

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 68/JP/2024  
निर्धारण वर्ष / Assessment Years : 2018-19

Sunil Chablani 5-A Mayur Colony, Mayo College Road, Near Sewa Mandir, Ajmer	बनाम Vs.	Circle (Intl. Tax), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ASTPC 0800 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya &  
Shri Devang Gargieya (Adv.)  
राजस्व की ओर से / Revenue by : Shri Anil Dhaka (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 27/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 22/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The assessee is aggrieved from the order of the assessment passed u/s. 147 r.w.s. 144 [ Here in after referred as Id. AO ] for the assessment year 2018-19 dated 29.12.2023 which in turn passed after the directions given by the Dispute Resolution Panel [ in short "DRP" ] passed under Section 144C(5) of the Income tax Act, 1961 (in short 'the Act') dated 28.11.2023.

2. In this appeal, the assessee has raised following grounds: -

"1. The very action taken u/s 147 r.w.s. 148 of the Act dt.30.03.2022 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 147 r.w.s. 144 dated 29.12.2023 also kindly be quashed.

2. The impugned assessment order passed under section 144/147 r.w.s. 144C is completely without jurisdiction in as much as the Id. Assessing Officer, Circle (INTL TAX), Jaipur not holding any valid jurisdiction and therefore, the impugned notice issued u/s 148 dt.30.03.2022 and the consequent, impugned assessment order dt.29.12.2023 complete nullity being without jurisdiction and deserves to be quashed.

3.1. The Id. Dispute Resolution Panel-1, New Delhi (DRP-1) has not providing any opportunity despite mandatory procedure statutorily prescribed u/s 144C (5) of the Act. Thus, the impugned order of DRP suffers from the violation of natural justice and being nullity, the same couldn't have been taken cognizance nor could have been followed by the assessing officer.

3.2. The impugned assessment order dt.29.12.2023 therefore, is without jurisdiction and having been passed in absence of a valid draft assessment order passed by the DRP and therefore, deserves to be quashed.

4. The Id. AO erred in law as well as on the facts of the case in framing the assessment u / s 144 r.w.s 147 of the Act without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order having been framed in gross breach of natural justice, kindly be quashed.

5.1. Rs. 69,90,000/- The Id. AO erred in law as well as on the facts of the case in considering the entire sale consideration as the Long Term Capital Gain (LTCG) in complete disregard to the other specific binding provisions of law contained u/s 45 r.w.s. 48 of the Act. The addition of the LTCG being contrary to the provisions of law and facts on the record and hence the same kindly be deleted in full.

5.2. Rs. 54,50,455/- The Id. AO erred in law as well as on the facts of the case in denying the benefit of the index cost of acquisition and cost of improvement absolutely without any valid reason and in complete ignorance of the evidences and other material available on record. The appellant therefore, be held entitled to the claim of the index cost of acquisition and cost of improvement of Rs. 54,50,455/- and the same be directed to alleged.

6. Rs.71,81,601/- The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A & 234B of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.

7. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing.”

2.1 In addition, the assessee also filed a prayer for raising additional ground of appeal dated 29.04.2024 & 27.05.2024. The additional ground so raised read as under :

*“8. The impugned assessment order dated 29.12.2023 is completely devoid on jurisdiction and is a nullity in as much as the directions issued by the Dispute Resolution Panel vide its order dated 28.22.2023 u/s 144C(5) of the Act was without bearing Document Identification Number (DIN) which is violation of the binding instructions of CBDT and thus, the impugned assessment order having been passed without there being any valid directions of the DRP-1, New Delhi may kindly be held as non-est and may kindly be quashed.”*

*“9. The impugned notice u/s 148 and impugned order u/s 148A(d) of the Act dated 30.03.2022 are nullity having been passed in complete violation of the binding notification dated 29.03.2023 issued u/s 151A r.w.s 144B of the Act, mandating for the Id. AO to complete the proceeding in faceless manner only as against done manually and hence, the same deserves to be quashed.”*

*“10. The Id. AO further erred in law as well as on the facts of the case in imposing tax, surcharge, cess etc. as per provision of S.115BBE of the Act. The invoking of S.115BBE is contrary to the provisions of law, on facts and without jurisdiction. The appellant totally denies its liability. The tax liability so created, kindly be deleted in full.”*

3. Succinctly, the fact as culled out from the record is that the assessee did not file his ITR for the A.Y. 2018-19. There was information available with the department that the assessee had sold an immovable property for

a sale consideration of Rs. 69,90,000/-, as the return of income was not filed the transaction remained unverified. Accordingly, after recording the reasons for escapement assessment, notice u/s 148 of the Act was issued to the assessee on 30.03.2022 with prior approval taken from the PCIT, Udaipur. The assessee did not file his ITR for the year under consideration even after issue of notice u/s. 148 of the Act.

3.1 During the assessment proceedings, statutory notices were issued to the assessee requiring him to furnish relevant documentary evidence to substantiate the transaction carried out by the assessee. Despite providing sufficient opportunity, the assessee did not furnish any documentary evidence and failed to explain and justify the said transaction. Considering these facts, the sale consideration of Rs. 69,90,000/- remain unexplained and falls under the purview of unexplained money u / s 69A of the Act. Accordingly, draft assessment order u / s 144C of the Act was passed on 29.03.2023 proposing an addition of Rs. 69,90,000/-.

3.2 Aggrieved by that draft assessment order dated 29.03.2023, the assessee has filed an objection before Hon'ble DRP-1, New Delhi challenging among other things, the addition of Rs. 69,90,000/- made u / s 69A of the Act. The DRP has passed an order dated 28.11.2023 issuing

directions to pass a reasoned order on the basis of submission of the assessee. The relevant finding of the Id. DRP is reproduced here in below:

“Decision and Directions of the DRP

3. The Panel has very carefully considered the grounds of objections and written and oral arguments made on behalf of the assessee. The decision of the Panel on various objections is as follows:

3.1 Ground no 1 to 4 are taken together as they are connected. The assessee has challenged the proceedings initiated under section 148 of Income Tax Act on the issue of Jurisdiction and also questioned on technicalities regarding issue of 148 notice to him. On perusal of the assessment records, it is seen that the notice under section 148 was issued after the approval of competent authority. Further, the DRP under section 144C (8) can confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order. Since, the assessee has filed its objection under section 144C of the Act read with Income Tax (Dispute Resolution Panel) rules 2009 the Panel has to adjudicate the matter and cannot set aside any draft assessment order. Even otherwise the Panel doesn't find any infirmity on the issue of notices sent under section 148 of the Act. The assessee's objections on the above ground are rejected. The assessee has stated that the notices have not been received by him and the service of notice therefore, is invalid. The Panel states that the AO had sent the notice as available with her. The AO is further constrained by the fact that assessee has not filed its return of income despite the fact that he had purchased and sold immovable property in India and some of the transactions pertains to subject assessment year. The AO naturally sent notice to that is available as per AIR information/TA9/26AS database. Therefore, the Panel doesn't find any infirmity on the above issue.

3.2 The AO has proposed an addition of Rs.69,90,000 under section 69A of the Act as assessee didn't comply to the AO's notices. The AO's proposed addition is on account of following fact as mentioned the draft assessment order.

*"During the assessment proceedings, the assessee was asked regarding the source of funds used to purchase the said immovable property and doing the above-mentioned transactions vide notice u/s 142(1) dated 02.01.2023, 16.01.2023, 19.03.2023 and show cause notice dated 17.02.2023, 25.03.2023.*

*The assessee in response did not produce any documentary evidence regarding the income generated from the above sale transactions. The assessee only stated that"...we are in the process of collecting the required*

*date in respect to the sale of property. Hence we will submit the same as soon as possible once we collect them."*

*The assessee also raised objections during the assessment proceedings, which were disposed of.*

*The assessee, despite providing sufficient opportunity, did not furnish any documentary evidence at this stage required to prove anything. The fact that there was receipt of money or conversion of notes is itself prima facie evidence against the assessee on which the Department can proceed in absence of good explanation."*

*Considering the above view held by the Courts and discussion made above, the amount of Rs. 69,90,000/- is hereby added to the total income of the assessee u/s 69A of the I.T. Act, 1961.*

*[Addition: Rs. 69,90,000/-]*

*Further, penalty proceedings u/s 271 AAC of the Act in respect of unexplained income is initiated.*

*On basis of the discussion made above the total income of the assessee is computed as under:-*

Income declared in ITR	Not filed
Addition: as above	Rs. 69,90,000/-
Total Income	Rs. 69,90,000/-

3.3 The assessee has filed its objection vide its letter dated 27.04.2023. Assessee filed a computation of income which is as below:

Particular		Amount
Sale value July 2017		69,90,000
Cost of Acquisition		
Purchase Cost 2008	7,00,000	
Stamp 2008	50,000	
Stamp Duty 2008	17,090	15,22,982
Indexed Cost of Improvement		
2008-09 (18,500) 137	36,730	
2009-10 (1,10,625) 148	2,03,311	
2010-11 (1,29,375) 167	2,10,719	
2011-12 (2,25,000) 184	3,32,609	
2012-13 (2,86,800) 200	3,90,048	
2013-14 (15,60,860) 220	19,29,791	
2016-17 (5,96,200) 264	6,14,267	
2017-18 (2,10,000)	2,10,000	39,27,473
Capital Gain in FY 2018-19		15,39,545
Deductions/s 54 (Property Purchased in 28 May 2018 Rs.38,20,000/-)		15,39,545
Long Term Capital Gain		NIL

3.4 However, the assessee neither presented (or through authorized representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done

in multiple years. However, in the fitness of things the DRP forwards the petition filed by the assessee to the AO, and directs the AO to pass a reasoned order on the basis of above submission of the assessee which is enclosed as an Annexure 'A' to this order. Assessee's objections on the above issue is disposed as above.

4. The objections of the assessee are decided as above. The Assessing Officer is directed to incorporate the findings of the Panel in respect of various objections suitably in the final order. The Assessing Officer shall also place a copy of the Panel Directions as Annexure to the final order.”

4. In compliance to the said directions, final assessment order was passed u/s 147 r.w.s. 144 on 29.12.2023 determining total income at Rs. 69,90,000/-. As the Id. DRP has directed to pass speaking order on the contentions raised by the assessee before the Id. DRP, the finding of the Id. AO on the issues raised before DRP are reproduced here in below :

“1. The assessee had purchased an immovable property i.e. AMC NO 547/15 Old, Shrinagar, Ajmer for a consideration of Rs. 7,00,000/- in the year 2008 and claimed indexation of purchase cost including other expenses at Rs. 15,22,982/-, However, he has neither mentioned alleged property details in his computation nor furnished purchase documents substantiating his claim. During the assessment proceedings, he did not comply to the statutory notices issued to him. Even after providing sufficient opportunities to file reply, the assessee has not filed even a single reply rather filing objection before the AO. Further, the assessee has also claimed indexation of cost of improvement for construction made in various financial years. In support of cost of improvement the assessee has only submitted a valuation report mentioning therein year wise cost of construction. No supporting evidence of work order, contract of work, payment made related to construction work bank statement etc have been submitted by the assessee.

2. The assessee has claimed to have been sold the said property for a sale consideration of Rs. 69,90,000/- during the FY. 2017-18. The assessee has accepted this fact in the computation submitted before, the Hon'ble DRP. Thus, assessee has been engaged in this property transaction (sale of property) during the F.Y. 2017-18 Hon'ble DRP has also categorically mentioned in the order passed u/s 144C(5) that the assessee neither presented (or through authorized representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done in

multiple years. During the assessment proceedings before the AO as well as proceedings before Hon'ble DRP, the assessee has only filed a purchase registered deed dated 28.05.2018 in support of his claim u/s 54 of the Act. No documents related to purchase of property and cost of improvement have been submitted to substantiate the claim of indexation.

Considering the above, the sale consideration of the property is Rs. 69,90,000/-, Further, the indexation of cost of acquisition and improvement worth Rs. 54,50,455/- (1522982+3927473) as claimed by the assessee is disallowed due to reason that assessee has failed to submit any documentary evidence in support of his claim. Therefore, the whole consideration of Rs. 69,90,000/- is considered as Long Term Capital Gain in the hands of the assessee. Penalty proceedings u/s 270A of the Act is initiated on this issue for underreporting of income.

Further, the assessee has purchased an immovable property i.e. Flat no. A-1001, A Wing, Priyanka Blossom Apartment, Nashik on 31.05.2018 at the consideration of Rs.38,20,000/- (stamp value) and claimed the deduction u/s 54 of the Act for this transaction. But, deduction u/s 54F for investment in residential house will not be provided if the assessee

1. Owns more than one residential house, other than the new asset, on the date of transfer of the original asset, or
2. Purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or
3. Constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and
4. The income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

In absence of any reply and documentary evidences, it cannot be ascertained that the assessee has fulfilled the above mentioned conditions and eligible for the deduction u/s 54 of the Act. Further, the assessee has not filed the ITR for claim u/s 54 of the Act. Therefore, considering the circumstances of the case, the deduction u/s 54 cannot be allowed.

On basis of the discussion made before the total income of the assessee is computed as under:-

Income declared in ITR	Not filed
Addition on account of LTCG	Rs. 69,90,000/-
Total Income	Rs. 69,90,000/-

5. Aggrieved from that order of the assessment which was passed after the direction of the DRP, the assessee preferred the present appeal on the grounds as stated here in above. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submissions and the same is reproduced herein below:

“Brief General Facts: Notice u/s 148 dt. 30.03.2022 (PB-II/102) was sent on dt.13.04.2022. The assessee had sold an immovable property of Rs. 69,90,000/- and being a case of NRI, draft assessment order purposing certain valuation in the income returns. In response, the appellant filed detailed objections u/s 144C (1) of the IT Act, 1961 which were decided by the Dispute Resolution Panel (“DRP” for short) vide its order passed u/s 144C (5) on dt. 28.11.2023 (PB 87-101), rejecting the objections so raised, holding as under:

*“3.1 The assessee has challenged the proceedings initiated under section 148 of Income Tax Act on the issue of Jurisdiction and also questioned on technicalities regarding issue of 148 notice to him. On perusal of the assessment records, it is seen that the notice under section 148 was issued after the approval of competent authority. Further, the DRP under section 144C (8) can confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order. Since, the assessee has filed its objection under section 144C of the Act read with Income Tax (Dispute Resolution Panel) rules 2009 the Panel has to adjudicate the matter and cannot set aside any draft assessment order. Even otherwise the Panel doesn't find any infirmity on the issue of notices sent under section 148 of the Act. The assessee's objections on the above ground are rejected. The assessee has stated that the notices have not been received by him and the service of notice therefore, is invalid. The Panel states that the AO had sent the notice as available with her. The AO is further constrained by the fact that assessee has not filed its return of income despite the fact that he had purchased and sold immovable property in India and some of the transactions pertains to subject assessment year. The AO naturally sent notice to that is available as per AIR information/TA9/26AS database. Therefore, the Panel doesn't find any infirmity on the above issue.*

*3.4 However, the assessee neither presented (or through authorized representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done in multiple years. However, in the fitness of things the DRP forwards the petition filed by the assessee to the AO, and directs the AO to pass a reasoned order on the basis of above submission of the assessee which is enclosed as an Annexure 'A' to this order. Assessee's objections on the above issue is disposed as above.*

*4. The objections of the assessee are decided as above. The Assessing Officer is directed to incorporate the findings of the Panel in respect of various objections suitably in the final order. The Assessing Officer shall also place a copy of the Panel Directions as Annexure to the final order”.*

Consequently, assessment order u/s 147/144 r.w.s 144C was passed on 29.12.2023 and addition of entire amount of sale consideration of Rs.69.90 lacs was made. Hence this appeal

GOA 1& 2: Action taken u/s 147/148 is completely without jurisdiction on various grounds:

Facts: The Income Tax Officer ward 2(2), Ajmer initiated the proceedings u/s 148A by issuing a show cause notice u/s 148A(b) (PB 68-69) and thereafter passing impugned order u/s 148A(d) (PB 79-80) and also impugned notice u/s 148 both dt.30.03.2022 whereas, the correct and legally valid jurisdiction remained with the international charge Circle (INTL. TAX), Jaipur. Accordingly, objections were raised letters dt.27.04.2023 (PB 3-12) and again vide another letter dt.23.07.2023 (PB 71-72). The same was disposed of by the ACIT Circle (INTL. TAX), Jaipur vide order dt.25.03.2023 (PB 77-78), rejecting the same.

Submission:

1. Impugned Notice u/s 148 issued without Jurisdiction:

1.1. At the outset it is submitted that the impugned order u/s 148(d), notice under section 148 both dated 30.03.2022 and notices u/s 142 for AY 2018-19, are completely devoid of jurisdiction in as much as the Income Tax officer, Ward 2(2), Ajmer was not vested with a valid jurisdiction in terms of S.120 read with 124 of the Act. The facts are not disputed that the assessee is a non-resident Indian. He has been residing outside India since last almost more than 25 years. He came back to India only on dated 22nd June 2022 (copy of passport enclosed PB 18-19). Thus, in any case during the relevant financial year 2017-18 (AY-2018-19), he completely remained outside India. Accordingly, in his PAN profile also, the jurisdictional AO is shown as the International Charge i.e. CIRCLE (INTL TAX), JAIPUR. Copy of the PAN profile is enclosed herewith (PB 17 & PB-II 105). Needless to say that since the jurisdiction of the assessee continues to fall with the International Charge CIRCLE (INTL TAX), JAIPUR, as per PAN profile, there is no legal justification behind issuance of the subjected notices by ITO Ward 2(2), Ajmer, who was not the competent officer having valid jurisdiction. Further, it is well settled that notice under section 148 can be issued only by a competent Assessing Officer having a valid jurisdiction over the assessee. However, in view of the admitted fact of the present case, the ITO, Ajmer was not having any valid jurisdiction and competence to issue the notice u/s 148 as also all the notices under order issued u/s 148A prior thereto, as also the subsequent notices issued pursuant to the said notice u/s 148, for want of jurisdiction, which rested with some other AO.

1.2. Objection of the Assessing Officer, Circle (Intl Tax) Jaipur: In response, the Officer (Anita Pillai), Circle (Intl Tax), Jaipur vide her letter/order dated 25.03.2023 (PB 77-78) rejected these objections saying *“that section 148 talks about the Assessing Officer only and not about the Jurisdictional Assessing Officer.”* She also took support from section 124(3) that no person shall be entitled to challenge the jurisdiction if no ROI has been filed after expiry of the time allowed in a notice u/s 148.

In this connection our submissions are as under:

1.2.1. It is absolutely wrong and a complete misreading of the law u/s 148 on the face of it that the term "Assessing Officer" ("AO") means the assessing officer only but not the "Jurisdictional Assessing Officer" ("JAO"). If the interpretation as contended, is accepted then the "AO" may mean any AO situated anywhere in the country i.e. right from Jammu & Kashmir till Kanyakumari, may be the AO to assess the income of an assessee stationed at Ajmer, which can never be the legislative intention.

1.2.2. In fact, the term Assessing Officer has been defined u/s 2(7A) of the Act reproduced hereunder:

*"Assessing Officer means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or] Additional Director or] Joint Commissioner or Joint Director] who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act"*

1.2.3. The very fact that the Assessing Officer, Circle (Intl Tax), Jaipur was vested with the jurisdiction to Act as an AO, is fully supported by the PAN Profile and the jurisdictional details (PB-II 105) of the assessee which clearly shows the Assessing Officer holding the charge was the International Taxation Charge. In this background only, when the assessee, after receiving the impugned notice u/s 148 sent on dt. 13.04.2022, raised his objections vide letter dated 23.07.2023 (PB 70-72) no reply came from the ITO Ward 2(2) Ajmer but strangely the same was replied by Officer, Circle (Intl Tax), Jaipur admitting, the very fact and the contention of the assessee that she might be holding the correct jurisdiction over this assessee but not the ITO Ward 2(2) Ajmer who issued the impugned notice u/s 148.

1.3. Supporting Case Laws:

Reliance is placed on the following cases:

A. CIT Vs Smt Anjali Dua (2008) 219 CTR 183 (Del) (DC 1-2) where in it is held that:

*"4. It is in this background that the Tribunal noted that the request of the assessee to transfer the jurisdiction was noted in the letter dt. 25th March, 1998, whereby the no objection of CIT, New Delhi, was conveyed to the CIT, Ludhiana. It is also noted that thereafter the assessee submitted returns for the asst. yrs. 1997-98 onwards at New Delhi. It is in these facts and circumstances that the Tribunal came to the conclusion that insofar as, the assessee was concerned, after the said transfer, it is only Revenue authorities at New Delhi who had jurisdiction over the assessee's cases and who were competent to issue a notice in terms of s. 148 of the said Act. It may also be pointed that pursuant to the issuance of impugned notice under s. 148 of the said Act on 28th March, 2003, when the notice under s. 142(1) was issued to the assessee in December, 2003, the assessee by her reply dt. 21st Jan., 2004, indicated that her AO was not located in Ludhiana, but was the ITO at New Delhi.*

*5. In view of the foregoing, we are of the view that the Tribunal has come to the conclusion on the basis of the facts available on the record and, we do not find any substantial question of law arising in the present case. No interference with the impugned order is called for. The appeal is dismissed."*

The facts of the instant case stand on much stronger footing in as much as the PAN profile (PB-II 105) as also the jurisdictional details (PB 17) available on the portal of the ITD, itself provide the Assessing Officer being the Circle (Intl Tax). The department, day in and day out, has been taking this stand that the Assessing Officer shown in the PAN profile is the correct Assessing Officer.

B. *Mir Zardari Qureshi v. ACIT* [2023] 151 taxmann.com 408 (Raipur - Trib.) (DC 3-13) held that:

*“Whether since ITO, Ward-1(3), Bhilai at time of initiating proceedings and issuance of notice under section 148 dated 9-3-2018 was not vested with any jurisdiction over case of assessee, assessment framed on basis of 'reasons to believe' along with notice under section 148 dated 9-3-2018 issued by ITO, Ward- 1(3), Bhilai, i.e. a non-jurisdictional Officer, could not be sustained and was liable to be quashed - Held, yes [Paras 16, 17 and 18] [In favour of assessee]”*

C. *Abdul Azeez Haroon vs DCIT (International Taxation)* (2020) 317 CTR 610 (Mad) (DC 14-17) held that:

*“Reassessment—Notice under s. 148—Validity of notice issued by AO having no jurisdiction—For asst. yrs. 2012-13 to 2015-16, intimations under s. 143(1) have been issued by the Central Processing Centre in respect of the returns filed—Assessee's case is that during the financial year relevant to asst. yr. 2009-10 he had shifted his residence from Madurai to Shimoga, Karnataka, carrying on business at Shimoga as well and the respondent, vide communication dt. 8th Jan., 2016 admits these facts, after verification of records, to the effect that the assessee, as on date and since asst. yr. 2012-13 is an assessee on the file of the ITO at Shimoga—If jurisdiction thus vested with the ITO at Shimoga, an alternate assessing authority assuming jurisdiction of the assessee's file can be only by transfer of the file—No order transferring the file of the assessee from the jurisdiction of the ITO, Shimoga to the Dy. CIT, International Taxation, Madurai, has been produced—In the facts and circumstances of the present case where the assessee is seen to have been in India only between 15th Feb., 2015 and 27th Feb., 2015 and then again from 1st May, 2015 to 11th May, 2015, as combined with the fact that the respondent AO has also taken contradictory stands as regards the proper officer to assume jurisdiction, the rigour of s. 124(3), would not be applicable to the present case—Officer could well have, simply rejected the challenge to assumption of jurisdiction citing the provisions of s. 124(3)—But this has not been done and the provisions of s. 124(3) are invoked for the first time only in the counter affidavit—If at all such jurisdiction were to vest concurrently by way of transfer to the respondent officer as well, it was incumbent upon the officials to have followed the methodology set out in terms of s. 127 for change of jurisdiction by way of a determination by a superior officer, which has not been done—Reassessment proceedings were not therefore valid.”*

D. *Saroj Sangwan vs. ITO* (2024) 162 Taxmann.com 704 (ITAT, Delhi) (DC 18-22)

1.4.1 Further, reliance placed on S.124(3)(b) is completely misplaced in as much as the said provision presupposes a valid issuance of a notice u/s 148 issued only by a validly holding jurisdiction then only, non-filing of ROI could be a ground. However, once ITO Ward 2(2), Ajmer, who issued the Notice u/s 148 was not vested with a valid jurisdiction, the assessee was under no legal obligation to file the ROI and to waive his legal rights/surrender himself to a wrong jurisdiction which he himself is disputing. However, where the authority issuing the notice has no authority at all, there is no requirement of raising any objection within the stipulated period. Moreover, objection u/s 124 is required to be raised only when there is a dispute on the question of territorial jurisdiction of a particular officer. Thus, the objection raised by the Officer, Circle (Intl Tax), Jaipur are completely baseless against the provisions of the law and deserves to be rejected. Kindly refer following case laws where such contention is directly supported:

1.4.2 Supporting Case Laws:

A. Mir Zardari Qureshi v. ACIT [2023] 151 taxmann.com 408 (Raipur - Trib.) (DC 3-13) held that:

*"Whether time limit for raising objection to jurisdiction of Assessing Officer prescribed under sub-section (3) of section 124 has a relation to Assessing Officer's territorial jurisdiction and same would not apply to a case where assessee contends that action of Assessing Officer is without authority of law and therefore, wholly without jurisdiction - Held, yes - Whether since ITO, Ward-1(3), Bhilai at time of initiating proceedings and issuance of notice under section 148 dated 9-3-2018 was not vested with any jurisdiction over case of assessee, assessment framed on basis of 'reasons to believe' along with notice under section 148 dated 9-3-2018 issued by ITO, Ward-1(3), Bhilai, i.e. a non-jurisdictional Officer, could not be sustained and was liable to be quashed - Held, Yes"*

The Hon'ble ITAT relied upon the decisions in the cases of CIT v. Ramesh D. Patel (2014) 42 taxmann.com 540 and Bansilal B. Rasoni & Sons v. Asstt. CIT (2019) 260 Taxman 281. Resultantly, in absence of any notice issued u/s 148 validly, the resultant assessment order u/s 148A(d) dated 30.03.2022 deserves to be quashed.

2. No Valid Approval obtained u/s 151 and impugned notice u/s 148 is barred by limitation u/s 149:

New Law to Apply:

2.1. That in the recent past, the Finance Act, 2021 was passed by the Parliament. Amongst various other amendments made in the Finance Act, 2021, Sections 147, 148, 149 and 151 of the Act were substituted making the aforementioned amendments effective from 01.04.2021. The amended/substituted scheme of reassessment provides that before issuing any notice u/s 148 of the Act, the assessing officer is legally obliged to follow the binding statutory procedure. As held in the case of UOI vs Ashish Agarwal (2022) SCC Online SC 543/326 CTR 473.

2.2. In the instant case since the impugned notice and order were served only on 13.04.2022 though the same might have been signed on 30.03.2022, hence it will be considered as issued only on 13.04.2022 new law will apply.

Supporting Case Laws:

Kindly refer Daujee Abhushan Bhandar (P.) Ltd. v. Union of India (2022) 136 taxmann.com 246 (Allahabad) (DC 23-35):

*“Whether mere digitally signing a notice is not issuance of notice and point of time when a digitally signed notice in form of electronic record is entered in computer resources outside control of originator, i.e., Assessing Officer, that shall be date and time of issuance of notice under section 148 read with section 149 - Held, yes - Assessee filed its return and assessment was completed accordingly - Subsequently, a notice under section 148 digitally signed by Assessing Officer was sent to assessee through e-mail and e-mail was received by assessee on his registered e-mail ID on 6-4-2021 - Assessee submitted that reassessment notice was issued on 6-4-2021 whereas limitation for issuing notice under section 148 read with section 149 expired on 31-3-2021 and, thus, notice was time-barred - Said objection was rejected on ground that since notice was digitally signed by Assessing Officer on 31-3-2021, it would be deemed to have been issued within time, i.e., on 31-3-2021 - Whether since impugned notice under section 148 was issued to assessee on 6-4-2021 through e-mail, impugned notice under section 148 was time-barred and consequently, it was to be quashed - Held, yes [Paras 22-30] [In favour of assessee]”*

Recently Rajasthan High Court, Jaipur Bench has also so held in the case of M/s Mittal Pigments Pvt. Ltd. Vs. CIT & Ors in D.B.CWP No.8626/2023 (pr.7to9) (DC 36-39)

S.No	New law	Specified authority u/s 151
1.	Reopening made within 3 years from the end of the relevant A.Y.	Pr. CIT or Pr. DIT or CIT or DIT
2.	Reopening made after 3 years but before 10 years from the end of the relevant A.Y.	Pr. CCIT or Pr. DGIT (in their absence CCIT or DGIT)

S.No	Old law	Specified authority u/s 151
1.	Reopening made within 4 years from the end of the relevant A.Y.	Joint Commissioner (JCIT)
2.	Reopening made after 4 years from the end of the relevant A.Y.	Pr CCIT or CCIT or PCIT or CIT

The issue involved is no more res-integra in as much as various high courts have now taken this view and quash the notices issued in violation of S.151.

2.3.1 A recent and very detailed decision is in the case of Siemen Financial vs DCIT (2023) 154 taxmann.com 159 (Bombay) (DC 40-73) wherein it was held as under:  
*“Whether thus, TOLA only sought to extend period of limitation and would not affect scope of section 151 and sanction of specified authority was to be obtained in accordance with law existing when sanction was to be obtained - Held, yes - Whether since in instant case Assessing Officer issued reopening notice beyond period of three*

*years and prior approval was taken from Principal Commissioner, Assessing Officer could not rely on provisions of TOLA and approval was required to be taken as per provisions of amended section 151 from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General and thus, impugned order and notice were to be quashed - Held, yes [Paras 25, 26 and 41] [In favour of assessee]*

2.3.2 Reliance is also placed in the case of Anil Jaggi vs ACIT (2018) 168 ITD 612 (Mumbai):

*“Reassessment—Validity—Approval under s. 151(1) obtained from a wrong authority—Failure of AO to take the sanction of the appropriate authority contemplated under s. 151(1) would go to the very root of the validity of assumption of jurisdiction by the AO—Notice issued by AO under s. 148 offer taking approval of Jt. CIT, instead of principal Chief CIT/Chief CIT or principal CIT/CIT as prescribed by s. 151(1), the very assumption of jurisdiction by AO was invalid, hence the notice and consequent reassessment could not be sustained”*

2.3.3 Kindly refer the case of Balkrishna Barsha Sutar vs ITO, Mumbai (WP no. 6192/2024) Bombay High Court, (DC 74-76) wherein it was held under:

*“3. Mr. Singh, at the outset, submitted that the sanction issue in this matter would be covered by the order dated 6th February 2024 passed by this Court in the case of Vodafone Idea Limited v. Deputy Commissioner of Income Tax, Circle-5(2)(1), Mumbai & Ors. 1 Mr. Gupta though in fairness states that it can be covered by Vodafone Idea Limited (supra), he raised the question of maintainability of petition because Assessee did not even respond to the notice issued. But we ask ourselves a question, even if Assessee has not responded would that make an invalid notice valid. The answer is ‘NO’.*

*4. The impugned order and the impugned notice both dated 20th July 2022 state that the Authority that has accorded the sanction is the PCIT-27, Mumbai. The matter pertains to Assessment Year (“AY”) 2017-2018 and since the impugned order as well as the notice are issued on 20th July 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151(ii) of the Act. The proviso to Section 151 of the Act has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand.*

*5. In the circumstances, as held by this Court in Siemens Financial Services Private Limited Vs. Deputy Commissioner of Income Tax & Ors. 2, the sanction is invalid and consequently, the impugned order 1. Writ Petition No. 2768 of 2022. 2. (2023) 457 ITR 647 (Bom.). Gaikwad RD 3/3 426-aswp-6192-2024.doc and impugned notice both dated 20th July 2022 under Sections 148A(d) and 148 of the Act are hereby quashed and set aside.*

*6. Petition disposed. No order as to costs. All rights and contentions are kept open.”*

2A. Also therefore, the impugned notice u/s 148 is barred by limitation u/s 149(1)(a). Therefore, the impugned notice and order deserves to be quashed. So also the consequent assessment order.

3. No Income Escaped Assessment:

3.1 No valid *information* as contemplated u/s 148:

3.1.1 A perusal of SCN u/s 148A(b) dated 17.03.2022 shows the only information available, based by the AO to alleged income escaping assessment is that, during the year under consideration, the assessee sold immovable property for Rs 69.90 Lacs on dated 28.07.2017 but no return of income has been filed for AY 2018-19. As per AO, this

information suggest that the income of 69.90 Lac is chargeable to tax has escaped assessment in AY 2018-19. Again in the order u/s 148A(d) dated 30.03.2022, in para 5 similar opinion has been framed by the AO that income of the assessee of Rs 69.90 Lacs has escaped assessment and it was a fit case to issue notice u/s 148 of the Act. However, it is not clarified precisely that there was some taxable as per the Act income and such income escaped the assessment. Thus in the SCN u/s 148A(b) dated 17.03.2022 and in the order u/s 148A(d) dated 30.03.2022 the AO appears to have proceeded merely on suspicion merely on getting the information simpliciter the AO has alleged income escaping assessment. The question is whether such information really suggested any income escaping assessment or not.

3.1.2 In this context, a reference to the Proviso to the S.148 is also essential which read as under: -

*“Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained approval of the specified authority prior to issue such notice...”*

What is evident thus is that the information with the A.O. must suggest that some income chargeable tax has escaped the assessment for the relevant assessment year. In other words, it is not any or every or the information simpliciter coming to the possession of A.O. but such information must also suggest some income chargeable tax has escaped the Assessment. The information must have a material bearing on the question on escapement of income. It does not mean a purely subjective satisfaction of the AO. Such satisfaction be held in good faith and cannot merely be a pretence. The information must have a rational connection with or relevant bearing on the formation of the belief as to escapement. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation is belief regarding escapement of income. However, the Respondent AO did not conform the settled judicial guideline resulting the impugned notice and order, a nullity.

3.1.3 On the other hand however, a bare look upon the impugned draft assessment order u/s 144C(1) dated 29.03.2023 shows a serious contradiction in approach of the AO in as much as on one hand it is alleged that when the assessee was asked regarding the source of the funds used for the purchase of the immovable property (i.e. is the old residential house 15/547, Ibrahim Building, Shrinagar Road, Ajmer) which was purchased by the assessee from his mother on dated 21.11.2008 for Rs 7 lacs, it was not explained. He also alleged that the income generated from the transaction of the sale of the said residential house was not explained with the help of documentary evidences. But, then finally the AO alleged that the assessee did not produced any justification or documentary evidences regarding the above mentioned sale transaction of the immovable property, therefore, the sale consideration of Rs 69.90 lacs remained unexplained and falls under the purview of unexplained money u/s 69A of the Act. Thus, initially the AO proposed for making an addition (apparently) from the Capital Gain arising from the sale of the residential house for Rs 69.90 lacs on 28.07.2017 but then finally in draft assessment order he sifted to the addition made u/s 69A of the Act. In the

impugned assessment order he invoked S.69A first but at the end he made addition on account of LTCG.

3.1.4 From this what emerges is that:

i. The information based by the AO to initiate proceeding u/s 147/148 is not the information as contemplated under law. The AO blindly proceeded on the information by picking the gross figure of Rs 69.90 Lacs and considered the same to be income escaping assessment but without showing any provision of law or head of income.

ii. On the other hand, he is also asking for the source of the said immovable property purchased long back in AY 2009-10 which already stood barred by limitation and he could not have asked for.

iii. The AO never proposed the impugned addition u/s 69A and there is a complete misreading of the provision itself. Section 69A can be invoked only if the assessee is found to be owner of any money however, the same is not recorded in accounts, if any maintained, by him and assessee also fails to offer an explanation about the nature and source of such money or the explanation tendered is not found satisfactory. However, none of these conditions are satisfied in the present case in as much as the assessee did have a valid source being the receipt of the sale consideration of a residential house property for Rs 69.90 Lacs vide a registered sale deed executed on 28.07.2017 (and i.e. the very information also in possession of the AO). Thus, the money of Rs 69.90 Lacs was not source less and the AO himself was of the view that this was a transaction of sale of immovable property hence there is no question of dissatisfaction with regard to such explanation of the source even though already available on the record.

iv. The decision cited by the AO propounds the principle on which there is no dispute however, AO was supposed to have demonstrated that how those principles are applicable on the facts of present case, which he has completely failed.

GOA 3 & 4: Draft Assessment Order- Nullity:

1. As per the mandate of S.144C (1) of the Act, which starts with a non-obstante clause, the AO is bound to have served a draft of the proposed Order of Assessment (for short "*Draft Order*") to the Assessee giving him an opportunity to file his objection, if any, thereupon. This clearly implies that the very proposed variation has to be confronted to the Assessee, inviting his objections. However, in that view of the matter, in the instant case, the AO has not given that opportunity (or the draft order) as mandated in as much as in the draft Assessment Order (See Para 2 and Pg.2, top of the Assessment Order), he started with the proposed variation for want of source and after referring to S.69A and certain case laws, he made addition of Rs.69.90 lakh u/s 69A in that draft order, but while concluding and completing the impugned Assessment Order, he completely shifted the stand and now made the addition on account of LTCG as evident from the discussion made by him starting from para 4 pg. 4 and ending at pg.7. Undisputedly, the variation made on account of LTCG was not a part of the draft order as stated above and this way, no opportunity was given to the Assessee by way of draft order w.r.t the proposed variation, (i.r.t. LTCG as it was only w.r.t. S. 69A only). In that view of the matter, there was no draft order as such was forwarded, clearly violating the mandate of law as held in several cases.

2.Supporting case laws:

2.1 In the case of SHL (India) (P) LTD. vs. Deputy Commissioner of Income Tax & Ors. (2021) 321 CTR 655 (Bom) (DC 77-87), it was held:

*“Following principles emerge from the discussion: (i) that the procedure prescribed under s. 144C is a mandatory procedure and not directory. (ii) failure to follow the procedure under s. 144C (1) would be a jurisdictional error and not merely procedural error or irregularity. (iii) therefore, s. 292B cannot save an order passed in breach of the provisions of s. 144C (1), the same being an incurable illegality. (Para 25)”*

3. Further, where the Show Cause Notice issued u/s 263 of the Act did not contain the issue which was finally raised thereafter in the order u/s 263, was held as a case of non-issuance of a mandatory SCN and therefore, the order u/s 263 itself was quashed in the case of PCIT vs. Shreeji Prints (P.) Ltd. [2021] 130 taxmann.com 294 (SC) held:

*“SLP dismissed against impugned order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and Assessing Officer had made inquiries in detail and accepted genuineness of same, such view of Assessing Officer being a plausible view could not be considered erroneous or prejudicial to interest of revenue” The Gujarat High Court affirmed the ITAT Order as under:*

*15 The Pr.CIT had observed that Explanation 2 of section 263 of the Act is clearly applicable and it is clear that the Assessing Officer has passed the assessment order after making enquiries for verification which ought to have been made in this case. However, we find that the Pr. CIT has not mentioned in the show-cause notice issued under section 263 that he is going to invoke the Explanation 2 to 263 hence, invocation of Explanation in the order without confronting the assessee is not appropriate and sustainable in law”*

Recently in the case of Tata Teleservices (Maharashtra) Ltd. vs. PCIT (2023) 225 TTJ (Mumbai) 137, following Shree Ji Prints (Supra) it is held as under: “11. As regards the finding of the learned Principal CIT that the AO has not verified whether MTM losses are speculative in nature under s. 43(5)(d) of the Act, we find that this allegation does not form part of the notice issued under s. 263 of the Act by the learned Principal CIT and therefore the opportunity was not granted to the assessee to rebut the same. Thus, it is contrary to the provisions of s. 263 of the Act, which specifically requires the grant of opportunity of being heard to the assessee. We find that the Hon'ble Supreme Court in CIT vs. Amitabh Bachchan (2016) 286 CTR (SC) 113: (2016) 135 DTR (SC) 73: (2016) 384 ITR 200 (SC) observed as under: "10 ..... What is contemplated by Section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice”.

GOA-5 Invalid Computation of LTCG: Hence, impugned notice u/s 148 and the consequent assessment order deserves to be quashed.

Facts: The AO has dealt with this issue from page 5 onward. The issue involved was that the assessee this year sold a residential house for Rs 69,90,000/- on dated 28.07.2017. Based on this information alone, entire gross sale consideration, was considered to be the income escaping assessment u/s 147 and has been taxed even without allowing Indexed Cost of Acquisition, Indexed Cost of Improvement, deduction claimed u/s 54 etc. as a rule of thumb without application of mind. Hence, this ground.

Submission:

1. By a bare look upon the impugned assessment order which is an ex-parte order, it is evidently clear that the Id. AO has not at all acted on the material available on the record nor he applied the provision of law binding upon him. Strangely, he assessed the entire gross receipts itself which is against all the canons of principle of natural justice and the specific law while computing LTCG. He even did not bother to comply with the mandatory statutory provision of S.45 r.w.s 48 of reducing the cost/the Indexed Cost of Acquisition (COA) which is Rs 15,22,982/-. In addition, the assessee went on incurring expenditure on the improvement of the property and incurred such cost in different years, the Indexed COA comes to Rs 39,27,473/-. After reducing the Indexed Cost of Acquisition and Indexed cost of Improvement from the sale consideration of Rs 69,90,000/-, what remained was the LTCG of Rs 15,39,545/-, against which the assessee claimed a deduction u/s 54 on account of purchase of a new residential house on dated 28.05.2018. A computation of Capital Gain along with the copy of the sale deed (PB 26-39), purchase deed (PB 40-51), the valuation report given by the Registered Valuer of the estimated expenses incurred on the improvement of the property (PB 64-65) as also a bill raised by the civil contractor (PB 66-67), purchase deed of new housing property (PB 52-62) were submitted to support the above contention. Thus, there was no income at all at least in relation to LTCG. Therefore, there was no valid information suggesting escapement of income as contended in the earlier part.

2. AO's allegations are more suspicions:

It is surprising that as per AO the property sold had no construction cost at all which is unbelievable. The appellant did furnish copy of the purchase deed dated 21.11.2008 (PB 40-51) for Rs.7 lacs, the indexed cost of which came to Rs.15,22,982/- and could not have been denied. If AO says no property was purchased, there can't be any question of even sale and taxing LTCG. The cost of improvement has been rejected merely saying that no evidence was furnished but completely ignoring that the assessee did file copies of the invoices, bills raised by the civil contractor (PB 66-67). However, all evidences were submitted to DRP (PB-16). The AO himself admitted that a copy of the valuation report by the registered valuer (PB 64-65) was submitted. No site verification was got done by him but he merely proceeded on mere suspicion. The deduction claimed u/s 54 of a new residential house vide the registered purchased deed dated 28.05.2018 (PB 52-62) was also denied. It is a fact on record that the appellant made a claim u/s 54 which requires the net capital gain only to be invested in the purchase of a new residential house which was admittedly done by the assessee and this fact has been stated by the AO himself at page 6 in para 2 giving details of the newly purchased property. But very strangely he switched to S.54F and alleging non-compliance of that provision denied the deduction.

This shows a complete non-application of mind by the AO who merely proceeded with blind eyes, just to penalize the assessee since he was making an ex parte assessment. Repeated allegation of non-compliance does not entitle AO to penalize the assessee

while making a best judgment assessment u/s 144 of the Act. He did not even consider the material available record and the mandate of the law binding upon him. Thus, the entire claim of NIL LTCG was duly and fully supported by the evidences and backed by the legal provisions. In absence of any contrary evidence brought on record or contrary decisions or judicial guidelines by the AO, the entire addition on account of LTCG of Rs 69.90 lakh deserves to be deleted.

### 3. Supporting Case laws:

#### A. Divya Capital one (P) Ltd. vs. ACIT (2022) 326 CTR (Del) 781:

*"Reassessment—Notice under s. 148—Enquiry and order under s. 148A(d)—Under the amended provisions, the term "information" in Explan. 1 to s. 148 cannot be lightly resorted to so as to reopen assessment—Merely because the Revenue classifies a fact already on record as "information" may vest it with the power to issue a notice of reassessment under s. 148A(b) but would certainly not vest it with the power to issue a reassessment notice under s. 148 post an order under s. 148A(d)—In the present case, the impugned notice dt. 17th March, 2022 as well as the order dt. 4th April, 2022 are cryptic as is evident from the fact that information culled out from assessee's own return and records—It was all the more necessary in the present case for the AO to thoroughly scrutinize the contentions and submissions advanced by the assessee before passing an order under s. 148A(d)—Assessee has a right to get adequate time in accordance with the Act to submit its reply—In the present case, the impugned order under S. 148A(d) has been passed in great haste and in gross violation of principle of natural justice as the assessee was not given reasonable time to file a reply—Mandate of s. 148A(c) has been violated as it casts a duty on the AO, by using the expression 'shall', to consider the reply of the assessee in response to notice under s. 148A(b) before making an order under s. 148A(d)—Consequently, the impugned order dt. 4th April, 2022 issued under s. 148A(d) and the notice dt. 4th April, 2022 issued under s. 148 are quashed and the matter is remanded back to the AO for a fresh determination".*

#### B. Sanath Kumar Murali vs. ITO & Ors. (2023) 333 CTR (Kar) 189 (DC 88-94)

*"Reassessment—Notice under s. 148—Limitation under s. 149 vis-a-vis "income escaping assessment"—It is clear that the notice is issued in the context of sale consideration from sale of immovable property for an amount of Rs. 55,77,700—Reply to the show-cause notice, would reveal the details of sale consideration and the cost of acquisition would be the indexed cost of acquisition—Accordingly, in the present case, the words found in s. 149 which are 'income chargeable to tax' must be read in terms of 'income' as arising out of the 'capital gains' as provided under s. 48 and this is the only manner of understanding the words, 'income chargeable to tax' under s. 149(1)(b)—Income chargeable under the head of 'capital gains' shall be computed by deducting from the full value of the consideration, the indexed cost of acquisition—It cannot be stated that since the stage at which the notice is issued is at a premature stage, the entirety of consideration of Rs. 55,77,700 ought to be taken note of—Accordingly, the order dt. 21st March, 2023 passed under s. 148A(d) is set aside and the notice dt. 21st March, 2023 issued under s. 148 for the asst. yr. 2016-17 is set aside"*

Hence, impugned order u/s 148 dated 30.03.2022 and resultant order u/s 148A(d) dated 30.03.2022 may be quashed. Alternatively, the entire impugned addition deserves to be deleted.

Additional GOA-10: Invoking S.115BBE of the Act is without jurisdiction:

Submission:

1. The AO imposed special tax u/s 115BBE with reference to the addition made of Rs.69.90 lac however, there is absolutely no case made out to invoke S.115BBE. Admittedly the related income is not income from other sources but by AO's own admission it was an income from LTCG as finally assessed by him hence, S.115BBE cannot be involved. Thus, once the AO himself did not dispute that it was income from LTCG and not from the income of other sources he could not have invoked S. 115BBE. At Pg. 6 of order the Id. AO noted as under:

*"Considering the above, the sale consideration of the property is Rs. 69,90,000/-. Further, the indexation of cost of acquisition and improvement worth Rs. 54,50,455/- (1522982+3927473) as claimed by the assessee is disallowed due to reason that assessee has failed to submit any documentary evidence in support of his claim. Therefore, the whole consideration of Rs. 69,90,000/- is considered as Long Term Capital Gain in the hands of the assessee. Penalty proceedings u/s 270A of the Act is initiated on this issue for underreporting of income."*

1.2 Otherwise also, admitted fact that the assessee during the subjected year sold immovable property for Rs. 69.90 lakhs. Because of such that very information, the AO initiated proceedings u/s 148A. In the body of the assessment order he has discussed the computation if LTCG submitted by the assessee along with evidences and his reasoning of rejection of such working thus, the income arising from the transfer of the immovable property if any to be taxed can be taxed as LTCG but not the income from the other sources (these submissions are without prejudice to our basic contention that the entire addition itself was bad in law and without jurisdiction and for various reasons).

2. AO can't change head of income:

2.1 It is submitted that S.115BBE specifically refers to the income which are of the nature as referred in S. 68,69,69A of the Act being the income from other sources. Therefore, subjected income has essentially to be classified u/s 14 of the Act as Income from Other Sources and that is possible only when the income is not capable of being classified under any other head being income from salary, house property, capital gain, business or profession.

2.2 A combined reading of S.14 with S.56 of the Act makes is evidently clear that for the assessment of an income it must have to be classified under four heads of income as enumerated u/s 14 and if it doesn't fall under any specific head of income as per item A to E of S.14, such income has to be assessed under the residuary head of income i.e. item F of S.14. Therefore, income added u/s 68 or 69 etc. has to be given a specific head in terms of S.14. 4.3 The Hon'ble Supreme Court in case of Karanpura Development Co Ltd vs. CIT [1962] 44 ITR 362 (SC) held that these heads are in a sense exclusive to one another and income which falls within one head cannot be brought to tax under another head. Further, the Hon'ble Supreme Court in case of Nalinikant Ambalal Mody v CIT [1966] 61 ITR 428, has held that whether an income falls under one head or another is to be decided according to the common notions of practical man because the Act does not provide any guidance in the matter. Of course, lot of

judicial precedents are available to a taxpayer to arrive at a conclusion about determination of appropriate head of income.

2.3 It is further submitted that whatever, was assessed by AO was nothing but Income from Capital Gains only and it cannot be termed as excess/undisclosed/unaccounted Income for the simple reason that the Id. AO at pg.2 of order observed that the assessee has sold immovable property as per information with him for reassessment proceedings:

*“On perusal of the submission made by the assessee and the information available on record, it is noted that the assessee, during the year under consideration sold immovable property of Rs. 69,90,000/-.”*

Moreover, the assessee admittedly accounted for such sales in regularly maintained books of account and also furnished appropriate documentary evidences were furnished before lower authorities. Consequently, it cannot be said that there was some excess shortage/undisclosed/unaccounted income, etc. found by Id. AO.

3. Binding judicial guideline: The Hon'ble Rajasthan High Court as also Tribunals whose decision are binding upon the assessing officer as a juridical precedence have also been consistently holding so. Kindly refer:

3.1 The Hon'ble Rajasthan High Court in case of CIT vs Bajargan Traders in ITA No. 258/2017 dated 12.09.2017 has held that when the assessee is dealing in sale of food grains, rice and oil seeds and the excess stock which is found during survey is stock of rice then, it can be said that investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. Therefore, the investment in the excess stock is to be brought to tax under head “business income” and not under the head income from other sources. It was held as under:

*“2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of RS. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularize its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.*

*2.11. Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under*

*the head "business income" or "income from other sources". In the present case, the assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources. In the result, ground No. 1 of the assessee is allowed."*

3.2 The Hon'ble ITAT Jaipur, Jaipur in its decision in the case of Shri Ram Narayan Birla in ITA No. 482/JP/2015 dated 30.09.2016 has held that unrecorded/excess investment or expenditure surrendered during the course of the survey has to be assessed as business income only and not under the head income from other sources. The Hon'ble ITAT Jaipur followed the case of Choksi Hiralal Mangal vs. DCIT 131 TTJ 1 (Ahd).

3.3 The Hon'ble Ahmedabad Tribunal in case of Chokshi Hiralal Maganlal vs DCIT (ITA No. 3281/Ahd/2009 AY 2004-05 dated 05.08.2011) held that for invoking deeming provisions u/s 69, 69A, 69B & 69C of the Act there should be clearly identifiable investment or asset or expenditure (i.e. in our understanding not connected with business so as to make convenient to invoke aforesaid sections). In case source of investment or asset or expenditure is clearly identifiable and has no independent existence of its own where a case arises to claim that it cannot be separated from business then first 'what is to be taxed is the undisclosed business receipt. Only on failure of such exercise, it would be regarded as taxable u/s 69 on the premises that such excess investment or asset or expenditure is unexplained and unidentified, satisfying the mandate of the law.

3.4 In the case of Shri Lovish Singhal vs ITO (ITA No 142 to 146/Jodh/2018 for AY 2014-15 dated 25.05.2018), the Jodhpur Tribunal applying the proposition of law laid down by the Hon'ble Rajasthan High Court in the Bajargan Traders (supra), held that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act and accordingly held that there is no justification for taxing such income u/s 115BBE of the Act.

4. There apart, there are many decisions available taking such a view in favor of the assessee on dated 22.09.2021 when the subjected assessment was framed by the AO. The above very relevant and crucial facts and the legal position was well available before the AO and there is nothing on record to show that he did not consider the same.

In view of the facts & circumstances, judicial guidelines and the statutory provisions, the addition of Rs. 66.90 lakhs could not be subjected to S. 115BBE of the Act.

Additional GOA 9: Violation of S.151A of the Act hence impugned notice and orders are nullity.

Submission:

1. It is submitted that the impugned Order u/s148A(d) dt. 30.03.2022 as also the impugned Notice u/s 148 dt. 30.03.2022 are wholly without jurisdiction in as much as they have been issued in a complete and gross violation of the Notification No. 18/2022 dt. 29.03.2022 (PB-II 104) titled as E-Assessment of Income Escaping Assessment Scheme, 2022 issued by the Central Govt. in exercise of the power conferred by S.151A (1) & (2) of the Act which has made the Re-Assessment in any case mandatory through

the E-Assessment Scheme only but not otherwise. Clause 3 of the Scheme provides the scope which includes the Assessments/Re-Assessment u/s 147 as also the issuance of Notice u/s 148 of the Act, shall be through automated allocation only in accordance with Risk Management Strategy (herein after referred to as “RMS”) formulated by the Central Board of Direct Taxes (herein after referred to as “CBDT”) u/s 148 and in a faceless manner as provided u/s 144B of the Act.

2. For a ready reference clause 3 is being reproduced hereunder:

*“For the purpose of the Scheme, —*

*(a) assessment, reassessment or recomputation under section 147 of the Act,*

*(b) issuance of notice under section 148 of the Act.*

*shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total; income or loss of assessee.”*

The Central Govt. was empowered by S.151A inserted by the Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 w.e.f. 01.09.2020 (*herein after referred to as “TOLA”*). Therefore, any proceedings u/s 147 could be initiated only. Accordingly, a notification (PB-II 105) was issued on 29.03.2022 making the Faceless Re-Assessment Scheme binding upon AO in faceless manner and not manually. However, in the present case SCN u/s 148A(b) has been issued on dt. 29.03.2023 followed by the impugned Order u/s 148A(d) of the Act dated 30.03.2022 and impugned Notice u/s 148 of the Act dated 30.03.2022, all by the Respondent AO manually, much later than the Notification dated 29.03.2022 [when the E-Re-Assessment Scheme had come into effect] yet however, the provisions of S.151A and the statutorily prescribed Scheme have not at all been complied with hence, the impugned notice and order deserves to be quashed.

3. Supporting Case Laws:

3.1 The CBDT, in the context of faceless assessment scheme, had issued an order u/s 119 of the Act dated 13.08.2020 (DC 95-96) which has clearly held that any assessment order which is not in conformity with faceless assessment scheme shall be treated as non-est.

3.2 Recently in the case of Kankanala Ravindra Reddy & Ors. vs. ITO & Ors. (2023) 334 CTR (Telangana) 646 (DC 97-107), it was held that:

*“Reassessment—Notice under s. 148A—Validity vis-a-vis notice by jurisdictional AO and not in faceless manner as per s. 144B r/w s. 151A—A plain reading of the two notifications issued by the CBDT dt. 28th March, 2022 and 29th March, 2022, would clearly indicate that the CBDT was very clear in its mind when it framed the two schemes with respect to the proceedings to be drawn under s. 148A, that is to have it in a faceless manner—From the factual matrix, firstly the statutory provisions of ss. 144B and 151A and secondly, the subsequent direction given by the Supreme Court in the case of Union of India & Ors. vs. Ashish Agarwal (2022) 326 CTR (SC) 473 : (2022) 213 DTR (SC) 217 what is clearly reflected is the fact that the Supreme Court has only permitted the Union of India to proceed further with the reassessment proceedings under*

*the amended provision of law, more particularly, as amended by the Finance Act, 2021—In the present case, both the proceedings i.e., the impugned proceedings under s. 148A, as well as the consequential notices under s. 148 were issued by the local jurisdictional officer and not in the prescribed faceless manner—Order under s. 148A(d) and the notices under s. 148 are issued on 29th April, 2022, i.e., after the "Faceless Jurisdiction of the IT Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced—Impugned notices issued by local jurisdiction AO and the proceedings drawn by the Department is neither tenable, nor sustainable—All the impugned orders getting quashed, the consequential orders passed by the Department pursuant to the notices issued under ss. 147 and 148 would also get quashed"*

### 3.3 Hexaware Technologies Limited vs ACIT & Ors. (WP no.1778/2023) (Para 39).

*"39. With reference to the decision of the Hon'ble Calcutta High Court in Triton Overseas Private Limited (Supra), the Hon'ble Calcutta High Court has passed the order without considering the Scheme dated 29th March 2022 as the said Scheme is not referred to in the order. Therefore, the said judgment cannot be treated as a precedent or relied upon to decide the jurisdiction of the Assessing Officer to issue notice under Section 148 of the Act. The Hon'ble Calcutta High Court has referred to an Office Memorandum dated 20th February 2023 being F No.370153/7/2023 TPL which has been dealt with above. Therefore, no reliance can be placed on the said Office Memorandum to justify that the JAO has jurisdiction to issue notice under Section 148 of the Act. Further the Hon'ble Telangana High Court in the case of Kankanala Ravindra Reddy vs. Income Tax Officer 14 has held that in view of the provisions of Section 151A of the Act read with the Scheme dated 29th March 2022 the notices issued by the JAOs are invalid and bad in law. We are also of the same view."*

Additional GOA-8: No DIN Mentioned hence impugned orders to be quashed:

1.1. It is submitted that in order to prevent instances where certain notices, orders, summons, letters and other correspondences which have been issued manually do not have proper audit trail of their communication despite various e-governance initiatives and computerization and to maintain proper audit trail of all the communications, the Central Board of Direct Taxes ("CBDT" in short) vide its Binding Circular No.19/2019 dated 14.08.2019 (PB-II 106-107) has made it obligatory on the part of the authorities below to essentially mention of Document Identification Number ("DIN" for short) and has directed that no communication shall be issued by any Income-Tax Authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval, etc. to the Assessee or any other person, on or after the 01.10.2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. Para 3 of the said Circular provides for certain exceptional circumstances when the communication can be issued manually but must mention such fact and the date of obtaining of the written approval of the Chief Commissioner/Director General of Income-tax for issue of said manual communication in the prescribed format, failing which, para 4 of the said circular states that such communication shall be treated as 'invalid' and shall be deemed to have never been issued.

1.2 In the instant case however, the undisputed and verifiable facts are that the directions issued by the Dispute Resolution Panel vide its order dated 28.22.2023 u/s 144C (5) of the Act is not an electronic communication but a manual order as is evident from the perusal of the same. Although there is a separate letter dt. 28.11.2023 (PB 87)

intimating DIN no. being ITBA/DRP/M144C(5)/2023-24/1058282550(1) but the fact of issuing the present directions issued u/s 144(C)(5), manually without a DIN and without obtaining an approval from prescribed authority in the prescribed format, (as was not mentioned/quoted in the body of the said communication) is non-est. Similar contention when raised by the revenue, was rejected.

## 2. Supporting case laws where no DIN is mentioned:

2.1 Recently in the case of Practo Technologies Pvt. Ltd. Vs DCIT IT(TP)A No.154/Bang/2022 (DC 108-124), the Hon'ble Bangalore Bench, in the context of the directions issued u/s 144C (5), when noticed that no DIN was mentioned therein, held as under:

*"21. Respectfully following the above order of the Tribunal, since the DIN was not mentioned in DRP order dated 30.12.2021 which was mandatory as per CBDT Circular No.19 (supra) & in view of the facts noted above in regard to communications done with the assessee, we hold that the DRP directions dated 30.12.2021 is invalid in the eyes of law and shall be deemed to have never been issued as per Para 4 of the CBDT circular as the order is not conformity with Para 2 and Para 3. Accordingly, the DRP order dated 30.12.2021 is held to be null and void ab initio and quashed. Thus, the additional grounds No. 24 & 25 raised by the assessee on the legal issue are allowed."*

While holding so, the Hon'ble ITAT has firstly admitted the additional ground of Appeal in Para 5 and thereafter, followed the decision in the case of Intrado EC India Private Ltd. v. DCIT IT(TP)A No.239/Bang/2021.

2.2 Recently Hon'ble Bombay High Court in the case of Hexaware Technologies Limited vs ACIT & Ors. (WP no.1778/2023), was dealing with a notice issued u/s 148, without DIN and held as under:

*"31 As regards issue no.3, in the notice dated 27th August 2022 impugned in the petition, admittedly there is no DIN mentioned. It is petitioner's case that the notice is invalid and bad in law in view of the Circular No.19 of 2019 dated 14th August 2019 issued by CBDT. A separate intimation letter also dated 27th August 2022 was issued and the said letter reads as under:*

XXX----XXX-----XXX-----XXX-----XXX

*We agree with petitioner that this letter cannot validate the notice issued under Section 148 of the Act on 27th August 2022. The reason is firstly; the intimation letter refers to a DIN with respect to some notice under Section 148 of the Act dated 26th August 2022. The impugned notice issued to petitioner is dated 27th August 2022 and not 26th August 2022 for which the DIN is generated. Secondly, the procedure prescribed in Circular No.19 of 2019 dated 14th August 2019 for non-mention of DIN in case letter/notice/order has not been complied with by respondent no.1. It is settled that if DIN is not mentioned in the letter/notice/order, the reason for not mentioning the DIN and the approval from specified authority for issuing such letter/notice/ order without DIN has to be obtained and mentioned in such letter/notice/order. In the present case, in the impugned notice dated 27th August 2022, no such reference is there. Therefore, as held in Ashok Commercial Enterprises (Supra) and Tata Medical Center Trust (Supra), the impugned*

*notice is clearly invalid and bad in law. It will be useful to reproduce paragraph 18 of Ashok Commercial Enterprises (Supra):*

XXX---XXX-----XXX-----XXX-----XXX

*Therefore, the impugned notice dated 27th August 2022 issued under Section 148 of the Act is invalid and bad in law as the same has been issued without a DIN."*

2.3 In the case of Ashok Commercial Enterprises v. ACIT [2023] 154 taxmann.com 144 (Bombay) (DC 125-150), a satisfaction note also has been held as a communication requiring DIN to be mentioned thereon. It was held: "(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no. 1. The satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to any person. In the case of the satisfaction note no regularization dated 13th October 2021 has been issued".

2.4 Various other decisions are in the case of Bangalore Narayan Das vs. ITO (International Taxation) (2023) 226 TTJ (Bang) 66, PCIT (EXEMPTION) vs. Tata Medical Centre Trust (2023) 334 CTR (Cal) 942, Ankit Jain v. DCIT (2023) 155 taxmann.com 321 (Delhi - Trib.) and Deepak Kumar vs DCIT (2024) 159 taxmann.com 358 (Delhi - Trib.)

### 3. CBDT Instructions are binding: Supporting Case Laws:

The CBDT circular and instructions have been held to be binding on the Income-Tax Authorities for which a useful reference can be made to the cases of *CIT v. Hero Cycles (P.) Ltd.* (1997) 94 Taxman 271/228 ITR 463 (SC), wherein, it was held that circulars bind the ITO but will not bind the Court or even the Assessee. In the case of *UCO Bank v. CIT* (1999) 104 Taxman 547/237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

*"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

Strong reliance is also placed in the decision of His Late Highness Maharana Shri Bhagwat Singhji of Mewar vs. ITAT & Ors. (1996) 133 CTR (Raj) 97: (1997) 223 ITR 192 (Raj).

The Rajasthan High Court in *Sudesh Teneja vs. ITO* (2022) 324 CTR (Raj) 577: (2022) 210 DTR (Raj) 105: (2022) 442 ITR 289 (Raj) held that (a) taxing statute must be interpreted strictly. Equity has no place in taxation. Nor while interpreting taxing statute

intendment would have any place. (b) There is nothing unjust in the tax payer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly. (c) It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. (d) In the matter of interpretation of charging section of a taxation statute, strict Rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favorable to the assessee need to be applied.

Since, the impugned assessment order has been passed without there being any valid directions issued by the DRP-1, New Delhi (in absence of DIN as aforesaid), has vitiated the impugned order itself as per mandate of Sec.144C (5) r.w.s 143(3) hence, both these orders may kindly be held as non-est and quashed."

6. In support of the contentions so raised in the written submission reliance was placed on the following evidence / records:

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1.	Copy of form 35A	1-2
2.	Copies of detailed objections raised dt. 27.04.2023 against the draft assessment order u/s 144C(1)	3-12
3.	Copy of application for admission of Additional Documents/ Evidences dt. 27.04.2023	13-14
4.	Index of the papers filed before the D.R.P.	15
5.	Index of Additional documents filed before the D.R.P.	16
6.	Copy of Passport	17-20
7.	Copy of letter dated 23.03.23 requesting for supplying necessary information and/or certified copies along with the acknowledgement	21-22
8.	Copy of CBDT Instruction NO. 1/ 2022 dated 11.05.2022	23-25
9.	Copy of registered sale date dated 28.07.2017	26-39
10.	Copy of registered purchase date dated 21.11.2008	40-51
11.	Copy of registered Articles of Agreement date 31.05.2018	52-62
12.	Chart showing computation of Long Term Capital Gain	63
13.	Copy of valuation report by the Approved Architects Engineers & Valuers i.e., Daksh Architectural Works, Ajmer	64-67

14.	Copy of Show Cause Notice issued u/s 148A(b) dt.17.03.2022 by the ITO ward 2(2), Ajmer	68-69
15.	Copy of the legal objections against the order under section 148(d), dated 23.03.2023 filed before the ITO-ward 2(2) Ajmer, along with acknowledgement of uploading.	70-76
16.	Copy of order dated 25.03.2023 by the ACIT Circle (INTL TAX),Jaipur regarding disposal of legal objections	77-78
18.	Copy of order passed u/s 148A(d) dt.30.03.2022 by the ITO ward-2(2), Ajmer	79-80
19.	Copy of showcase notice dated 25.03.2023 issued by the ACIT circle(intl.) tax, Jaipur	81-82
20.	Copy of Draft Order u/s 144C(1) dt.29.03.2023	83-86
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24.	Copy of CBDT Notification No. 18/2022/F. No. 370142/16/2022-TPL (Part1 dt.29.03.2022)	104
25.	Copy of PAN profile of ITD Portal	105
26.	Copy of Circular No. 19/2019 [F.NO. 225/95/2019-ITA.II], Dt. 14.08.2019	106-107

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3.	Abdul Azeez Haroon vs DCIT (International Taxation) (2020) 317 CTR 610 (Mad)	14-17
4.	Saroj Sangwan vs. ITO (2024) 162 Taxmann.com 704 (ITAT, Delhi)	18-22

5.	Daujee Abhushan Bhandar (P.) Ltd. v. Union of India (2022) 136 taxmann.com 246 (Allahabad)	23-35
6.	M/s Mittal Pigments Pvt. Ltd. Vs. CIT & Ors in D.B.CWP No.8626/2023 (Raj)	36-39
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9.	SHL (India) (P) LTD. vs. Deputy Commissioner of Income Tax & Ors. (2021) 321 CTR 655 (Bom)	77-87
10.	Sanath Kumar Murali vs. ITO & Ors. (2023) 333 CTR (Kar) 189	88-94
11.	Copy of order u/s 119 of the Act dt. 13.08.2020	95-96
12.	Kankanala Ravindra Reddy & Ors. vs. ITO & Ors. (2023) 334 CTR (Telangana) 646	97-107
13.	Practo Technologies Pvt. Ltd vs DCIT Central Circle 1(3), Bangalore IT(TP)A No.154/Bang/2022 (Relevant Extracts)	108-124
14.	Ashok Commercial Enterprise vs. ACIT (2023) 334 CTR 757 (Bom)	125-150

7. The Id. AR of the assessee submitted that his prayer to consider the addition ground raised be considered based on the decision of the apex court in the case of National Thermal Power Corporation Ltd. [ 229 ITR 383 (SC) ] as that grounds are purely being technical and no finding on facts is required to be made and therefore, he prayed to consider.

8. Considering the nature of grounds raised by the assessee being technical in nature the same are admitted.

9. The Id. AR of the assessee in support of ground no. 1 & 2 raised by the assessee submitted that the impugned order u/s 148(d), notice under section 148 both dated 30.03.2022 and notices u/s 142 for AY 2018-19, are completely devoid of jurisdiction in as much as the Income Tax officer, Ward 2(2), Ajmer was not vested with a valid jurisdiction in terms of S.120 read with 124 of the Act. The facts are not disputed that the assessee is a non-resident Indian. He has been residing outside India since last almost more than 25 years. He came back to India only on dated 22nd June 2022 (copy of passport enclosed PB 18-19). Thus, in any case during the relevant financial year 2017-18(AY-2018-19), he completely remained outside India. Accordingly, in his PAN profile also, the jurisdictional AO is shown as the International Charge i.e. CIRCLE (INTL TAX), JAIPUR. Copy of the PAN profile is placed on record in paper book page 17 & PB-II 105. Thus, the jurisdiction of the assessee continues to fall with the International Charge CIRCLE (INTL TAX), JAIPUR, as per PAN profile, there is no legal justification behind issuance of the subjected notices by ITO Ward 2(2), Ajmer, who was not the competent officer having valid and legal jurisdiction to re-open the case of the assessee. Thus, he vehemently submitted that notice under section 148 can be issued only by a competent Assessing Officer having a valid jurisdiction over the assessee and as ITO, Ajmer was

not having any valid jurisdiction and competence to issue the notice u/s 148. The Id. AR of the assessee submitted that the contention AO of that section 148 talks about the Assessing Officer only and not about the Jurisdictional Assessing Officer.” She also took support from section 124(3) that no person shall be entitled to challenge the jurisdiction if no ROI has been filed after expiry of the time allowed in a notice u/s 148. Objecting to that finding the Id. AR of the assessee submitted that the term “Assessing Officer” (“AO”) means the assessing officer only but not the “Jurisdictional Assessing Officer” (“JAO”). If the interpretation as contended, is accepted then the “AO” may means any AO situated anywhere in the country i.e. right from Jammu & Kashmir till Kanyakumari, may be the AO to assess the income of an assessee stationed at Ajmer, which can never be the legislative intention. In support the Id. AR of the assessee relied upon the definition of the AO given in section 2(7A) of the Act. The case of the assessee pertains to the Assessing Officer, Circle (Intl Tax), Jaipur was vested with the jurisdiction to Act as an AO, is fully supported by the PAN Profile and the jurisdictional details (PB-II 105) of the assessee which clearly shows the Assessing Officer holding the charge was the International Taxation Charge. In this background only, when the assessee, after receiving the impugned notice u/s 148 sent on dt. 13.04.2022, raised

his objections vide letter dated 23.07.2023 (PB 70-72) no reply came from the ITO Ward 2(2) Ajmer but strangely the same was replied by Officer, Circle (Intl Tax), Jaipur admitting, the very fact and the contention of the assessee that she might be holding the correct jurisdiction over this assessee but not the ITO Ward 2(2) Ajmer who issued the impugned notice u/s 148. To drive home to this contention the Id. AR of the assessee relied upon the decision of CIT Vs Smt Anjali Dua (2008) 219 CTR 183 (Del) (DC 1-2), Mir Zardari Qureshi v. ACIT [2023] 151 taxmann.com 408 (Raipur - Trib.) (DC 3-13), Abdul Azeez Haroon vs DCIT (International Taxation) (2020) 317 CTR 610 (Mad) (DC 14-17) and Saroj Sangwan vs. ITO (2024) 162 Taxmann.com 704 (ITAT, Delhi) (DC 18-22). The Id. AR of the assessee argued that where the authority issuing the notice has no authority at all, there is no requirement of raising any objection within the stipulated period. Moreover, objection u/s 124 is required to be raised only when there is a dispute on the question of territorial jurisdiction of a particular officer. Thus, the objection raised by the Officer, Circle (Intl Tax), Jaipur are completely baseless against the provisions of the law and deserves to be rejected. The Id. AR of the assessee also submitted that though the notice alleged to be of dated 31.03.2022 but the same was issued on 13.04.2022 therefore, the law as applicable in the fact of the case

is the new regime. As held by the apex court in the case of UOI Vs. Ashish Agarwal 326 CTR 473 the assessing officer has to follow the procedure as prescribed in the new law. In support of this contention he relied upon the decision of Daujee Abhushan Bhandar (P.) Ltd. v. Union of India (2022) 136 taxmann.com 246 (Allahabad). The Id. AR also challenged that in this case since the notice is beyond three year the approval is to be taken of that of the Id. CCIT and of PCIT and on that aspect of the case he relied upon the decision of Siemen Financial Vs. DCIT [154 taxmann.com 159 (Bombay) ] so even that count of the aspect of the case the notice issued u/s. 148 is not a valid notice.

9.1 As regards the merits of the case the Id. AO in the draft order proposed the addition u/s. 69A of the Act. Whereas in the final order after the direction of the DRP he shifted that to long term capital gain for which he has not given any show cause notice and merely based on the surmises and conjecture completed the assessment assessing the capital gain without considering the material placed on record by the assessee. As it was submitted before the DRP by the assessee that there is no tax liability that arises in the case of the assessee and once DRP accepted the evidence of the assessee the order of the assessing officer is in gross violation of principles of nature justice and bad in law as well as on facts.

There was direction of the DRP to consider the evidence filed by the assessee and there is no cross objection of the revenue that why the DRP has allowed those evidence to be considered that evidence needs to be considered. The Id. AR of the assessee raised various issues such there is no DIN, assessment not done in online mode as per Board circular and various technical latches and glitches in the order of the assessment for which he relied upon the written submissions filed and in support of those contention he filed a compilation of case laws relied upon.

10. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and DRP. The Id. DR stated that the assessee has taken under the sun all the grounds of approval of PCIT/CCIT, jurisdiction, addition to be made u/s. 69A or capital gain, DIN attached or not, how the proceedings were conducted etc., thus, on these aspect he sought time to seek the comments of the Id. AO. The Id. AO submitted his report vide letter dated 24.05.2024 and the contention of the Id. AO on the submission of the assessee is reproduced here in below:

“Sub.: Reports/comments in the case of Sh. Sunil Chablani (PAN: ASTPC0800H) for the A.Y. 2018-19-regarding.

Ref.: Letter No. 119 dated 06.05.2024 and No. 143 dated 14.05.2024

Kindly refer to the above.

2. The brief facts of this case are that the assessee was non-filer for the A.Y. 2018-19. There was information available with the department that the assessee had sold an immovable property for a sale consideration of Rs. 69,90,000/-. Since, the assessee was non-filer during the year under consideration, the said transaction remained unverified. Accordingly, after recording the reasons for escapement assessment, notice u/s 148 of the Act was issued to the assessee on 30.03.2022 with prior approval taken from the competent authority. However, in compliance to the notice issued u/s 148 of the Act, the assessee did not file his ITR for the year under consideration. During the assessment proceedings, statutory notices were issued to the assessee requiring him to furnish relevant documentary evidence to substantiate the said transaction carried out by the assessee. Despite providing sufficient opportunity, the assessee did not furnish any documentary evidence and failed to explain and justify the said transaction. Considering these facts, the sale consideration of Rs. 69,90,000/- remain unexplained and falls under the purview of unexplained money u/s 69A of the Act. Accordingly, draft assessment order u/s 144C of the Act was passed on 29.03.2023 proposing an addition of Rs. 69,90,000/-.

Aggrieved by this draft assessment order dated 29.03.2023, the assessee has filed objection before Hon'ble DRP-1, New Delhi challenging among other things, the addition of Rs. 69,90,000/ made u/s 69A of the Act. In this matter, Hon'ble DRP has passed order dated 28.11.2023 and issued necessary directions to pass a reasoned order on the basis of submission of the assessee. In compliance to the said directions, final assessment order passed u/s 147 r.w.s. 144 on 29.12.2023 determining total income at Rs. 69,90,000/- after making an addition of Rs. 69,90,000/-.

The assessee is now in appeal before Hon'ble ITAT. The pointwise comments on objections raised by the assessee during the appellate proceedings are furnished as under-

(1) That notice u/s 148A(b) of the Act 1961 as also order u/s 148A(d) of the Act 1961 and notice u/s 148 of the Act 1961 were primarily issued by the ITO, Ward- 2(2), Ajmer in exercise of valid jurisdiction. In this regard, it may be mentioned that for the A.Y. 2018-19, assessee was a non-filer and his residential status was not known to the AO and the initial proceedings were carried out by the then AO on the basis of PAN card details available with him. In this case, information pertaining the transaction carried out by the assessee was conveyed through notice issued u/s 148A(b) of the Act dated 17.03.2022, requiring the assessee to furnish supporting documents to explain the said transaction. However, after allowing opportunity to explain and furnish the requisite documents, the assessee has failed to comply with the same. He did not file any response in this regard. Accordingly, on the basis of material available on record

and after exploring the information flagged on the system, this case was treated as fit case to issue notice u/s 148 of the Act. Order u/s 148A(d) of the Act was issued on 25.03.2022 after obtaining approval from the specified authority as mentioned in section 151 of the Act. Subsequently, notice u/s 148 of the Act was issued on 30.03.2022 with prior approval of the PCIT, Udaipur. The jurisdiction of this case was transferred to the DCIT, Circle (Intl. Tax.), Jaipur charge when it came to notice to the AO that the assessee is having NRI status. This fact was disclosed when the assessee has filed his written submission during the assessment proceedings. It is the duty of assessee itself to disclose his correct facts pertaining to the transactions in question even his residential status also.

During the assessment proceedings, the assessee was having opportunity to challenge jurisdiction within time limit. However, he failed to do so. After completing the assessment proceedings, the assessee cannot take liberty to challenge the jurisdiction of the Assessing Officer. For the sake of brevity, provisions of section 124 of the Act are reproduced as under - "Jurisdiction of Assessing Officers.

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

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

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

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WE or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier,

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 1530 or after the completion of the assessment, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120"

As such, there is no lack, or error of jurisdiction or any procedural lacuna/defect in the proceedings. Thus, the ground taken by the assessee in respect of having incorrect jurisdiction is not acceptable and vehemently denied.

(2) In this matter, limitation to issue notice u/s 148 of the Act was going to be expired on 31.03.2022. Accordingly, notice was issued to the assessee through the ITBA system on 30.03.2022 itself. In this regard, a copy of system generated notesheet showing the chronological events of the assessment proceedings of this case are enclosed herewith. The entry dated 30.03.2022 appearing in the note sheet shows that notice u/s 148 of the Act was issued to the assessee on 30.03.2022. As such, the minimum requirement to initiate the reassessment proceedings u/s 148 of the Act fulfils appropriately.

In this regard, provisions of section 149 of the Act are as under: -

Time limit for notice.

149(1) No notice under section 148 shall be issued for the relevant assessment year,

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

((b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more: /

From the above, it is clear that the time limit for issuance of notice u/s 148 in this case was 31.03.2022. On perusal of section, it is clear that the notice should be issued, which was done and clear from the note sheet enclosed.

In this case, it is evident that the notice under reference was initiated on the ITBA System on 30.03.2022 and digitally signed by the Assessing Officer on 30.03.2022 and the said notice was instantly transmitted via the ITBA system. It is pertinent to mention that once a notice u/s 148 is generated on ITBA system and digitally signed, it is instantly entered and transmitted in the ITBA system. Also, the notice is instantly transmitted to the e-filing portal of the assessee under e-Proceedings. Further, real date and time are also mentioned on the bottom right corner of the notice which clearly shows that this notice was digitally signed by the issuing authority on Wednesday, 30 March, 2022 at 4:55 PM.

In this context, reliance is placed upon the decision of Hon'ble Allahabad High Court in Writ Tax No. 78 of 2022 which is squarely applicable in this case. The relevant paragraph of the judgement is as under-

\*29, Thus, considering the provisions of Section 282 and 282A of the Act 1961 and the provisions of Section 13 of the Act 2000 and meaning of the word "Issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or to be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic

record. Section 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e. the assessing authority shall be the date and time of issuance of notice under section 148 read with Section 149 of the Act, 1961."

In this matter, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e. the assessing authority is Wednesday, 30 March, 2022 at 4:55 PM and according to this judgment, Wednesday, 30 March, 2022 at 4:55 PM shall be the date and time of issuance of notice under section 148 of the Act, 1961. Thus, keeping in view the facts as discussed above, the contention raised by the assessee that this notice was served only on 13.04.2022 and to be considered as issued only on 13.04.2022 is vehemently denied.

(3) The claim of the assessee that the notice of 148 received in April, so it is time barred because reopening of case made after 03 years, approval should have been taken from the Chief Commissioner or Director General is not acceptable on the ground that the notice u/s 148 of the Act was well issued to the assessee on 30.03.2022 and fulfils all conditions as laid down in the provisions of section 148 of the Act. It is evident that the proceedings against the assessee have been carried out in accordance with law and the procedure for reassessment has been strictly followed. As the said notice has already been issued within the prescribed time period i.e. 31.03.2022, so that, question of approval to be taken from the Chief Commissioner or Director General does not arise.

(4) During the assessment proceeding, the assessee in response to notices issued did not produce any documentary evidence regarding the income generated from sell of immovable property. The assessee only stated that "..... We are in the process of collecting the required data in respect of the sale of property. Hence, we will submit the same as soon as possible once we collect them". Besides furnishing documentary evidence, the assessee has raised objections. He totally failed to explain and justify the said transaction. Accordingly, sales consideration of Rs. 69,90,000/- received by the assessee from sell of immovable property was treated as unexplained money u/s 69A in the hands of the assessee. This fact has been duly incorporated in the draft assessment order.

The Hon'ble DRP vide its order dated 28.11.2023 has issued necessary directions to the AO to pass a reasoned order on the basis of submission of the assessee which was enclosed as an Annexure-"A" to this order. The said Annexure "A" is a computation of income filed by the assessee before Hon'ble DRP. This computation consists only details of sale value, indexed cost of improvement and capital gain and no such supporting documents were furnished therewith. This is the only document which was filed by the assessee in support to his claim. As per the directions issued by Hon'ble DRP as well as considering

the evidences furnished by the assessee, final assessment order was passed on 29.12.2023 making addition of Rs. 69,90,000/- on account of Long-Term Capital Gain. Your good self will find that the AO while passing final assessment order has duly incorporated all the facts available on record and discussed each issue in detail. During the assessment proceedings, the assessee failed to substantiate the transaction with regard to receive sales consideration, accordingly, the money received by him remained unexplained and treated as unexplained money u/s 69A of the Act. However, while finalizing final assessment order, additional evidences furnished by the assessee has been duly examined. After examining the additional evidences, it is emerged that the assessee has received sales consideration but he failed to produce documentary evidence with regard to indexed cost of acquisition and improvement as claimed by him in the said computation of income. Therefore, the whole consideration of Rs. 69,90,000/- was considered as Long-Term Capital Gain. Keeping in view these facts, the ground taken by the assessee is denied.

(5) The objection raised by the assessee that the directions issued by DRP is without DIN is not acceptable on the ground that the order dated 28.11.2023 issued by Hon'ble DRP is having DIN No. ITBA/DRP/M/144C(5)/2023-24/1058282550(1) which is clearly mentioned on the first page of the order.

(6) With regard to furnish details of payment for cost of improvement made by the assessee, it is submitted that the assessee has not furnished copy of bank statement as well as payments details in his written submission showing the source of funds used for cost of improvement in the aforesaid immovable property. It is established that the assessee was non-cooperative during the assessment proceedings. The Hon'ble DRP in its order dated 28.11.2023 at para-No. 3.4 has also noted as under -

"3.4 However, the assessee neither presented (or through authorized representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement or property allegedly done in multiple years."

Further, there is no such information available on record, which disclose the mode of payment made by the assessee towards cost of improvement. Even, assessee did not furnish details of payment towards cost of improvement before Hon'ble DRP.

(7) The objection raised by the assessee that the impugned notice u/s 148 and impugned order u/s 148A(d) of the Act dated 30.03.2022 are nullity having been passed in complete violation of the binding notification dated 29.03.2023 issued u/s 151A r.w.s. 144B of the Act mandating for the Ild. AO to complete the proceeding in faceless manner only as against done manually and hence, the same deserves to be quashed. On perusal of the said objection, it emerged that the assessee has itself asserted that notice u/s 148 dated 30.03.2022 was issued

prior to issue of the said notification dated 29.03.2023. As such, question of violation of this binding notification does not arise.

Accordingly, this contention deserves to be dismissed.

The Id. DR relying the contentions of the Id. AO submitted that since the transaction was flagged in the system and it was fit case to issue the notice u/s. 148 the same was issued and that objection were dealt with as the assessee has not filed his ITR. The assessee never filed the ITR even after the issue of notice u/s. 148. As in this case the notice is within 3 year and the same was issue within three years the approval taken was in accordance with the law as the notice was issued on 31.03.2022. The assessment was re-opened on the valid information and the case of the assessee being of the non-filler case the notice was issued by the ITO, Ajmer. The assessee not remained compliant with the notices of the Id. AO as well as of the Id. DRP. The assessee has not supported the contention with valid explanations and proof the indexation benefit cannot be given to the assessee. The assessee has not supported the cost incurred with supporting evidence. As regards the claim of the assessee u/s. 54F no such information was filed by the assessee before the Id. AO. The levy of tax u/s. 69A and charge of tax under section 115BBE is consequential in nature. As regards the DIN not attached in the order of the DRP there is a separate

letter generating DIN for that order. The Id. DR also filed a detailed order sheet entry in support of the orders of the lower authority.

11. In the rejoinder the Id. AR of the assessee submitted that the issue of jurisdiction was first taken up the assessee has challenged the issue of notice itself and therefore, merely the return is not filed the non-jurisdictional AO has no power to issue and regularize the illegal jurisdiction and thereby the assessment. The Id. AR of the assessee filed a detailed rejoinder to the submission made by the Id. AO through the Id. DR and the same is reproduced herein below :

“Para wise comments/rejoinder follows as:

1. In response to the contention that the AO had no jurisdiction, it was contended that after coming to know from the assessee only, the jurisdiction of the case was transferred to DCIT, CIRCLE (INTL. TAX), Jaipur and it was the duty of the assessee to disclose correct facts.

1.1 (Reply Para 1) It is submitted that in fact the AO is rather trying to avoid the real challenge. It's a fact that the assessee cannot change the jurisdictional detail (PB-1 17), (PB-11-105) however the AO is silent as to precisely what is the date on which he transferred the jurisdiction or further how AO himself can transfer unless there is a Notification by the competent authority transferring the jurisdiction from ITO WD-2, Ajmer to the International Taxation but unfortunately no detail has been supplied. Also there is absolutely no comment made by them on the PAN profile which shows the jurisdictional detail as DCIT, International Taxation which is not within the control of the assessee. Exactly when international taxation is shown or was changed from ITO Ajmer to that, has not been explained by the AO. Further the assessee has duly discharged its duty while uploading the details for the passport, wherein PAN No., as required by the concerned authority (in para 2.9 page 2 of passport Application Form) was duly filled in. Now it is internal affair of the two ministries /departments, which is beyond the control of the assessee. Pertinently, the very starting point and the very base of the present impugned proceeding u/s 148A are the registered sale

deed dated 28.07.2017 (PB 26-39) showing the sale consideration of Rs. 69.90 lakh, referring to which only, allegation of non-disclosing of LTCEG is made by the AO. Interestingly, in the first few lines of above sale deed only at internal page 1 (PB 30), it is stated that the appellant (the seller) was residing at Dubai, UAE during that relevant point of time. Thus, it was very well known to the Department that the appellant had been residing at Dubai, therefore, the correct jurisdiction rested with the international taxation.

1.2 (Reply Para 1) Further on the aspect of S. 124(3), the Id. DR completely failed to controvert the submissions and the case laws cited in our revised WS dated 27.05.2024, which are once again relied upon.

2. (Reply Para 2) With regard to the contention of the issuance of the impugned notice u/s 148 after 01.04.2022 and hence the same was barred by limitation, it is solely an internal affair of the department as to when the notice digitally signed on 30.03.2022 is instantly entered and transmitted in the ITBA system. Also, the notice is instantly transmitted to the e-filing portal of the assessee under e-proceedings. However, when one looks upon the e-portal at the relevant place, there appears no date and time of uploading the impugned notice u/s 148 after digitally signing. In any case, the Hon'ble Allahabad High Court in the case of Daujee Abhushan Bandar (2022) 136 taxmann.com 246 (DC 23-35) has already considered same very contention but in that case the notice, having been sent on the registered e-mail id only on 06.04.2021, was held time barred as limitation expired on 31.03.2021, which is also a case here. Interestingly, the DR also cited the same very decision. Hence, the repeated contention that the digitally signed notice entered in the computer resource outside the control of the originator on Wednesday, 30.03.2022 at 4:55 PM cannot be accepted. Consequently, the impugned notice firstly, was barred by limitation u/s 148 and secondly, no valid approval as required from the PR CCIT/DGIT was not obtained. Hence, it was invalid.

3. (Reply para 4) The repeated allegation of non-cooperation and not furnishing of evidences is completely contrary to the facts on record. The appellant being an NRI, for last several years was not able to manage his affairs and therefore, all evidences were filed before the DRP as evident from paper of index (PB16) and the relevant documents were even referred to by the AO itself in the assessment order pursuant to the directions of the DRP who sent all those papers vide its directions u/s 144C(5) to the AO.

4. (Reply Para 5) As regards absence of DIN on the direction u/s 144C(5), the Ld. DR has ignored that subsequent mentioning of DIN number is not the solution. The fact is that on that direction order, DIN was mentioned manually and told to appellant vide separate letter. Precisely, such situation has been dealt in the case of Ashoka Commercial Enterprise vs ACIT (2023) 334CTR757 (Bom.) in Pr18 (DC 127).

5. (Reply para 7) The Ld. DR has very clearly misread the date of the Notification as 29.03.2023 as against the correct date of 29.03.2022 (PB104) and impugned notice was issued next day on 30.03.2022 without complying with the said Notification. There is no other adverse comment/argument raised by the Ld. DR.

6. Thus, all the contentions raised by the Ld. DR in the reply are of no substance, either on legal side or on facts and therefore, the appeal of the SAC, appellant deserves to be allowed on all counts.

The above submissions have been made based on the instructions and the information provided of/by the client.”

The Id. AR of the assessee submitted that ITO, Ajmer has accepted the fact that the assessee is NRI and therefore, he himself transferred the case record. In support the Id. AR of the assessee relied upon the PAN profile filed and copy of order sheet entries filed by the Id. DR. As regards the issue and service of notice the same is not correct. Notice was emailed on 13.04.2022. So the notice issued is beyond three years' time and the approval of the CCIT is also not obtained.

12. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has taken almost in all 11 grounds of appeal challenging the finding of the lower authority on facts as well as on legal grounds. In ground no. 1 & 2 the assessee has challenged the validity of issue of notice and connected approval together with the jurisdiction of the Id. AO who issued the notice to the assessee. Since this ground no. 1 &

2 goes into the route of all other grounds the bench decided to deal that ground first.

12.1 The facts related to the disputes as culled out from the record is that the assessee for the year under consideration has not filed any income tax return. The revenue was in possession of the information that the assessee had sold an immovable property for a sale consideration of Rs. 69,90,000/-. Since there was no ITR filed the transaction remained unverified. Accordingly, after recording the reasons for escapement assessment, a notice u/s 148 of the Act was issued to the assessee on 30.03.2022 with prior approval taken from the PCIT, Udaipur. That notice dated 30.03.2022 was served to the assessee on 13.04.2022 through email and for that the assessee filed the copy of the mail issued by ITO, Ajmer. Since, the assessee has taken the issue of jurisdiction as well as service of the notice the Id. DR was upon request given time to seek comments on the legal issue raised by the assessee. The Id. AO submitted a report / comment on the case vide his letter dated 24.05.2024 wherein the Id. AO contended that the assessee was non-filer and his residential status was not known to the AO and the initial proceedings were carried out by the then AO on the basis of PAN Card details available with him. Thus, the Id. AO did not controvert

the fact that the assessee is NRI as per his PAN profile filed and has simply relied upon the fact that the Id. AO did not know the status of the assessee and based on that aspect, he assumed jurisdiction. The Id. AO also reported that the assessee was having the opportunity to challenge the jurisdiction within time limit. He went on further that since the assessee failed to do so, after completing the assessment proceedings, the assessee cannot take liberty to challenge the jurisdiction. As regards the service of notice the Id. AO submitted that *“In this matter, limitation to issue notice u/s. 148 of the Act was going to be expired on 31.03.2022. Accordingly, notice was issued to the assessee through the ITBA system on 30.03.2022 itself. In this regard, a copy of a system generated note sheet showing the chronological events of the assessment proceedings of this case are enclosed herewith. The entry dated 30.03.2022 appearing in the note sheet shows that notice u/s 148 of the Act was issued to the assessee on 30.03.2022. As such, the minimum requirement to initiate the reassessment proceedings u/s 148 of the Act fulfils appropriately.”* The Id. AO as regards the service of notice relied upon the decision of Hon’ble Allahabad High Court.

12.2 The assessee in the paper book filed submitted copy of pass port which was valid from 16.03.2015 to 13.03.2025 and place of issue is Dubai

(APB-18), at page 20 the details of old passport and place of issue shows Dubai. At page 17 of the paper book the jurisdictional details of the assessee is filed it shows the "Circle (Intl.Tax), Jaipur. Thus, the Id. AO while sending this report based on the submission has not controverted this aspect of the matter which establishes that the residential status of the assessee is undisputedly NRI as on the date of issue of notice u/s. 148 of the Act. Thus, based on this evidence placed on record and the same being not controverted we are of the considered view that when the assessee is non-resident as on the date of issue of notice u/s. 148 of the Act. The bench further noted from order sheet entry dated 16.03.2023 ***that Faceless Assessment Unit (FAU) requested through NaFAC to transfer out this case from them because the case is of non-resident individual or of a foreign company and can be assessed only at international charge.*** Thus, the contention raised by the assessee has already been observed by the FAU in the assessment proceeding when the case was transmitting from ITO, Ajmer to FAU. In the light of these facts we are of the considered view that the ITO, Ward-2(2), Ajmer has no jurisdiction when the notice u/s. 148 was issued on 30.03.2022. Therefore, the in order to sustain the validity of the reassessment, a reassessment notice is required to be issued by an Assessing Officer having proper jurisdiction over the assessee to

whom such notice has been issued. Based on the evidence placed on record and after giving sufficient time to the revenue to rebut the contention based on the set of evidence placed on record, but revenue could not demonstrate that when the notice issued on 30.03.2022, ITO, Ward 2(2), Ajmer, has valid jurisdiction. In the light of this fact, we quash the order of the assessment and ground no. 1 & 2 raised by the assessee is allowed.

12.3 Ground no. 4, 5 & 6 are related to the merits of the case wherein the Id. AR of the assessee submitted before us that the additional evidence filed by the assessee has already been admitted by the Id. DRP and Id. AO did not consider even the original cost of the property sold for which all the evidence placed on record and the assessee has provide before the Id. DRP that there is no income left to charge the tax by filling the computation of capital gain but the Id. AO in the draft order taken one stand and after the direction of the Id. DRP added the sum without considering the fact and without issuing any fresh show cause notice. Thus, the order of the assessing officer is perverse and required to be quashed.

12.4 Ground no. 3 relates the DRP proceedings, ground no. 7 general in nature, ground no. 8 relates not mentioned of the DIN in DRP order, ground

no. 9 relates to consider the assessment in faceless manner and ground no. 11 is charging of tax u/s. 115BBE of the Act. Since we have allowed the appeal of the assessee on technical grounds, all these other grounds raised by the assessee becomes educative in nature.

In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 22/07/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/07/2024

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sunil Chablani, Ajmer
2. प्रत्यर्थी / The Respondent- CIT (Intl. Tax), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 68/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar