुनील कुमार शाह द्वारा पेश किया जा रहा है।*
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> *4. (चार) यह कि वादी व प्रतिवादी के बीच में उक्त जायदाद के खरीद बेचान का इकरार करते समय इस सम्बंध में एक आम सूचना इस आशय की प्रकाशित करवाई गयी थी कि वादी द्वारा प्रतिवादी से उक्त जायदाद खरीदने बाबत् इकरार किया गया है, अतः इस सम्बंध में यदि किसी भी व्यक्ति/ संस्था को किसी प्रकार की कोई उज्र आपत्ति हों तो ये आम सूचना के प्रकाशन के दिन से दस दिन के भीतर अपनी आपत्ति प्रस्तुत करे। वादी ने प्रतिवादी को विभिन्न तारीखों को उपरोक्त भुगतान जरिये चैक के अतिरिक्त रूपये 1,25,00,000/- अक्षरे रूपये एक करोड़ पच्चीस लाख का भुगतान एवं* ***नकद रूप से रूपये 1,44,00,000/- अक्षरे रूपये एक करोड़ चौमालीस लाख उक्त इकरार पेटे किया गया.*** *इस प्रकार वादी ने उक्त इकरार पेटे प्रतिवादी को कुल रूपये 5,00,00,000/- अक्षरे रूपये पांच करोड़ मात्र का भुगतान किया जा चुका है, जो प्रतिवादी द्वारा प्राप्त किया जा चुका है।*

39. Before us the assessee has not brought any finding of Civil Court accepting the claim of cash payment of Rs. 1,44,00,000/- as bogus claim. In view of the above claim before the court of Additional civil judge, Jodhpur, there is no doubt regarding payment of ₹ 1,44,00,000/- by the assessee. The assessee has at any time did not explain before the court of additional civil judge that said claim was false. The contention of the assessee that said claim was made only for a strengthening the suit filed for stay on sale of the property by shri Bhandari, is according rejected. The ground numbers 3 & 4 of the appeal are accordingly dismissed.

40. In the ground No. five, it is contested that assessee was formed during the current assessment year only and no operations were carried out any time before and therefore said cash payment could not be held as income in the hands of the assessee.

41. Before us, the learned counsel of the assessee submitted that addition has been made in the hand of the partnership firm, which was created on 12/04/2011 and the agreement for the sale was entered on 13/04/2011, which is next day of incorporation of the partnership firm. He submitted that as the partnership firm was created on 12/04/2011 and the payment was made in advance the addition made in the hand of the partnership firm on the second day of the incorporation is not justified. In support of the contention that no addition can remain in the hand of the partnership firm in the first year of the business or before the start of the business, the learned counsel relied on following decisions:

Sr No.	*Particulars*	*Page no.*
7.	*Jaiswal Motor Finance (1983) ITR 706 (High Court of Allahabad)*	*53*
8.	*Vaishnodevi Refoils & Solvex (2018) 96 taxmann.com 469 (SC)*	*54*
9.	*Vaishnodevi Refoils & Solvex (2018) 89 taxmann.com 80 (High Court of Gujrat)*	*55-56*
10.	*Odedara Construction (2014) 45 taxmann.com 65 (High Court of Gujrat)*	*57-58*
11.	*Pankaj Dyestuff Industries It reference no 241 of 1993 (High Court of Gujrat)*	*59-64*

42. The learned DR on the other hand submitted that addition has not been made on the basis of an estimation or extrapolation of evidences, but it has been made on the basis of the written claim filed before the civil court by the assessee itself, and therefore the decisions relied upon by the assessee are distinguishable.

43. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case of Jaiswal Motors Finance (supra), deposits in the hand of the partnership firm were held explained as those deposits had been made by the partners in their capital account. In the case of Vaishnodevi Refoils and Solvex (supra) the Hon'ble Gujrat High Court held that if the Assessing Officer was not convinced about creditworthiness of the partners who made capital contribution, enquiry had to be made in the hand of the partnesr and not against the firm. In the case of Odedara construction (supra) also the Hon'ble High Court deleted the addition made under section 68 of the Act on account of capital introduced by the partner and also deposits made by the partner in the firm, on the ground that it does

not represented unaccounted cash credit of the firm. The facts of the decisions relied upon by the assessee are different, because in the case of the assessee, the assessee itself has made claim of payment of cash of ₹ 1,44,00,000/-and therefore it is for the assessee to explain the source of the same and in absence of which, the Assessing Officer has correctly held it to be unexplained and undisclosed income in the hands of the assessee. We do not find any error in the order of the Ld. CIT(A) in upholding the same. The ground No. five of the appeal of the assessee is accordingly dismissed.

44. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 18/07/2023.

Sd/-	**Sd/-**
(ABY T VARKEY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 18/07/2023
Dragon/Shubham P. Lohar

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai