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

डा॰ 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. 516/JP/2024
निर्धारण वर्ष/Assessment Years : 2013-14

Rajendra Kumar Meena Sanjay Colony Gangapur Ward No. 21, Gangapur, Sawai Madhopur	बनाम Vs.	ITO, Ward-2, Sawamadhopur, Gangapur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BOLPM 6615 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Shrawan Kumar Gupta, Adv.
राजस्व की ओर से/ Revenue by : Sh. Rajesh Kumar Meena (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 27/06/2024
उदघोषणा की तारीख/Date of Pronouncement: 25/07/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 27/03/2024 [here in after (NFAC)/ ld. CIT(A)] for assessment year 2013-14 which in turn arise from the order dated 06.12.2018 passed under section 143(3) r.w.s. 147 of the Income Tax Act, by ITO, Ward-2, Sawaimodhopur.

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

"1. The impugned order u/s 147 rws 143(3) of the I.T. Act, 1961 dated 06.12.2018 as well as the notice u/s 148 and action or proceedings u/s 147/148 are illegal, bad in law, barred by limitation, without jurisdiction, without approval/satisfaction from the proper or competent authority, against the principle of natural justice and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

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

3. Rs.46,00,000/- : The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.46,00,000/- made by the ld. AO on account of cash deposited in the bank account during the year which was to be stated from the sale of agriculture and the sale consideration received on the sale of agriculture land was out of the preview of capital assets i.e outside the scope of Sec. 2(14), i.e is exempt income, also erred in not invoking any provisions of law while making the addition. The Ld. AO and CIT(A) both have also erred in not considering the vital facts and material available on record in their true perspective and sense available on record. Hence the addition so made by the ld. AO and confirmed by the ld. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.

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

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

3. Succinctly, the fact as culled out from the records is that Revenue was having information that assessee has deposited cash of Rs.

58,00,000/- in his bank account in the F.Y 2013-14. But the assessee has not declared this investment in the ITR and not filled ITR. Hence notice u/s 148 was issued on 08.03.2018 after getting the approval from JCIT Range Swaimadhopur, to assess amount of Rs. 58,00,000/- deposited cash in his bank account as undisclosed income. Notice issued u/s. 148 of the Act was served upon the assessee. Various notices u/s. 143(2) and 142(1) were issued from time to time. The ld. AO on perusal of the reply / information / documents furnished by the assessee he found that assessee has shown Rs. 12,00,000/- received cash on the sale of two agriculture land. While the assessee has received Rs. 58,00,000/- cash from the sale of agriculture land. Rs. 12,00,000/- may be accepted as cash received from the sale of agriculture land. No proper explanation/reply for remaining Rs. 46,00,000/- (5800000-1200000) has been furnished by the assessee. Out of that deposit assessee had deposited cash of Rs. 20,00,000/- on 20.04.2012 and on 23.04.2012 Rs. 37,50,000/- and Rs. 50,000/- in the bank account which has been deposited from the amount received on the sale of agriculture land. The said deposited made converted into fixed deposit receipt of Rs. 40.00 lakhs on 27.04.2012 and FD of Rs. 5.00 lakhs on dt. 02.07.2012 in the bank. The amount deposited by the assessee in FDR are

out of the amount received from the sale of agriculture land and therefore, ld. AO made addition of Rs. 46,00,000/- in the hands of the assessee.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the ld. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

> "Observation and Decision
>
> It is observed from the records that the appellant was provided multiple opportunities of being heard by way of issue of hearing notices. But appellant has not responded to the said notices. From the non responding conduct of the appellant it may be concluded that he is not interested in completing the appeal proceedings. To reach the finality of this appeal the following judgments are refer to
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> 4.1 The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known Latin dictum, VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT. The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various proncuncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.
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> 4.2 The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar Kolkata vs. DCITCCXXI (15 March, 2016) (ITA Nos. 450/Kol/2013 for Asstt. Year 2006-07) dismissed the appeal of the Appellant for non-prosecution.
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> 4.3 The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under
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> "If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference.

Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT ((2008) 296 ITR 495] returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.

4.4 Considering the above, it is clear that the Appellant is not aggrieved with the impugned order and not keen on pursuing this appeal. Hence I compel to proceed to decide the appeal based on the records available in my office and on merit of the case.

Considering the records and merits of the case I have left with no option but to dismiss this appeal.

4.5 Accordingly, the appeal of the Appellant is dismissed."

5. As the assessee did not find any favour, from the appeal so filed before the ld. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the ld. AR of the assessee, he has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

"FACTS: The brief facts of the case that the assessee is not a regular IT assessee. He was having income from agriculture, other source during the year. In this case the ld. AO has issued the notice u/s 148 on dt.08.03.2018 on the reason that

"As per information available with this office, the assessee had deposited cash of Rs.10,00,000/- or more with a banking company aggregating to Rs. 58,00,000/- during the F.Y. 2012-13 relevant to the assessment year 2013-14.

Further, as per record of this office, the assessee had not filed his return of income for A.Y. 2013-14. As such by the reason of failure on the part of the assessee to make a return under section 139 and in view of the explanation 2(a) to section 147, the case of the assessee for the assessment year 2013-14 is deemed to the case of income escaping assessment. In view of the above, it is a fit case for issue of notice u/s 148.

Therefore, I have reason to believe that income of Rs. 58,00,000/- has escaped assessment in the hands of assessee for the A.Y. 2013-14 in the light of the provisions of section 147 of the I.T. Act.

Issue Notice u/s 148 of I.T. Act, 1961 to the assessee for A.Y. 2013-14."

In response thereto the assessee has filed the ITR on dt. 17.03.2018 declaring the total income of Rs.4,87,176/-. Thereafter the ld. AO has issued the notice u/s 142(1) and 143(2) in response there to the assessee has filed the reply/information and details. The ld. AO after considering the same in partly has stated that "On the date of hearing assessee has filed the reply, copy of bank statement and computation of total income.
On the perusal of the reply/information/documents furnished by the assessee it is found that the assessee received income from bank interest. On perusal of the computation of the total income of the assessee it is found that assessee has shown Rs.12,00,000/- received cash on the sale of two agriculture land. While the assessee has received Rs.58,00,000/- cash from the sale of agriculture land. Rs.12,00,000/- may be accepted as cash received from the sale of agriculture land. No proper explanation /reply for remaining Rs.46,00,000/-(5800000-1200000) has been furnished by the assessee.

Assessee has deposited cash of Rs.20,00,000/- on dt. 20.04.2012 and on dt. 23.04.2012 Rs.37,50,000/- and Rs.50,000/- in the bank account which has been deposited from the amount received on the sale of agriculture land. Thereafter the assessee has made FD of Rs.40.00 lakhs on 27.04.2012 and FD of Rs.5.00 lakhs on dt. 02.07.2012 in the bank. The amount deposited by the assessee in the FD is out of the amount received from the sale of agriculture land. "

Thus the ld. AO has made addition of Rs.46,00,000/- without invoking any provisions of the act and without referring any head of income.

In first appeal the ld. CIT(A) has confirmed the order of the ld. AO without going in to consideration material available on record.
Hence this appeal.

SUBMISSIONS:
1. Invalid notices and illegal assessment: 1.1 At the very outset it is submitted that in the present case the ld. AO has recorded the reason u/s 148 on dt. 28.02.2018 vide PB1 and in the reasons recorded the ld. AO has in last has stated "Issue Notice u/s 148 of I.T. Act, 1961 to the assessee for A.Y. 2013-14". While the ld. JCIT had given the approval on 06.03.2018. Here we would like to submit that how the ld. AO can write issue the notice before approval from the higher authority. Hence the reasons recorded and consequent proceedings are illegal invalid void ab-initio and liable to be deleted.

1.2 No application of mind by the JCIT on the reasons recorded:.1.2.1 Further from the perusal of the approval of the ld. JICT it is clear that the ld. JCIT has

given the approval without satisfaction and application of mind. The ld. JCIT has given the approval of 8 cases in one letter, which shows non application of mind. Further in the approval letter he has stated that

" the undersigned is satisfied on the reasons to issues the notice u/s 148 of the IT act in the above cases and approval is given to issue the notices u/s 148. You are directed to issue the notice u/s 148 and serve timely on the assessee's . Signed letter of reasons for satisfaction is being sent by attaching the same."

1.2.2 On perusal of the same it is clear that the ld. JCIT has given is approval on the reason to notice u/s 148 not on the reasons recorded. Which shows that the ld. JCIT has not applied his mind on the reasons recorded nor given satisfaction on the reasons recorded. Further the ld. JCIT has given consolidated approval of 8 case in one letter and satisfaction together in one shot of 8 cases/assessee's through one letter dt. 06/03/2018 (PB2). Further the ld. JCIT has not stated under which section he has given the approval because there is no mention of Sec. 151 in the letter dt. 06.03.2018. All these this show how the JCIT has acted in very formal way. On perusal of the assessment order and documents it may be possible that there may be no approval in original letter or documents. The document of approval may be in the photocopy. How the approval can be given consolidated of all the 8 different assessee's in one documents, all are the independent or separate assessee and reasons/issue are different. Thus it all shows how the wrong and illegal manner have been adopted by all the authorities. On this preposition and issue kindly refer the decision of this Honble ITAT in the case of Sh. Satya Naraya Bairwa v/s ITO in ITA No.867 & 869/Jp/2018 dt. 15.09.2021 Copy is enclosed, wherein under the same facts and circumstances the Honble ITAT has held that

"20. The ld. A/R has also drawn our attention on the approval of the Pr. CIT placed at page Nos. 7-8 of the paper book and also from the assessment record placed before us, we found that he has given one consolidated approval of 56 different assessee's in one shot through one letter dated 29.03.2016 which is even not signed by him but signed by ITO (T&J), who is not a competent authority to give and signed the approval letter, which shows how the PR. CIT has acted in very formal way. When we examined of the assessment record, it is gathered that the approval was in photocopy and not in original or there was no original letter or documents of approval. Further the name of the assessee was at Sr. 46 out of 56 assessee's and even there was no tick on the name of the assessee in the approval list, which creates a doubt that the approval has been received before the issue of notice u/s 148 of the Act as the approval letter lying on the file after issuance of the notice u/s 148 or not before or attached with the notice u/s 148 and may reach in the office of the AO after 31.03.2016. Thus, in our view, approval u/s 151 cannot be given of all the 56 assessee's in a single documents, as all assessee's are the independent and separate also the reason recorded are different in each case and it is not possible that there shall be same reasons. Looking to these facts and record it is also held that the procedures and way of approval and satisfaction is not proper. Here AO initiated proceedings u/s. 147 r.w.s. 148 on basis of information furnished and CIT gave approval without applying his mind in slipshod manner. As approval/sanction

given by CIT was without recording his own independent satisfaction as noted above, therefore the reopening was not sustainable as per above judicial pronouncements and irregularities noted. There were clear irregularities and violation of the provision of Sec. 151 of the Act and very foundation of the issuance of the notice u/s 148 was not as per law. Then in that eventuality, we are of the view that the issuance notice 148 of the Act and all the consequent proceedings and assessment order passed was not in accordance with law. The case laws relied upon by the ld. DR are not tenable in the facts and circumstances of present case, therefore, considering the totality of facts and circumstances of the case as well as the judicial pronouncements qua the issue under consideration, we find merit in the contention of the ld AR, therefore, we quash the proceedings U/s 147 of the Act."

Here is the same position.

1.2.3 Thus the ld. JCIT has not applied the mind on the Reasons recorded and on this preposition we also would like to draw your kind attention toward the recent decision of this Honble ITAT in the case of Anshuman Singh V/s ACIT Circle-1 Jaipur 733 & 739/Jp/2023 dt 10.04.2024 where it has been held

The Bench has meticulously gone through the orders of the lower authorities and taken in the consideration the oral arguments advanced by the ld. AR of the assessee encountering the assessment order as invalid and beyond jurisdiction. It is noted on perusal of the reasons recorded and approval u/s 151 by the competent authority indicates that Pr. CIT has not applied his mind on the reasons recorded by lower authorities and he has only expressed or mentioned 'Yes' on the reason forwarded (PBP-5). It is worthwhile to mention that as per decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 where in it has been held that Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' or 'Yes' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up before him. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed. It is also noted that the ld. AR of the assessee has advanced his paper book at Pages 3 to 5 as to reasons recorded for no satisfaction by the ld. Pr. CIT, the satisfaction if any was of the AO, who is not competent in the present case. In the case of N.C. Cables (supra) following case laws were relied therein.

i. Maruti Clean Coal And Power Ltd. vs. ACIT (2018) 400 ITR 0397 (Chhattisgarh)

ii. CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP)

iii. PAC AIR SYSTEMS P. LTD. vs. ITO (2020) 58 CCH 0001 Del Trib

iv. GORIKA INVESTMENT AND EXPORT (P) LTD. vs. ITO (2018) 53 CCH 0168 Del Trib.

v. TARA ALLOYS LTD. vs. ITO (2018) 63 ITR (Trib) 0484 (Delhi)

And the ld. CIT(A) kept mum on this very legal plea, which shows his contradictory approach. Therefore the notice, reasons recorded assessment all are the illegal bad void ab-initio and barred by limitation and liable to be quashed. It is also noted that the Joint CIT has forwarded a letter of consolidated approval of 26 assessee's vide his order 23.03.2017 (PB5A-5C) and this shows as to how the Ld. Pr. CIT has acted in formal way. On inspection of the assessment record, it has also been noticed that there

was no approval in original letter or documents and there is no tick on the name of the assessee (vide Sr. No. 13 at 8 PB-5B). It is surprising as to how an approval can be given of all the 26 different assessee's in one documents whereas all are the independent or separate assessee and their reasons are different. Hence in view of the above facts and circumstances of the case the action taken u/s 148 of the Act and consequent proceedings needs to be quashed for which we rely on the following judgements.

Shri Satyanarayan Bairwa vs. ITO Ward 2(4), Jaipur ITA No. 867 & 869 JP/2018, dated 15/09/2021 (Jaipur ITAT), relevant part of judgement is as follows;

"19. We have considered the rival contentions of both the parties and perused the material available on record. From perusal of the record, we observed that the A.O. has reopened the case of the assessee for escaping the income of Rs.1,15,00,500/- on account of cash deposit in his bank account and assessee has not filed his return of income and issued notice u/s. 148 of the Act on 29.03.2016 after recording reasons that income of assessee had escaped assessment in the meaning u/s 147 of the Act. Thereafter the AO framed assessment u/s. 144 r.w.s. 147 of the Act by making addition of Rs.1,15,00,000/- and the ld. CIT(A) upheld the order of AO. Before us the ld. A/R has drawn our attention to the reasons recorded and satisfaction of the Pr. CIT and Addl. CIT placed at page No. 10-11 of the assessee's paper book where the Addl. CIT has mentioned only "Recommended" and Pr. CIT has mentioned only "Yes", which shows no application of mind and proper satisfaction by them on the reasons recorded by the AO. In this regard, we draw strength from the decison in the case of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 Del HC 9 ITA NO.733/JP/2023 ANSHUMAN SINHA VS ACIT, CIRCLE-1, JAIPUR wherein it has been held that Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed." We also draw strength from the decision in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP) wherein it has been held that While according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied" If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 147, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration. 20. The ld. A/R has also drawn our attention on the approval of the Pr. CIT placed at page Nos. 7-8 of the paper book and also from the assessment record placed before us, we found that he has given one consolidated approval of 56 different assessee's in one shot through one letter dated 29.03.2016 which is even not signed by him but signed by ITO (T&J), who is not a competent authority to give and signed the approval letter, which shows how the PR. CIT has acted in very formal way. When we examined of the assessment record, it is gathered that the approval was in photocopy and not in original or there was no original letter or documents of approval. Further the name of the assessee was at Sr. 46 out 10 of 56 assessee's and even there was no tick on the name of the assessee in the approval list, which creates a doubt that the approval has been received before the

issue of notice u/s 148 of the Act as the approval letter lying on the file after issuance of the notice u/s 148 or not before or attached with the notice u/s 148 and may reach in the office of the AO after 31.03.2016. Thus, in our view, approval u/s 151 cannot be given of all the 56 assessee's in a single documents, as all assessee's are the independent and separate also the reason recorded are different in each case and it is not possible that there shall be same reasons. Looking to these facts and record it is also held that the procedures and way of approval and satisfaction is not proper. Here AO initiated proceedings u/s. 147 r.w.s. 148 on basis of information furnished and CIT gave approval without applying his mind in slipshod manner. As approval/sanction given by CIT was without recording his own independent satisfaction as noted above, therefore the reopening was not sustainable as per above judicial pronouncements and irregularities noted. There were clear irregularities and violation of the provision of Sec. 151 of the Act and very foundation of the issuance of the notice u/s 148 was not as per law. Then in that eventuality, we are of the view that the issuance notice 148 of the Act and all the consequent proceedings and assessment order passed was not in accordance with law. The case laws relied upon by the ld. DR are not tenable in the facts and circumstances of present case, therefore, considering the totality of facts and circumstances of the case as well as the judicial pronouncements qua the issue under consideration, we find merit in the contention of the ld AR, therefore, we quash the proceedings U/s 147 of the Act. 21. Once, we quash the proceeding U/s 147 of the Act, therefore, there is no need to adjudicate the other grounds raised in this appeal."

Hence, in view of the above facts, circumstances of the case and case laws cited hereinabove, the Bench feels that there is jurisdictional error and the order passed by AO does not survive. Thus the appeal of the assessee is allowed.

In the case of CIT vs. N.C. Cables Ltd (Del)]. It has been held that Held

The mere appending of the word "approved" by the CIT while granting approval under section 151 to the reopening under section 147 is not enough. While the CIT is not required to record elaborate reasons, he has to record satisfaction after application of mind. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal.

[CIT v S. Goyanka Lines & Chemical Ltd. (2016) 237 Taxman 378 (SC)]

Held: Where the reasons recorded by the Joint Commissioner, for according sanction to issue notice under section 148, stated only that "I am Satisfied" and the action for sanction was without application of mind and this was done in mechanical manner, following the law laid down in case of Arjun Singh v ADIT (264 ITR 363) (SC), the Commissioner (Appeals) quashed the notice under section 148 of the Act, and the same having been upheld by Tribunal and the Hon'ble High Court. Aggrieved by the High Court, Revenue filed an appeal before the Supreme Court which was dismissed by the Hon'ble Supreme Court.

Here is the case of the assessee is on much strong footing.

3.1 No provisions has been applied by the ld. AO: The ld. AO made the addition of Rs.46,00,000/- but he has not invoked or applied any provisions of law. The ld. AO has not stated under what provision of law he has made addition and under what head whether, under business or trading income, agriculture income, capital

gain or u/s 48, 56 or u/s 68 or 69. Thus the addition so made without any provision of is also against the law and liable to be deleted on this ground alone. When the ld. AO has not invoked any provision of law then also how the ld.AO can make the addition. When in the law and in the Act for each and every offence specific provisions are given to held any person as victim defaulter, then without applying any provision for that a person cannot be taxed and penalized. When the ld. AO himself has not stated that under what provision the assessee liable to be taxed or penalized or under what provision his offence falls then how the addition can be made.

on this preposition we also would like to draw your kind attention toward the recent decision of this Honble ITAT in the case of Arvind Kumar Nehra V/s ITO Ward 7(1), Jaipur 32/Jp/2024 dt 10.04.2024 where it has been held

> "It is also noteworthy to mention from the entire conspectus of the case that the AO has also not invoked any provisions of IT Act while making the lump Sum addition of Rs.50,00,000/- for cash deposits in the bank account during the Demonetization Period, Unsecured Loan & capital introduced. Hence, in our view lump-sum addition cannot be made under these accounts. The AO must have referred the specific amount with specific details and documents which he has not provided and as to what basis lump sum addition has been made and also failed to mention that on which account and as to what amount of addition consists of. It is also noted that the AO has not stated under which provisions or section he has made the lump-sum addition either u/s 68 or 69 or 69A or trading or u/s 56 i.e. other sources. It may be worthwhile to mention that when in the Act for every additions, the provisions or section has been provided by the legislature, otherwise there shall be no meaning of the Act. Hence the addition is wrongly made against the Act . (vide page 21-22 of the order)."

Hence also the addition is liable to be deleted in full.

4. Agriculture land is out of preview of the capital assets and sale consideration is not taxable:- Further it is submitted that as per para 2 page 2 of the assessment order the ld. AO himself admitted and held that the cash deposits in the bank account was from the sale consideration received by the assessee from the sale of agriculture land. And we would like to submit that agriculture land which was sold is situated at Village Udei Kalan Tehsil Gangapur City District Swaimadhopur Rajasthan, which is out of the Municipal limit and what consideration received is not taxable being the out of the preview of the capital assets. Hence the sources of the cash deposit has been accepted by the ld. AO himself and not taxable. The assessee on wrong advice has shown the same as capital assets and paid the tax, it means not that the wrong tax should be collected from the citizen or assesse as per Article 265 tax can be collected only as per law. On this preposition we would like to draw your kind attention to word the decision of this Honble ITAT in the case of Asha Bhargava v/s DCIT Circle-2 in ITA No.654/Jp/2018 dt. 18.03.2021 wherein the assesse has originally assessee has shown the LTCG on the sale of agriculture land in the return filled,

later on when assessee has come to know that the sale consideration received on the sale of agriculture land which is situated out of the Municipal limit, then he made the claim in the appeal that he has wrongly shown the LTCG and no addition is required to be made on account of LTCG and wrongly paid the tax, in appeal the honble accepted the same and held that

> ”Since now before us, the assessee has successfully proved by placing on record the documentary evidences that the land in question at village Machhwa is 17 KM away from Jaipur and this village is having population of 2453 and land of the assessee is used for agriculture purposes as discussed by us in the preceding para of this order, therefore, keeping in view the totality of facts and circumstances and also keeping in view all the documentary evidences placed on record, we are of the view that the land in question of the assessee was situated beyond 8 KM from the municipal limits of Jaipur and was being used for agricultural purposes and was thus outside the scope of Section 2(14) of the Act and therefore, any gain on sale of the said land is exempted from tax. Thus, we allow these grounds of appeal and directed to delete the addition.

For full facts and arguments kindly consider the whole order.
5. Article 265 of the Constitution of India says that "No tax shall be levied or collected except by authority of law"

In construing penal statutes and taxation statutes, the Court has to apply strict Rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. 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. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature

Kindly refer undercarriage and tractor parts pvt. Ltd. vs. DISPUTE RESOLUTION PANEL-3, (WZ) MUMBAI, THROUGH ACIT (HQ) AND ORS.(2023) 118 CCH 0275 MumHC (2023) 335 CTR 0974 (Bom)

> *(i) A taxing statute must be interpreted strictly. Equity has no place in taxation nor while interpreting taxing statute intendment would have any place. In case of State of W.B. Vs. Kesoram Industries Ltd. And Ors., (2004) 10 SCC 201, referring to Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law, it was observed that in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted by any presumption or assumption. A taxing statute has to be interpreted in light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency. Before taxing any person it must be shown that he falls within the ambit of charging section by clear words used in the section and if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. 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. A Constitution Bench in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar And Company And Ors., (2018) 9 SCC 1, had reiterated these principles. It was a case where on a reference to the Larger Bench the Supreme Court was considering a question whether an ambiguity in a tax exemption provision or notification, the same must be interpreted so as to favour the assessee. Making a clear distinction between a charging provision of a taxing statute and exemption notification which waives a tax or a levy normally imposed, the Supreme Court observed as under:- Kindly refer siemens financial services pvt. Ltd. vs. DCIT & ORS. August 25, 2023 (2023) 117 CCH 0259 MumHC (2023) 334 CTR 0825 (Bom),(2023) 457 ITR 0647 (Bom)

Further, it is contended that it is settled law that while construing penal statutes and taxation statutes, the Court has to apply strict rules of interpretation of Article 265 of the Constitution which prohibits the State from extracting tax from the citizen without authority of law. The natural corollary to the said provision is that State cannot burden the citizen without the authority of law and thus, taxation statutes has to be interpreted strictly. The Hon'ble Supreme Court in the case of Commissioner of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1 held that if there are two views possible in the matter of interpretation of a charging section, the one favorable to the assessee needs to be applied. Applying the aforesaid ratio in the fact of the present case, it is humbly submitted that the Delhi High Court in CIT vs. RRJ Securities have on a strict interpretation construed Section 153C of the Act and held that 6 years contemplated under sub Section 1 of Section 153C have to be reckoned from the date of handing over of documents to the AO of searched person and not the date of search. Thus, even otherwise the interpretation given by the High Court to Section 153C of the Act is in terms of the aforesaid law laid down by the Hon'ble Supreme Court.

the Hon'ble Madras High Court in the case of *Sharp Tools v. Principal Commissioner of Income-tax reported in [2020] 421 ITR 90 (Mad)* particularly paragraphs 22 to 26 which are relevant and are quoted as hereunder:

"*22. It is contended by the learned counsel appearing for the Revenue by that exercise of power and granting the relief to the assessee under section 264 of the Income-tax Act, 1961, is subject to the provision of the Income-tax Act and therefore, the assessee herein, having not filed revised return within the time stipulated under section 139(5) of the Income-tax Act, is not entitled to the relief even under section 264 of the Income-tax Act.*

23. I am unable to appreciate the above contention, as it appears that the Revenue by making such contention, is sought to justify the collection of excess tax over and above the tax payable by the assessee, even though they admit that only due to inadvertent mistake, a wrong entry was made by the assessee with lesser figure of the relevant expenses than the actual expenses met out. At this juncture, it is relevant to note that Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law. Therefore, both the levy and collection must be done with the authority of

law, and if any levy and collection, later are found to be wrong and without authority of law, certainly, such levy and collection cannot withstand the scrutiny of the above constitutional provision and thus, such levy and collection would amount to violation of Article 265 of the Constitution of India.

24. Therefore, it is apparent on the facts and circumstances of the present case, that a mere typographical error committed by the assessee cannot cost them payment of excess tax as collected by the Revenue. Certainly, the denial for repayment of such excess collection would amount to great injustice to the Assessee.

(iii) No tax can be collected beyond jurisdiction and even if at all it has been collected or deposited *suo-moto* by an assessee without there being any liability, then the same cannot be retained by the department in view of Article 265 of the Constitution of India which expressly says that *"Taxes not to be imposed save by authority of law. No tax shall be levied or collected except by authority of law."*

6. AO admitted amount deposited in bank out of amount received on sale consideration of agriculture land: Further when in the present case there is no dispute regarding the cash deposited was from the cash received on the sale consideration of agriculture land as the ld. AO himself admitted and thus not required any other evidence. And when the sale consideration is not taxable and is deposited in the bank account no addition can be made whether it is disclosed or not. We would like to draw kind attention of the Honble Bench on the following judgments under the same facts.

On this issue kindly refer a direct judgment of Honble ITAT Cochin Bench in the case of ITO v/s Shri Abraham Varghese Charuvil in ITA No. 30/Coch/2017 dt.26.04.2017. where the judgment of ITO vs. Dr. Koshy George, reported in (2009) 317 ITR (AT) 116(Cochin) has also been referred copy of the same is enclosed

In the case of Jagir Singh vs. ACIT ITA NO. 331/Chd/2019 February 21, 2023 (2023) 67 CCH 0656 ChdTrib (2023) 106 ITR (Trib) 0233 (Chandigarh), (2023) 225 TTJ 0462 (Chd) it has been held

"20. In the instant case, we find that there was deposit of cash of Rs 79,00,000/- on 07/07/2009 the very same day on which the sale deed was executed and Rs 2,00,000/- was deposited on the next day, therefore a clear nexus has been established between source of such cash deposit and sale transaction so executed by the assessee. In absence of any contrary evidence brought on record in terms of statement of witnesses and comparative sale data of similar transaction undertaken at same/nearby location at a value different from what has been claimed by the assessee, the explanation so furnished by the assessee cannot be disputed. We are conscious of the fact that though the sale deed shows lower sale consideration of Rs 42,53,000/- which is also the Stamp Duty Valuation however, once the assessee has brought on record the relevant facts and documentation as well as nexus between transaction of sale and deposit in

bank account has been established then in absence of any contrary evidence brought on record, only inference which can be drawn from these facts and circumstances of the case is that the source of deposit of Rs. 82,50,000/- is the sale consideration of the agriculture land."

Further in the case of Onkar Singh vs. ITO ITA Nos. 47 & 48/Asr/2018 August 7, 2023 (2023) 68 CCH 0320 AsrTrib It Has been held *Income—Cash credits—Saving bank account of assessee was credited amount to Rs. 68,28,406—Information was received by AO—Notice u/s148 was issued—Assessee had not filed any return in pursuance of notice U/s 148—AO accepted explanation of assessee except deposit amount to Rs. 59 lakh—Assessee explained that assessee sold property in nature of agricultural land to M/s P assessee explained that said cash was received on account of sales of agricultural land—But AO rejected assessee's plea—Addition was made amount to Rs.44,00,000/-with total income of assessee—CIT(A) rejected assessee's plea—Held, Assessee was able to proof that sales transaction was executed on 23/05/2006—Crediting of cheque amount to Rs. 15 lakh is fully related on sales of agricultural land—AO had not agitated issue related calculation of capital gain and nature of property which was sold during impugned year—CIT(A) has not agitated issue which was not part of assessment year—During assessment proceedings assessee submitted affidavit and payment receipt—AO had not exercised his jurisdiction to cross-examine assessee and witness—Rather only to accept statement from purchaser-company related transaction—Assessee filed an affidavit dated 26/12/2014 in which assessee has explained that he is doing agriculture farming and have no other source of income—Assessee further stated that deposit in bank was made out of sale proceeds of agriculture land against which purchaser paid Rs. 15 lakh through cheque (executing for Sale Deed) and paid in cash Rs. 44,00,000/- in token of receipt of sale—Revenue authorities never confronted affidavit of assessee duly filed both stages. Respectfully relied on order Mehta Parikh & Co. V/s CIT (1956) 30 ITR 186,187 (S.C)—Both payments are coherent in nature—Cash was even deposited on date of execution of sales i.e., on dated 23/05/2006—Revenue has not taken any pain to complete verification or has not confronted affidavit of assessee during assessment and appeal stages—Assessee was able substantiate source of cash deposit in bank amount to Rs.44 lakh which is part of consideration of sale proceed—Assessee's appeal allowed.*

7. Further the question of regarding the land situated out of the Municipal limit, as the land is situated at Village Udai Kalan which is more than to 80 KM from the Sawaimadhpur District and more then 6.00 KM from the Tehsil. In support we are enclosing herewith Google Map as annexure-2. Still if having any doubt the ld. AO may make inquiry if required. Hence the land is out of the preview of the capital assets and what consideration is received is exempt and not taxable. Further when admittedly the details were available on record. The availability of cash represented from the agriculture land has been admitted by the ld. AO himself despite these the ld. AO has not made the addition, which shows his contradictory approach.

8. Hence in view of the above facts and circumstances and legal position of law the assessment order may kindly be quashed and the addition so made may also kindly be deleted in full and oblige.

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records :

S.No.	Particulars	Page No.
1.	Copy of reasons recorded u/s 148.	1
2.	Copy of Approval letter of JCIT dt. 06.03.2018.	2
3.	Copy of Notice u/s 148 dt. 08.03.2018	3
4.	Copy of ITR with computation of total income filed in response to the notice u/s 148.	4-7
5.	Copy of Notice u/s 143(2)	8
6.	Copy of letter to AO.	9
7.	Copy of order sheet.	10
8.	Copy of Bank statement	11-13
9.	Copy of sale deed.	14-26

7. The ld. AR of the assessee in addition to the above written submissions vehemently argued that in this case ld. JCIT's approval for issuing notice u/s 148 of the Act is bad and illegal. Therefore, the assessment is required to be quashed. Ld. JCIT has merely vide single letter given sanction for 8 cases. That action does not justify that he has applied his mind while giving sanction for issue of notice u/s 148 of the Act and there is no as such satisfaction by the JCIT. Therefore, notice u/s 148 of the Act is bad in law in this case. As regards the merits of the case, the ld. AR of the assessee submitted that out of sale proceed of Rs. 58,00,000/- and 12,00,000/- considered as sale proceed of land and not considered the same as chargeable to tax being agricultural income being exempt. However, he has added at Rs. 46,00,000/- and that too is not known as to

under which head of income, he is adding that income, chargeable to tax. He vehemently argued that once the assessee pleaded that he does not have any other income except this proceed on sale of agricultural land. The ld. AO when accepted this fact for Rs. 12,00,000/- why not for other money. The ld. AR of the assessee relied upon the finding of AO.

करदाता द्वारा प्रस्तुत जवाब/सूचनाओं/दस्तावेजों का अवलोकन करने पर पाया गया कि करदाता की आय बैंक ब्याज से प्राप्त होती है। करदाता द्वारा प्रस्तुत आयकर संगणना प्रपत्र से ज्ञात होता है कि करदाता को दो कृषि भूमि के बेचान से रू0 12,00,000/– नकद प्राप्त होना बताया है जबकि करदाता को कृषि भूमि से रू0 58,00,000/– नकद प्राप्त हुए है। करदाता द्वारा कृषि भूमि के बेचान से नकद प्राप्ति रू0 12,00,000/– को माना जा सकता है शेष रू0 46,00,000/–(5800000 – 1200000) के बारे में करदाता द्वारा कोई उचित जवाब/स्पष्टीकरण प्रस्तुत नहीं किया गया। करदाता के द्वारा दिनांक 20.04.2012 को 20 लाख रू0 एवं दिनांक 23.04.2012 को 37,50,000/– तथा 50,000/– रू0 नकद में जमा कराया है जो कि कृषि भूमि को बेचने से प्राप्त रकम ही बैंक में नकद में जमा करायी गई है। इसके पश्चात् करदाता के द्वारा 40 लाख की एफ.डी. दिनांक 27.04.2012 एवं 5 लाख की एफ.डी दिनांक 02.07.2012 को बैंक में कराई गई है। करदाता के द्वारा एफ.डी में जमा करवाया गया रूपया कृषि जमीन को बेचने से प्राप्त रकम ही जमा कराई गई है।

8. Per contra, the ld. DR supported the orders of lower authorities. The ld. DR also filed report of the ld. AO as regards the approval taken for issue of notice u/s 148 of the Act. The said factual report of ld. AO filed by ld. DR reads as under:-

> "Sub : In the appeal matter pending before the Hon'ble TAT, Jaipur in the case of Rajendra Kumar Meena V/A ITO Wand 2, Sawai Madhopur ITA No 516/JPR/2024 A.Y. 2013-14-reg
>
> Kindly refer to the letter no. 252 dated 27.06 2024 on the above cited subject for this regard the point/para wise report on assessee submission is as under:-

S. No.	Particular	Reply
1	Invalid notices and illegal assessment	AO submitted proposal for permission for issue notice u/s 148 vide this office letter no. 1235 dated 28/02/2018 (Copy enclose). Based on the AO facts The JCIT considered this case fit for issuing notice u/s 148, which was intimated to this office vide letter no. 1610 dated 06-03-2018 (Copy enclosed). Hence, AO issue notice u/s 148 to assesses of stated 08-03-2018 (Copy enclosed). Hence, it is pertinent to state that AO issue notice u/s 148 after getting approval from JCIT. Therefore objection submitted by assessee is not acceptable.
1.2	No application of mind by the JCIT on the reasons recorded	AO submitted prescribed format proposal for approval to initiate proceedings u/s 147/148 on 28/02/2018. Based on the AO facts The ICIT mention its satisfactory note on the same prescribed format submitted by the AO (Copy enclosed). Vide letter no. 1610 dated 06-03-2018 the JCIT approved this office to initiate this proceedings u/s 148. Further, it is also pertinent to mention that neither income tax act nor income tax rule states that the JCIT or approval authority should mention the section in which approval has been accorded. Therefore objection submitted by assessee is not acceptable.
3.1	No provisions has been applied by the ld. AO	In the assessment order the AO made addition of Rs. 46,00,000/- stating that the assessee has deposited total amount of its 58,00,000/- in cash which was received as sales proceeds of agriculture land. AO passed rectification order u/s 154 of IT Act on 23.12.2020 in which AO clearly mentioned the section 15/0 rws 115BBE of IT Act under which addition was made. Copy of rectification order is enclosed. Therefore objection submitted by assessee is not

		acceptable.
4	Agriculture land is out of preview of the capital assets and sale consideration is not taxable.	In the course of assessment proceedings, the assessee submitted computation sheet. In computation sheet, the assessee shown sale of agriculture land of Rs. 12,00,000/-. In the assessment order. AO has already accepted the claim of the assessee and has given exemption of the same amount and exemption u/s 54 for capital gain arouse from the same. Copy of assessment order and computation sheet submitted by the assessee is enclosed. Therefore, objection submitted by assessee is not acceptable.
5	AO admitted amount deposited in bank out of amount received on sale consideration of agriculture land.	When finalizing assessement order the AO mistakenly typed the amount of Rs. 4600000/- was also received from sale proceeds of agricultural land. However rectifying the same u/s 154 of IT act dated 23.12.2020, wherein, the AO has rectified the mistake and clearly mentioned that the addition was made u/s 68 rws 115BBE and taxed accordingly. Therefore, objection submitted by assessee is not acceptable.

The requisite report is submitted for your kind information and necessary action."

The ld. DR thus, submitted that the contention raised by the assessee is not tenable and all the issue raised by the ld. AR of the assessee the same is replied by the ld. AO saying as why that contentions are not correct. The ld. DR submitted that ld. AO already given the credit to the extent of of Rs. 12,00,000/- recorded and supported in the sale agreement and rest of the amount deposited is only taxed as unexplained as the assessee unable to

justify the source of that receipt. Therefore, the ld. DR relied upon the finding of lower authorities.

9. We have heard the rival contentions and perused the material placed on record. The bench noted that the apple of discord in this case is that the assessee deposited cash of Rs. 58,00,000/- in his bank account. As the assessee has not filed his return of income, proceedings as per provisions of section 148 of the Act were initiated in the case of the assessee to verify the source of cash deposited in the bank account. In the proceedings before ld. AO, the assessee filed the return of income declaring income of Rs. 4,87,176/- during the assessment proceedings while verifying the source of deposit of cash of Rs. 58,00,000/- in the bank account. Ld. AO gives credit to the extent of Rs. 12,00,000/- in the hands of the assessee being sale proceed of agricultural land the balance of amount of Rs. 46,00,000/- added as the income of the assessee, as he did not substantiate the source of the said cash with supporting evidence so as to justify that the said amount is received on account of the sale of agricultural land. The assessee during proceedings submitted that he has received cash of Rs. 58,00,000/- on account of sale of agricultural land explanation of the assessee was not considered by the AO because the agreement

value of the said land recorded at Rs. 12,00,000/-. The bench noted that while examining the issue, the ld. AO himself noted this aspect of the matter but has not given the credit of Rs. 46,00,000/-. The ld. AR of the assessee argued before us, that the revenue authorities could not controvert this fact that the assessee has no other source in the year under consideration. Therefore, explanation given by the assessee cannot be discarded by the revenue. The holding of agricultural land by the assessee is not disputed, the payment of money is an unfortunate practice followed and there cannot be any contrary proof of having other income to the extent of Rs. 46,00,000/- by the assessee thus it is a case of the assessee that buyer paid the assessee the fair value of consideration which the assessee has deposited into bank account. Thus, the explanation given by the assessee by submitting documentary evidence which has been partly accepted and partly disapproved. The Apex Court in the case of Sreelekha Banerjee vs. CIT (1963) 49 ITR 112 (SC) has held that the department cannot by merely rejecting unreasonable a good explanation converting good proof into no proof. Thus, the contention of the assessee cannot be totally brush aside and the surplus money deposited by the assessee as explained is required to be considered out of the agricultural land proceed and since that land proceed has already been considered while assessing the income of the

assessee as exempt the remaining amount of Rs. 46,00,000/- cannot be held as income of the assessee. The bench also noted while making the addition the ld. AO did not mention any section under which that income is made chargeable to tax in the hands of the assessee. Therefore, even on that account also addition made by the ld. AO is not sustainable. Based on these observations, we direct the ld. AO to delete the addition of Rs. 46,00,000/- made in the hands of the assessee.

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

Order pronounced in the open court on 25/07/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 25/07/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Rajendra Kumar Meena, Gangapur
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Sawamadhopur, Gangapur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 516/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar