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

श्री मनीष बोराड, लेखा सदस्य एवं डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: SHRI MANISH BORAD, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA No. 157/JPR/2024
निर्धारण वर्ष/Assessment Years : 2008-09

Suva Lal Paharia B-282, Hari Marg, Malviya Nagar, Jaipur.	बनाम Vs.	ITO, Ward-6(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:ABPPP0913P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओरसे/Assesseeby : Sh. Shrawan Kumar Gupta (Adv.) &
Sh. S.L. Jain (Sr. Adv.)
राजस्व की ओरसे/Revenue by: Smt. Monisha Chaudhary (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 28/03/2024
उदघोषणा की तारीख/Date of Pronouncement: 24/06/2024

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre, Delhi dated 29.11.2023[herein after referred to as "CIT(A)/NFAC"] for the assessment year 2008-09, which in turn arise from the order dated 17.03.2016 passed under section 144 r.w.s. 147 of the Income Tax Act (here in after "Act") by the AO.

2.1 At the outset of hearing, the Bench observed that there is delay of 18 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

> "1. In this connection it is submitted that the applicant is a State Govt. Employee and a regular IT asessee. In this case the assessment for A.Y. 2008-09 was completed u/s 147 rws 144 by the ITO Ward 6(3), Jaipur on dt. 17.03.2016 by making the addition of Rs.6,25,410/-. Against which the assessee has filed the appeal before the CIT(A)-2, Jaipur, which later transferred to NFAC. The NFAC has passed the Exparty order on dt.29.11.2023, despite the Ws and reply filed by the assessee. The order was received on portal on dt. 29.11.2023 and on email, which was not served upon the assessee physical. However as per date of order the appeal was to be filed on or before 28.01.2024 but the same is being filed on by 15.02.2024 i.e by the delay of about 18 days. Although actually there is no delay if following facts are being considered.
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> 2. The reason of late filing was that the assessee is a State Govt. employee. the order was sent on the email id:- cavivekawasthi9@gmail.com which belongs to very earlier counsel who mentioned his email id while registering the PAN of the assessee on income tax portal. Neither the assessee in touch with the person whose this email id belongs was nor he informed to the assessee. However in the form 35 the email id was of the mentioned of the assessee which is suvalalpahadia@gmail.com and also mentioning the ITR being filed by the assessee and this email id available with the department while issuing the notices and orders, despite this the notices and order have been sent on the old email id, no notices or orders were received on this suvalalpahadia@gmail.com. Thus the assessee has never come earlier about the orders and notices, that is why neither the compliance has been made nor order has come in the notice, recently when while seeing the income tax portal, the assessee has come to about the exparty orders and notice. The assessee were under impression that they would have been received orders and notices on new email id and email id mentioned I form 35. Further it is also the facts that earlier the mother of the assessee suffering from some diseases now his wife is not well, hence this is also the reason.
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> 3. That thereafter assessee asked to the counsel to prepare the appeal and the appeal has been prepared by him on 14.02.2024 and sent to us for singe.

4. Thus there was no negligence's of the assessee. Thus due to above bonafide mistake the appeal could not be filed within time. In support of these contention an affidavit of the assessee is enclosed.

5. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

> "The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

6. The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy (1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Anothers 118 ITR 507.

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(AII), N. Balakrishnan v/s M. Krishanmurthy 7 SSC123.

7. The Hon'ble Jaipur Bench of ITAT has also condoned the dealy in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.

In the instant case also, the appeal could not be filed in time because of the above reaons which were bonafide and was a sufficient cause and there was no melafide intention of the assessee.

8. Recent Decision of Apex Court: in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).

Prayer In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."

To this effect, the assesee has filed an affidavit as to the condonation of delay in filing the appeal.

2.2 The ld. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 18 days is on account of the e-mail error resulted delay. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji& Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 18 days has merit and we concur with the submission of the assessee. Thus the delay of 18 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. The assessee has raised the following grounds of appeal:-

"1.1 The impugned order u/s 147 rws 144 of the I.T. Act, 1961 dated 17.03.2016 as well as the notice u/s 148 and proceedings u/s 147/148 are illegal, bad in law, barred by limitation, without jurisdiction, without approval/satisfaction from the proper or competent authority, against the principle of natural justice and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in passing exparty order without providing adequate and reasonable opportunity of being heard in the gross breach of law. Hence the additions so made by the Id. AO may kindly be quashed and delete.

3. Rs.2,32,545/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.2.32,545/- made by the Id. AO on account of Long Term Capital Gain and also erred in not giving the claim/deduction u/s 54. The Ld. AO and CIT(A)also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

4. Rs.1,82,461/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.1,82,461/- on account of salary also erred in not giving or allowing the deduction claimed u/s 80C. The Ld. AO and CIT(A)also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

5. Rs.89,000/-: The Id. CIT(A) has grossly erred in law as well as on thefacts of the case in confirming the addition of Rs.89,000/- on account of alleged undisclosed cash deposits in the bank account. The Ld. AO and CIT(A)also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

6. Rs.1,21,400/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.1,21,400/- on account of alleged undisclosed credit entries in the bank account. The Ld. AO and CIT(A)also erred in not considering the evidences, vital facts and material available on record in their true perspective and sense. Hence the addition so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

7. The Id. AO has grossly erred in law as well as on the facts of the case in charging the interest u/s 234A, B,C. The interest so charged is being totally contrary to the provision of law and on facts of the case and hence same may kindly be deleted in full.

8. That the appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

4. Brief facts of the case are that the assessee is an individual and regular IT assessee but for the year he not filed his ITR. A notice u/s 148 on 30.03.2015 was issued by the ITO Ward 7(4), Jaipur. As per the assessment order notice u/s 148 was issued on the reason that" On the basis of information brought on record, it is gathered that the assessee has sold an immovable property during the year under consideration. Further on perusal of the information received from Sub- Registrar, it is found that the Sub-Registrar has taken the value of said property at Rs.56,16,000/- instead of face value of Rs. 10,25,000/-. On further verification of record, assessee has not filed his return of income for A.Y. 2008-09. Hence, there

was a reason to believe that income amounting to Rs.56,16,000/- had remained undisclosed and had escapement assessment" Thereafter the ld. AO has noted that the case was re-opened after seeking requisite approval from Add. CIT Range-7, Jaipur. The ld. AO has also noted that the case records were received by the ITO Ward 6(3), Jaipur on 28.12.2015. Thereafter the ld.AO has completed the assessment by making various addition of Rs.6,25,410/-and completed the assessment at Rs.6,25,410/-.

5. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). Since the assessee has not complied with the notices issued the ld. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

> "5.1 The appeal was filed by the assessee 08/01/2019 against the order u/s 147r.w.s144 of the Act dated 17/03/2016 for the Asst year 2008-09. In connection to the appeal, opportunities were provided to the assessee to substantiate his grounds of appeal on following dates:

Sr. No.	Date of hearing(s)
1.	22.01.2021
2.	12.02.2021
3.	13.09.2023
4.	17.11.2023

On verification of the ITBA portal, it is observed that all the above-mentioned hearing notices got delivered to emails cavivekawasthi9@gmail.com, successfully. Against all these notices there was no response from the appellant, as has been brought out above, it is evident that the appellant is not interested in filing any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.

5.2 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another (118 ITR 461) that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of Mis Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the Page 3 of 4 AABFA9198E- ARVIND JEWELLERS A.Y. 2012-13 ITBA/NFAC/S/250/2023-24/1056369699(1) observations of Hidayatullah, Chief Justice (as His Lordship then was) in SunderlalMannalal Vs. Nandramdas Dwarkadas AIR 1958 MP 260 wherein it was observed :-

"Now the Act does not give any power of dismissal But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal therefore, is an inherent power which every tribunal possesses..."

5.3 This appeal has been filed by the appellant with a prayer to this office that deduction of claim u/s 54, salary income without deducting 80C, Cash deposit and credit in bank account, to be allowed. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The 'burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Further, if the appellant claims that the addition made should be deleted, the burden is on the appellant to prove it why it should be deleted. Same is the position in case of all allowances, deductions, exemptions, claims or loss etc. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed or levied fee/interest, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the assessee to discharge its onus. Hence, respectfully following the above-mentioned

judicial pronouncements and in view of the facts of the case, the appeal is hereby dismissed.

6. In the end result, the appeal is DISMISSED."

6. As the assessee did not receive any favour from the appeal filed before ld. NFAC/ CIT(A). The present appeal filed against the said order of the ld. NFAC before us on the grounds as reiterated in para 3 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

" GOA:-1-7: Invalid action u/s 147 rws 148 and Invalid and illegal assessment:

FACTS: 1. The brief facts of the case are that the assessee is a regular IT assessee. For the year he not Filed his ITR being the no taxable income. The ld. AO has issued the notice u/s 148 on 30.03.2015(PB) by the lTO Ward 7(4), Jaipur, on the reason that" On the basis of information broght on record, it is gathered that the assessee has sold an immovable property during the year under consideration. Further on perusal of the information received from Sub- Registrar, it is found that the Sub-Registrar has taken the value of said property at Rs.56,16,000/- instead of face value of Rs10,25,000/-. On further verification of record, assessee has not filed his return of income for A.Y. 2008-09. Hence there was a reason to believe that income amounting to Rs.56,16,000/- had remained undisclosed and had escapement assessment" (PB). The ld. AO has stated that the case was re-opened after seeking requisite Approval from Add. CIT Range-7, Jaipur. The ld. AO has noted that the case records were received by the ITO Ward 6(3), Jaipur on dt. 28.12.2015

2. The ld. AO has issued the notice u/s 142(1) and SCN. The assessee has filed the copy of Bank accounts, alongwith copy of sale deed and details in respect to the purchase of property through a registered purchase deed of Rs.7,25,000/- . In this notice the ld. AO has asked to file the remaining details and proposed to make the additions. The ld. AO has stated that the assessee has not filed the reply and proceed to ex parte assessment .

The ld AO has stated that the onus to prove sale consideration and any deduction claimed o account of investment u/s 54, cost of any improvement made on the said property vest with the

assessee and the assessee has failed to prove the same. Thus the ld. AO has calculated the LTCG at Rs.2,32,545/- by taking the sale consideration at Rs.11,86,977/- and const of indexation at Rs.9,54,432/- vide page 5 of assessment order.

The ld. AO has further noted that in the bank account assessee has received of Rs.1,82,461/- on account of salary. And assesee has not filed any details and hence the ld. AO has made the addition of Rs.1,82,461/- under the head of income from salary.

The ld. AO has further noted that in the bank account assessee has deposited cash of Rs.89,000/- during the year on various date. The ld. AO stated that assesee has not filed any details and hence the ld. AO has made the addition of Rs.89,000/- under section 68 as alleged unexplained credit.

The ld. AO has further noted that in the bank account of the assessee cehque amounting of Rs.1,21,400/- deposited/credited during the year on various date. The ld. AO stated that assesee has not filed any details and hence the ld. AO has made the addition of Rs.1,21,400/-as alleged unexplained income of the assessee.

Thus the ld. AO has completed the assessment at Rs. 6,25,409/-.

Hence this appeal.

SUBMISSIONS:

1. No Approval from Jurisdictional or competent Authority u/s 151 from CIT or Pr. CIT: As in the above case the notice u/s 148 was issued after expiry four years and as per provisions of Sec. 151 notice after four years can be issued only after obtaining the sanction or approval u/s 151(1) from the CIT or Pr. CIT. And in the present case no approval has been taken from the Pr. CIT-3 but the approval has been taken from the Add.CIT Range-7, Jaipur admittedly vide page 1 para of the assessment order. Hence the issuance the notice 148 and consequent assessment order passed is invalid, illegal void ab-initio and liable to be quashed on this ground alone. Because this is the case of for A.Y. 2008-09 and four years has expired on 31.03.2013 and the notice u/s 148 has been issued on dt. 30.03.2015 vide page 2 para 3 of the assessment order.

> "151(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principle Chief commissioner or Chief Commissioner or Principle Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing officer, that it is a fit case for the issue of such notice."

Thus no satisfaction of the Add. CIT was required, the satisfaction must be of higher authorities which is PCIT or CIT in the present case. Hence the reasons recorded as well as the notice u/s 148 issued in these facts and circumstances is illegal, invalid void-ab-inito and liable to quashed.

The action of the ld. AO shows gross breach violation of the specific provision of aec. 151 of the IT Act.

On this preposition kindly refer direct decision of the Honble Raj. High Court judgments in case of Dhadha Exports V/s ITO 377 ITR 347(Raj.)wherein it has been held "*Dispute pertains to assessment year 2007-08. The notice under Section 148 of the IT Act has been issued to the petitioner-assessee beyond expiry of four years after the end of the relevant assessment year. Proviso to Section 151 (1) of the IT Act in this connection stipulated at the relevant time that no such notice itself be issued after the of four years from the end of the relevant assessment year unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid that it is a fit case for the issue of such notice. Subsequently by amendment inserted by the Finance (NO.2) Act, 2014 with effect from 01.06.2013 the Principal Chief Commissioner and Principal Commissioner, apart from Chief Commissioner and Commissioner, have also been inserted as the competent authority to grant such sanction. However, sanction letter dated 27.03.2014, which Income Tax Officer has relied and supplied to the petitioner-assessee, vide communication dated 02.01.2015, has been issued by Joint Commissioner, Income Tax, Range-I, Jaipur.*

(para 9)

Delhi High Court in CIT Vs. SPL's Siddhartha Limited, has while holding that when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction, rejected contention of the revenue that obtaining approval from the authority other than the one who was competent to grant such approval, was mere irregularity committed by the Income Tax Officer. And that it was rectifiable under Section 292B of the IT Act cannot be accepted as such irregularity is not curable under Section 292B.

(para 11)

Resort to Section 292B of the IT Act cannot be made to validate an action, which has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of Chief Commissioner or Commissioner under proviso to sub-section (1) of Section 151. This is an inherent lacunae affecting the very correctness of the notice under Section 148 and is such which is not curable by recourse to Section 292B of the IT Act.

The same has also followed recently by the Honble ITAT Jodhpur Bench Jodhpur in the case of Preeti Navin Mehta v/s ITO Ward 1(4) Udaipur, in ITA No. 13 to 16/Jodh/2022 dt. 15.12.2023.

Also refer Ghanshyam K. Khabrani v/s ACIT 346 ITR 443(Bom.) and

In the case of CIT V/s SPL's Siddhartha Ltd 345 ITR 223(Del). Reassessment—Sanction for issue of notice u/s 151(1)—AO issued notice u/s 147 read with S. 148 for reopening assessment after expiry of four years from end of relevant assessment year, which was subsequently set aside by ITAT on ground that requisite approval of Additional CIT, which is mandatorily required, was not taken—Held, AO was required to take approval of Competent Authority u/s 151 (1)—AO had specifically sought approval of Commissioner only—Therefore, it cannot be said that the Joint Commissioner/Additional Commissioner had granted the approval—Further, even though the file was routed through Additional Commissioner, he did not apply his mind or gave any sanction—Instead, he requested Commissioner to accord the approval—It, thus, cannot be said that it is an irregularity curable u/s. 292B—If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion—If discretion is exercised under direction or in compliance with some higher authorities instruction, then it will be case of failure to exercise discretion altogether—Therefore, the Tribunal has rightly decided the legal aspect.

In the case of CIT vs. Soyuz Industrial Resources Ltd.(2015) 232 Taxman 0414 (Delhi HC) held *Reassessment—Sanction for issuance of notice—Assessee had filed its returns in a normal course and assessment was framed u/s 143(1)—Based upon information received by AO, a satisfaction note was recorded and a notice was issued beyond four years from the end of the assessment year, under proviso to s 147(1)—Reassessment proceedings were completed—Assessee claimed that the notice u/s 147 was unsustainable because it was not approved by the competent authority in accordance with Section 151—CIT(A) sanctioned re-assessment proceedings through issuance of notice u/s 148—ITAT's allowed assessee's appeal by holding that the CIT lacked the authority to sanction re-assessment proceedings through issuance of notice u/s 148—Held, Privy Council in Nazir Ahmad V. Emperor had laid down that if the statute mandates that something be done in a particular manner, it should be in that manner or not at all—Thus, it was not court's job to render, in the process of interpretation, an entire provision academic or inoperative—As per Section 151, in case the original assessment was completed "other than" i.e. otherwise than u/s 143(3) or during the course of re-assessment proceedings, competent authority would be the Joint Commissioner—Instant Court had to give effect to plain words of the statute which unambiguously stated that the competent authority in such cases was the Joint Commissioner and not the Chief Commissioner or the Principal Commissioner—Since the original assessment was completed "other than" the eventualities contemplated in Section 151(1), i.e. it was processed u/s 143(1), thus, clearly Section 151(2) would be applicable—No infirmity was found in the order of the ITAT—Revenue's appeal dismissed.*

In the case of Pr. CIT vs. N.C. CABLES LTD.(2017) 98 CCH 0018 DelHC held that *Reassessment—Issuance of Notice—Sanction for issue of Notice—Assessee had in its return for AY 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan—Original assessment was completed u/s 143(3)—However, pursuant to reassessment notice, which was*

dropped due to technical reasons, and later notice was issued and assessments were taken up afresh—After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000—CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities—Tribunal allowed assessee's appeal on merits—Revenue appealed against appellate order on merits—Assessee's cross appeal was on correctness of reopening of assessment—Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148—Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion—Mere appending of expression 'approved' says nothing—It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up—At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner—In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer—Revenue's appeal dismissed.

The present case is on much strong footing because admittedly the satisfaction was of the ld. AO not of higher authority as per record available.

Also refer the decision of Satyanarain Bairwa v/s ITO Ward 2(4), Jaipur in ITA No. 867 and 869/Jp/2018 dt. 15.09.2021 where the facts and circumstances are the same.

The reason for the same was indicated by the High Court as under:
"It is noted that when a statue requires, a thing to be done in a certain manner, it shall be done in that manner alone and court would not expect its being done in some other manner." This contention has been praised by Honorable Justice in his land mark judgment of GHANSHYAM K. KHABRANI Vs ACIT (2012) 346 ITR 443 (BOM).

2. Incorrect or wrong Reasons: 1 Further it is submitted that the reasons recorded or information on which the proceeding has been initiated itself was wrong, incorrect and without material on record at the time of recording of reasons. Because in the reasons recorded the ld. AO mentioned that "On the basis of information brought on record, it is gathered that the assessee has sold an immovable property during the year under consideration. Further on perusal of the information received from Sub- Registrar, it is found that the Sub-Registrar has taken the value of said property at Rs.56,16,000/- instead of face value of Rs10,25,000/-. On further verification of record, assessee has not filed his return of income for A.Y. 2008-09. Hence there was a reason to believe that income amounting to Rs.56,16,000/- u/s 50C had remained undisclosed and had escapement assessment"

However the assessee the value of the property u/s 50 was of Rs.11,86,977/- admittedly not of Rs.56,16,000/- and this fact has already been admitted by the Ld. AO in the Assessment Order.

Thus firstly there was no value u/s 50C of Rs.56,16,000/- and new FDR and secondly the escaped income if any was only 2,32,545/- as the ld. AO himself admitted.

Thus when the very reasons are wrong or incorrect then all the proceedings are invalid.

2.2 Hence when the reason for reopening itself wrong, incorrect and without material and altogether reverse then all the proceedings are void –ab-initio and liable to be quashed.

2.2.1 On this preposition we would like to draw your kind attention on direct decision Honble Gujrat High Court in the case of Mumtaz Hazi Mohamad Memon v/s ITO 408 ITR 268(Guj.) on the very same issue, wherein the Honble Court has held that

> "11. In this context, we have noted that the reasons proceeded on two fundamental grounds. One, that the property in question was sold for a sum of Rs. 1,18,95,000/- and two; that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and income also offered his share of the declared sale consideration to tax as capital gain. The Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs. 1,18,95,000/- as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in which, the sale consideration disclosed was Rs. 50 lakhs.
>
> 12. The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs. 1,18,95,000/- therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, Revenue simply cannot hope to salvage the impugned notice. Through the affidavit-in-reply a faint attempt has been made to entirely shift the centre of the reasons to a completely new theory viz. the possible applicability of section 50C of the Act. The reasons recorded

nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain."

2.2.2 In the case of Vijay Harish Chandra Patel vs. ITO *400 ITR 167(Guj.) (2018) where it has been held that" When very basis for reopening no longer survives, assumption of jurisdiction u/s 147 by AO by issuing notice u/s 148 was without authority of law and could not be sustained.*

However the ld. AO nowhere stated that what documents he was having with him at the time of recording the reason for the information that there was cash deposits of Rs.55,00,000/-. Hence the observation are wrong and baseless and her own and liable to be ignored.

2.2.3 Recently the Honble ITAT Jaipur Bench Jaipur in the case of Smt. Sushila Chahch v/s ITO in ITA No. 683/Jp/2019 dt. 30.03.2021 has quashed the notice as well as assessment order under the same facts and circumstances of the case copy of order is enclosed. Where it has been held that" In light of aforesaid discussion and following the decision referred supra, where the very foundation for reopening the case is vitiated given that the assessee has filed her return of income disclosing the transaction of sale of immovable property for the specified consideration and offering the same to tax, there cannot be any reasons to believe that income has escaped assessment for the very same transaction the assumption of jurisdiction u/s 147 cannot be sustained and the subsequent proceedings are hereby directed to be set-aside. Also refer Shri Narain Dutt Sharma vs ITO (ITA No.203/JP/2017 dated 07.02.2018).

2.2.5 Also refer recent decision of Honble Delhi High Court in the case of Catchy Prop-Build(P.)Ltd v/s ACIT [2022] 145 taxman.com 510 (Delhi) dt.17.10.2022.

2.2.6 In the case of Rames Bhojprasad Gupta vs. ITO ITA No. 476/SRT/2019, Feb 7, 2022 (2022) 64 CCH 0090 SuratTrib it has been held That *Reassessment—Reopening of assessment—AO on basis of AIR information noted that assessee made deposit in his bank account in PNB—AO recorded that in response to notice under section 148; assessee neither filed return of income nor responded—Assessing Officer ultimately by-passing assessment order made addition on account of undisclosed cash deposits PNB'—Assessing Officer also disallowed disallowance under Chapter-VI-A by taking view that no such deduction claimed in original return of income and no evidence to substantiate such deductions were filed—CIT(A) observed that pattern of withdrawal support contention of assessee is that deposit in bank were pertaining to business of its scrap—Accordingly, accepted transaction—CIT(A) on basis of pattern of deposit and withdrawal in PNB concluded that assessee shifted a part of his business turnover to undisclosed bank account—CIT(A) calculated profit on account of undisclosed sales, credit in bank account and accordingly worked out addition and directed Assessing Officer that while computing income of assessee—Held, Assessing Officer recorded that assessee filed return in his return of income and revised return of income, as "It was also noted by undersigned that assessee had*

returned income of Rs.3,56,170/- in his return of income and in revised return of income, assessee returned income of Rs.5,00,660—Thus, during re-assessment, Assessing Officer was very well aware i.e., return was filed by assessee—AO recorded that on verification of details in ITD, it was seen that assessee has not filed return and assessee has not complied with verification letter—Assessing Officer has not recorded as to how said notice was served upon assessee or not—Reasons recorded was provided by AO vide letter dated 21.09.2017 which was received by assessee on 23.09.2017 and subsequently assessment order passed on 29.09.2017 by taking view that despite repeated notice and show cause assessee was not made proper compliance—On similar ground of reasons of reopening wherein Assessing Officer recorded that assessee has not filed return and in fact, return was filed by assessee, re-assessment were held as invalid by co-ordinate Bench of this Tribunal, in case of Rinakumar A. Shah (ITA No. 172/AHD/2017 holding that Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute fact that assessee did not file return—Entire reasoning recorded by AO for initiation of reassessment proceeding and issuance of notice under section 148 was on wrong and incorrect facts that assessee has never filed return of income, and in fact, it was filed—Initiation of reassessment proceeding u/s.147 and notice under section 148 and all subsequent proceedings and orders have been issued, conducted, passed without having valid jurisdiction, and therefore, same are bad-in-law and hence, same is quashed—CIT(A) estimated income @ 51.84% on account of undisclosed sales—Assessee claimed that he has shown book net book profit @ 11.45% and in subsequent year Assessing Officer has made addition @ 10% of net profit in assessment order passed under section 143(3—It is settled law that only profit element embedded in undisclosed sale or purchases is to be added not substantial part of transaction—When in subsequent assessment year in AY 2011-12, AO himself made addition only @ 10% of net profit in assessment order passed under section 143(3); book profit shown by assessee @ 11.45% for year under consideration was reasonable and justified—Therefore, assessee also succeeded on merit—Assssee's appeal allowed.

2.2.7 The Honble Jurisdictional Raj. High Court in the case of ABDUL MAJEED vs. INCOME TAX OFFICER in *D.B. Civil Writ Petition No. 7853/2022 Jun 29, 2022(2022) 114 CCH 0245 RajHC (2022) 216 DTR 0305 (Raj), (2022) 327 CTR 0733 (Raj)* it has been held " *Reassessment—Issuance of notice under section 148 after proceedings under Section 148A (d)—Writ petition seeks to assail correctness and validity of order passed by respondent, whereby, after initiating proceedings under Section 148A (d) on formation of an opinion that income chargeable to tax has escaped assessment, authority proceeded to issue notice under Section 148—Respondent issued notice under clause (b) of Section 148A on basis of certain information which suggested that income chargeable to tax for assessment year 2015-2016 has escaped assessment within meaning of Section 147—Notice stated that assessee did not disclose this amount of cash deposit during relevant financial year and, therefore, on that basis, proceedings are required to be initiated—Competent authority proceeded to pass an order for issuance of notice under Section 148—Thereafter, a notice under Section 148 has been issued to petitioner-*

assessee—Held, After amendment carried out in income tax under Finance Act, 2021, even before proceedings under Section 148 could be drawn, law requires an order to be passed under Section 148A by conducting an enquiry in manner provided under Section 148A and satisfaction to be arrived at on basis of material available on record that income chargeable to tax has escaped assessment for relevant assessment year—Provision is explicitly clear that Assessing Officer shall, before issuing any notice under Section 148, conduct enquiry, details of which have been contained in Sub Clause (a) (b) & (c), which requires seeking prior approval of specified authority with respect to information; providing an opportunity of being heard to assessee and consideration of reply of assessee—Sub-Clause (d) of Section 148A mandates that after conducting enquiry by affording an opportunity of hearing and consideration of reply, authority shall decide, on basis of material available on record, including reply of assessee, whether or not it is a fit case for issuance of notice under Section148, by passing an order—Notice which was issued to petitioner-assessee by invoking jurisdiction under Section 148A(d) by authority was based on information regarding undisclosed cash deposits reflected by various transactions, which according to authority, was more than Rs.52,00,000—However, when petitioner-assessee filed his reply, he clearly disclosed that total amount of cash deposits in bank by him was only Rs.19,39,000/- and not Rs.52,75,000/- as alleged in notice—Assessee along with his reply annexed complete bank statements showing all debit and credit transactions—Total transactions, which have been shown, do not exceed amount as has been stated by petitioner-assessee—While considering reply and bank statements, competent authority did not dispute transactions, which were placed before it along with reply filed by petitioner- assessee—Therefore, very basis of initiation of proceedings that income exceeding more than Rs.50,00,000/- had escaped assessment, was factually not correct—But then, authority thereafter, without disputing transactions, proceeded to pass an order for issuance of notice under Section 148—Provisions contained in Section 148A (d) referred to hereinabove, clearly show that decision has to be taken on basis of material available on record—Material available on record before authority did not disclose any cash deposit or any other transactions which can be said to have escaped assessment, which was more than Rs.50,00,000—Had it been a case of opening of case within a period of three years having elapsed from end of relevant assessment year, order of authority could be well justified on touch stone of legal requirement as embodied under Section 148A—However, in present case, undisputedly it is a case where more than three years have elapsed from end of relevant assessment year—In that case, in order to initiate proceeding under Sections 148, it is not only required to be shown that some income chargeable to tax has escaped assessment, but also that it amounts to or is likely to amount to Rs.50,00,000/- or more than for that year—Only on basis that cash deposits of Rs. 19,39,000/- chargeable to tax have escaped assessment, without anything more, authority was not justified in jumping to conclusion that assessee may have more bank accounts—If such an interpretation is placed on provision of Section 148A (d) with reference to expression 'material available on record', then in that case, it will open flood gate and even without availability of any material, authority would be initiating proceedings under Section 148, which will completely frustrate object of

incorporation of Section 148A in Act—It is well settled principle of interpretation that taxing statute is required to be construed strictly—Impugned order and proceedings are unsustainable in law—Assessee's petition allowed".

Here the facts and position are the same hence the assessment order liable to be quashed. As the ld. AO has issued the notice on the wrong reasons, as above.

Also refer Rajhans Processor v/s UOI in DB c Civit Writ Petition No. 16985/2021 dt. 05.01.2023 of Raj. High Court.

Thus the reassessment proceeding on the basis of wrong or incorrect reason and wrong material are illegal and liable to be quashed.

3. Notice u/s 148 without jurisdiction: Further admittedly in the above case the jurisdiction over the assessee was with the ITO Ward 6(3) not with the ITO Ward 7(4), hence the notice issued u/s 148 is without jurisdiction and liable to be quashed.

4. Re-assessment is based on borrowed satisfaction;

The Ld. AO has issued notice u/s 148 on the basis of borrowed information in respect of bogus sale value adopted by the Sub- Registrar, without verifying the correctness of the information and therefore re-assessment proceedings is absolutely bad in law and without jurisdiction and further AO not recorded his satisfaction and re-assessment is based on borrowed satisfaction which was not sufficient to confer power on the AO to initiate reassessment proceedings against assessee.

CIT vs. Shree Rajasthan Syntex Ltd. (2009)313 ITR 231 (Raj.) SLP dismissed (2009) 313 ITR (St.) 27 (SC);

Sun. Pharmaceutical Industries Ltd. Vs. DY. CIT (2016)287 CTR(Del.)621;

The Impugned initiation of assessment proceedings had started by the AO on borrowed satisfaction but not their own which is mandatory condition of the law as provided for re – opening of any assessment. Section 147 of Act clearly specify. In impugned case the Ld. AO had claimed that a certain transaction of bogus LTCG on the basis of statements as recorded of third party and Ld. AO could not have been made any enquiry regarding both the facts and without conducting any enquiry/investigation re-opened the case and issued the notices which is completely based on perverse findings and deserve to be declared as null and void ab initio.

Here in impugned case AO's self-satisfaction regarding escapement of income is not bringing on record which is mandatory condition of law under section 147 of Income Tax Act, 1961, it could have been come only after conducting enquiry and investigation but Ld. AO did not make such

therefore complete re-assessment proceedings come under suspicious circle, various honorable courts propounded and led on this aspect and issue direction to handle such situation.

Similarly in the case of CIT v. Indo Arab Air Services (2016) 130 DTR 78/ 283 CTR 92 (Delhi)(HC) it was held that mere information that huge cash deposits were made in the bank accounts could not give the AO prima facie belief that income has escaped assessment. The AO is required to form prima facie opinion based on tangible material which provides the nexus or the link having reason to believe that income has escaped assessment. The AO was also required to examine whether the cash deposits were disclosed in the return of income to form an opinion that income has escaped assessment.

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power. *Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 570 (Bom).*

Prayer: In view of the above facts , circumstances the case and legal position the notice as well as the assessment may kindly be quashed.

Further if your honor is not satisfied on our above legal plea and arguments then kindly adjourned the matter for arguing and filling the WS on merit."

6.1 During the course of hearing the Ld. AR of the assessee has drawn our attentions toward the legal issue's and argued the case on legal grounds of appeal. The Ld. AR of the assessee has argued that the notice u/s 148 dated 30.03.2015 has been issued by the ld. AO with the prior approval of the Add. CIT, which is invalid or wrong because after the expiry of four years.i.e after 31.03.2013 being the case of A.Y. 2008-09, the approval or sanction was required to be obtained from ld. PCIT not of the Add. CIT. The Ld. AR of the assessee has further argued that the notice has been issued on wrong reasons because in the reasons recorded the ld. AO stated that the Sub- Registrar has taken the value of the property at Rs.56,16,000/-

while in the assessment order ld. AO himself admitted that the value of the property u/s 50C was adopted by the Sub Registrar at Rs.11,86,977/-, the ld. AO has proceed on borrowed satisfaction not recorded his own satisfaction etc in support the ld. AR of the assessee submitted the following written submission and case laws.

7. Other hand the Id. DR supported the orders of the lower authorities.

8. We have heard both the parties and perused the materials available on record. We have observed that the case of the assessee is for A.Y. 2008-09, the notice u/s 148 was issued by the ld. AO on 30.03.2015 i.e. after expiry four years with the requisite approval or sanction of Add. CIT Range-7, However as per provisions of Sec. 151 notice after four years can be issued only after obtaining the sanction or approval u/s 151(1) from the CIT or Pr. CITand in the present case no approval has been taken from the Pr. CIT-3 but the approval has been taken from the Add.CIT Range-7, Jaipur admittedly vide page 1 para of the assessment order and as per Section 151 provides

> "151(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principle Chief commissioner or Chief Commissioner or Principle Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing officer, that it is a fit case for the issue of such notice."

And we note that the present case pertains to A.Y. 2008-09 and four years had expired on 31.03.2013 while the notice u/s 148 was issued on 30.03.2015 as also mentioned at page 2 para 3 of the assessment order.

Before us the Ld. AR for the assesee has supported his augments with cases in thecase of Dhadha Exports V/s ITO 377 ITR 347(Raj.) wherein it has held as under:-

> "Dispute pertains to assessment year 2007-08. The notice under Section 148 of the IT Act has been issued to the petitioner-assessee beyond expiry of four years after the end of the relevant assessment year. Proviso to Section 151 (1) of the IT Act in this connection stipulated at the relevant time that no such notice itself be issued after the of four years from the end of the relevant assessment year unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid that it is a fit case for the issue of such notice. Subsequently by amendment inserted by the Finance (NO.2) Act, 2014 with effect from 01.06.2013 the Principal Chief Commissioner and Principal Commissioner, apart from Chief Commissioner and Commissioner, have also been inserted as the competent authority to grant such sanction. However, sanction letter dated 27.03.2014, which income Tax Officer has relied and supplied to the petitioner-assessee, vide communication dated 02.01.2015, has been issued by Joint Commissioner, Income Tax, Range-1, Jaipur. (para 9)
>
> In the case of CIT VS. SPL's Siddhartha Limited, has while holding that when a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and satisfaction so recorded should be 'independent' and not "borrowed' or 'dictated' satisfaction, rejected contention of the revenue that obtaining approval from the authority other than the one who was competent to grant such approval, was mere irregularity committed by the Income Tax Officer. And that it was rectifiable under Section 2928 of the IT Act cannot be accepted as such irregularity is not curable under Section 2928.(para 11)

We noted from the above submissions of the Ld. AR of the assessee stated that the above judgment has also been followed recently by the Co-ordinate ITAT Jodhpur

Bench Jodhpur in the case of Preeti Navin Mehta v/s ITO Ward 1(4) Udaipur, in ITA No. 13 to 16/Jodh/2022 dt. 15.12.2023 and by this ITAT in case of Satyanarain Bairwa v/s ITO Ward 2(4), Jaipur in ITA No. 867 and 869/JP/2018 dt. 15.09.2021

We further note from the above facts and circumstances are the same and Section 292B of the IT Act cannot be made to validate an action, which has been rendered illegal due to breach of mandatory condition of the sanction on satisfaction of Chief Commissioner or Commissioner under proviso to sub-section (1) of Section 151. This is an inherent lacunae affecting the very correctness of the notice under Section 148 and is such which is not curable by recourse to Section 292B of the IT Act.

Further we noted from the reliance placed by the Ld AR for the assesee in the case of CIT V/s SPL's Siddhartha Ltd 345 ITR 223(Del),which is as under :

> "Reassessment-Sanction for issue of notice u/s 151(1)-AO issued notice u/s 147 read with S. 148 for reopening assessment after expiry of four years from end of relevant assessment year, which was subsequently set aside by ITAT on ground that requisite approval of Additional CIT, which is mandatorily required, was not taken-Held, AO was required to take approval of Competent Authority u/s 151 (1)-AO had specifically sought approval of Commissioner only- Therefore, it cannot be said that the Joint Commissioner/Additional Commissioner had granted the approval-Further, even though the file was routed through Additional Commissioner, he did not apply his mind or gave any sanction-Instead, he requested Commissioner to accord the approval-It, thus, cannot be said that it is an irregularity curable u/s. 2928-If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion-If discretion is exercised under direction or in compliance with some higher authorities instruction, then

it will be case of failure to exercise discretion altogether-Therefore, the Tribunal has rightly decided the legal aspect."

In the case of CIT vs. Soyuz Industrial Resources Ltd.(2015) 232 Taxman 0414 (Delhi HC) which is as under:-

"Reassessment-Sanction for issuance of notice-Assessee had filed its returns in a normal course and assessment was framed u/s 143(1)-Based upon information received by AO, a satisfaction note was recorded and a notice was issued beyond four years from the end of the assessment year, under proviso to s 147(1)-Reassessment proceedings were completed-Assessee claimed that the notice u/s 147 was unsustainable because it was not approved by the competent authority in accordance with Section 151-CIT(A) sanctioned re-assessment proceedings through issuance of notice u/s 148-ITAT's allowed assessee's appeal by holding that the CIT lacked the authority to sanction re-assessment proceedings through issuance of notice u/s 148-Held, Privy Council in Nazir Ahmad V. Emperor had laid down that if the statute mandates that something be done in a particular manner, it should be in that manner or not at all-Thus, it was not court's job to render, in the process of interpretation, an entire provision academic or inoperative-As per Section 151, in case the original assessment was completed "other than" i.e. otherwise than u/s 143(3) or during the course of re-assessment proceedings, competent authority would be the Joint Commissioner- Instant Court had to give effect to plain words of the statute which unambiguously stated that the competent authority in such cases was the Joint Commissioner and not the Chief Commissioner or the Principal Commissioner-Since the original assessment was completed "other than" the eventualities contemplated in Section 151(1), le. it was processed u/s 143(1), thus, clearly Section 151(2) would be applicable-No infirmity was found in the order of the ITAT-Revenue's appeal dismissed."

We also note in the case of Pr. CIT vs. N.C. CABLES LTD. (2017) 98 CCH 0018 Del HC, it has been held as under:-

"Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for AY 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and

assessments were taken up ofresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs 1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment-Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion-Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner-In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

8.1 We note in the case of GHANSHYAM K. KHABRANI VS ACIT (2012) 346 ITR 443 (BOM) raised the contention that "When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner".

Therefore taking consideration of above facts and circumstances of the case and the above cited case laws, we are of the view that as per the provisions of Sec. 151 that no satisfaction of the Add. CIT was required in this case and the satisfaction must be obtained from the higher authorities which is PCIT or CIT in

the present case. Hence the action of the AO was gross violation of the specific provision of u/s 151 of the IT Act. Hence the notice issued u/s 148 is illegal, invalid void-ab-inito and liable to quashed.

8.2 Second issue we also observed that the AO has issued the notice u/s 148 on wrong reasons recorded or information and without material on record at the time of recording of reasons. We note from the assessment order (page 1)the Ld AO has recorded the reasons has mentioned that "On the basis of information brought on record, it is gathered that the assessee has sold an immovable property during the year under consideration. Further on perusal of the information received from Sub- Registrar, it is found that the Sub-Registrar has taken the value of said property at Rs.56,16,000/- instead of face value of Rs10,25,000/-. On further verification of record, assessee has not filed his return of income for A.Y. 2008-09. Hence there was no reason to believe that income amounting to Rs.56,16,000/ u/s 50C had remained undisclosed and had escapement assessment."

Further we note from the submission of the Ld AR for the assesee and on perusal of the assessment order at (page 5), AO himself has taken the value of the property u/s 50 adopted by the Sub- Registrar at Rs.11,86,977/- admittedly not of Rs. 56,16,000/- and calculated the LTCG at Rs 2,32,545/-which shows that neither the

value of the property adopted u/s 50C at Rs.56,16,000/- nor the escaped income was of Rs. 56,16,000/-

We note from the reliance in the case by this Honble Jurisdictional Raj. High Court in the case of ABDUL MAJEED vs. INCOME TAX OFFICER in D.B. Civil Writ Petition No. 7853/2022 Jun 29, 2022 (2022) 114 CCH 0245 Raj HC (2022) 216 DTR 0305 (Raj), (2022) 327 CTR 0733 (Raj) it has been held

> "Reassessment-Issuance of notice under section 148 after proceedings under Section 148A (d)-Writ petition seeks to assail correctness and validity of order passed by respondent, whereby, after initiating proceedings under Section 148A (d) on formation of an opinion that income chargeable to tax has escaped assessment, authority proceeded to issue notice under Section 148-Respondent issued notice under clause (b) of Section 1484 on basis of certain information which suggested that income chargeable to tox for assessment year 2015-2016 has escaped assessment within meaning of Section 147-Notice stated that assessee did not disclose this amount of cash deposit during relevant financial year and, therefore, on that basis, proceedings are required to be initiated-Competent authority proceeded to pass an order for issuance of notice under Section 148-Thereafter, a notice under Section 148 has been issued to petitioner-assessee-Held, After amendment carried out in income tax under Finance Act, 2021, even before proceedings under Section 148 could be drawn, low requires an order to be passed under Section 148A by conducting an enquiry in manner provided under Section 148A and satisfaction to be arrived at on basis of material available on record that income chargeable to tax has escaped assessment for relevant assessment year-Provision is explicitly clear that Assessing Officer shall, before issuing any notice under Section 148, conduct enquiry, details of which have been contained in Sub Clause (a) (b) & (c), which requires seeking prior approval of specified authority with respect to information providing an opportunity of being heard to assessee and consideration of reply of assessee-Sub- Clouse (d) of

Section 148A mondates that after conducting enquiry by affording an opportunity of hearing and consideration of reply, authority shall decide, on basis of material available on record including reply of assessee, whether or not it is a fit case for issuance of notice under Section 148, by passing on order-Notice which was issued to petitioner-assessee by invoking jurisdiction under Section 148A(d) by authority was based on information regarding undisclosed cash deposits reflected by various transactions, which according to authority, was more than Rs.52,00,000- However, when petitioner-assessee filed his reply, he clearly disclosed that total amount of cash deposits in bank by him was only Rs.19,39,000/- and not Rs.52,75,000/- as alleged in notice- Assessee along with his reply annexed complete bank statements showing all debit and credit transactions-Total transactions, which have been shown, do not exceed amount as has been stated by petitioner-assessee-While considering reply and bank statements, competent authority did not dispute transactions, which were placed before it along with reply filed by petitioner-assessee-Therefore, very basis of initiation of proceedings that income exceeding more than Rs 50,00,000/- had escaped assessment, was factually not correct-But then, authority thereafter, without disputing transactions, proceeded to pass an order for issuance of notice under Section 148-Provisions contained in Section 148A (d) referred to hereinabove, clearly show that decision has to be taken on basis of material available on record-Material available on record before authority did not disclose any cash deposit or any other transactions which can be said to have escaped assessment, which was more than Rs.50,00,000-Had it been a case of opening of case within a period of three years having elapsed from end of relevant assessment year, order of authority could be well justified on touch stone of legal requirement as embodied under Section 148A-However, in present case, undisputedly it is a case where more than three years have elapsed from end of relevant assessment year-In that case, in order to initiate proceeding under Sections 148, it is not only required to be shown that some income chargeable to tax has escaped assessment, but also that it amounts to or is likely to amount to Rs.50,00,000/- or more than for that year-Only on basis that cash deposits of Rs. 19,39,000/- chargeable to tax have escaped assessment, without anything more, authority was not justified in jumping to conclusion that assessee may have more bank accounts if such an

interpretation is placed on provision of Section 148A (d) with reference to expression 'material available on record, then in that case, it will open flood gate and even without availability of any material, authority would be initiating proceedings under Section 148, which will completely frustrate object of incorporation of Section 148A in Act-It is well settled principle of interpretation that taxing statute is required to be construed strictly-Impugned order and proceedings are unsustainable in low-Assessee's petition allowed".

And from the Honble Gujrat High Court in the case of Mumtaz Hazi Mohamad Memon v/s ITO 408 ITR 268(Guj.) has held that

"11. In this context, we have noted that the reasons proceeded on two fundamental grounds. One, that the property in question was sold for a sum of Rs. 1,18,95,000/- and two, that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and income also offered his share of the declared sale consideration to tax as capital gain. The Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs. 1,18,95,000/- as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in which, the sale consideration disclosed was Rs. 50 lakhs.

12. The Assessing Officer may be correct in pointing out that when the saleconsideration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs. 1,18,95,000/- therefore, was not brought to tas. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, Revenue simply cannot hope to salvage the impugned notice. Through the affidavit-in-reply a faint attempt has been made to entirely shift the centre of the reasons to a completely new theory viz. the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in

fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain."

We note from the Co-ordinate Bench also in the case of Rames Bhoj Prasad Gupta vs. ITO ITA No. 476/SRT/2019, Feb 7,2022 (2022) 64 CCH 0090 Surat Trib has been held as under:-

"That Reassessment-Reopening of assessment-AO on basis of AIR information noted that assessee made deposit in his bank account in PNB-AO recorded that in response to notice under section 148; assessee neither filed return of income nor responded-Assessing Officer ultimately by-passing assessment order made addition on account of undisclosed cash deposits PNB- Assessing Officer also disallowed disallowance under Chapter-VI-A by taking view that no such deduction claimed in original return of income and no evidence to substantiate such deductions were filed-CIT(A) observed that pattern of withdrawal support contention of assessee is that deposit in bank were pertaining to business of its scrap-Accordingly, accepted transaction-CIT(A) on basis of pattern of deposit and withdrawal in PNB concluded that assessee shifted a part of his business turnover to undisclosed bank account-CIT(A) calculated profit on account of undisclosed sales, credit in bank account and accordingly worked out addition and directed Assessing Officer that while computing income of assessee-Held, Assessing Officer recorded that assessee filed return in his return of income and revised return of income, as "It was also noted by undersigned that assessee had returned income of Rs.3,56,170/- in his return of income and in revised return of income, assessee returned income of Rs.5,00,660-Thus, during re-assessment, Assessing Officer was very well aware Le, return was filed by assessee-AO recorded that on verification of details in ITD, it was seen that assessee has not filed return and assessee has not complied with verification letter-Assessing Officer has not recorded as to how said notice was served upon assessee or not-Reasons recorded was provided by AO vide letter dated 21.09.2017 which was received by assessee on 23.09.2017 and subsequently assessment order passed on 29.09.2017 by taking view that despite repeated notice and show couse assessee was not made proper compliance-On similar ground of reasons of reopening wherein Assessing Officer recorded that assessee has not filed return and in fact, return was filed by assessee, re-assessment were held as invalid by co-ordinate Bench of this Tribunal, in case of Rinakumor A. Shah (ITA No. 172/AHD/2017 holding that Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute fact that assessee did not file

return-Entire reasoning recorded by AO for initiation of reassessment proceeding and issuance of notice under section 148 was on wrong and incorrect facts that assessee has never filed return of income, and in fact, it was filed-Initiation of reassessment proceeding u/s 147 and notice under section 148 and all subsequent proceedings and orders have been issued, conducted, passed without having valid jurisdiction, and therefore, same are bad-in-law and hence, same is quashed-CIT(A) estimated income @ 51.84% on account of undisclosed sales-Assessee claimed that he has shown book net book profit @ 11.45% and in subsequent year Assessing Officer has made addition @ 10% of net profit in assessment order passed under section 143(3-It is settled law that only profit element embedded in undisclosed sale or purchases is to be added not substantial part of transaction-When in subsequent assessment year in AV 2011-12, AO himself made addition only @ 10% of net profit in assessment order passed under section 143(3), book profit shown by assessee @ 11.45% for year under consideration was reasonable and justified-Therefore, assessee also succeeded on merit-Assssee's appeal allowed."

Further we note from the submissions made by the Ld AR for the assesee and the cases relied upon by the Ld AR assesee as under :

*CIT vs. Shree Rajasthan Syntex Ltd. (2009)313 ITR 231 (Raj.)

*SLP dismissed (2009) 313 ITR (St.) 27 (SC);

*Sun. Pharmaceutical Industries Ltd. Vs. DY. CIT (2016)287 CTR(Del.)621;

*CIT v. Indo Arab Air Services (2016) 130 DTR 78/283 CTR 92 (Delhi) (HC)

*Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 570 (Bom).

Taking in consideration of above facts and circumstances of the cases and the legal issues regarding on borrowed satisfaction no notice u/s 148 can be given on wrong or incorrect reasons or without material in hands in at the time of reasons recorded

as appearing in this case. we held that the notice as well as the consequent assessment order are illegal, invalid void-ab-intio and is hereby quashed. The assessment order have been quashed then there is no need or requirement to decide the other grounds of appeal.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-	Sd/-
(मनीष बोराड)	(डॉ.एस.सीतालक्ष्मी)
(Manish Borad)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 24/06/2024
*Santosh
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Suva Lal Paharia, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(3), Jaipur.
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 157/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar