

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

डा0 एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 413 & 414/JPR/2024
निर्धारण वर्ष / Assessment Years : 2010-11

Shri Om Prakash Sharma HUF 1655, Jat Ke Kuwa Ka Rasta, Near Mission School, Chandpole Bazar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward-4(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAAHO1118B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vishal Gupta (C.A.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 20/08/2024

आदेश / ORDER

PER BENCH

These two appeals are filed by the assessee and are arising out of the order of the CIT(A), National Faceless Appeal Centre, Delhi both dated 18.01.2024 & 19.01.2024 [for short "CIT(A)"] for the assessment year 2010-11 respectively, which in turn arise from the orders dated 24.11.2017 passed under section 147/144 of the Income Tax Act [for short "Act"] and order dated 18.05.2018 passed u/s 271(1)(b) of the Act, by the ITO, Ward-4(1), Jaipur.

2.1 In ITA No. 413/JPR/2024, the assessee has raised the following grounds of appeal :-

“1. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred approving the action of Id. AO in making assessment under section 144 r.w.s. 147 of the Income Tax Act, 1961 and thereby making addition of Rs. 2577750.00 without giving adequate opportunity of hearing to the assessee considering the circumstances of assessee. Same is against the principles of natural justice. Further, the reply of assessee has not been considered & repeated by a fully vague & non speaking order. Hence, it is hereby prayed to delete the additions so made.

2. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in approving the action of Ld. AO in making addition in the hands of the assessee ignoring the fact that the assessee did not sold alleged property and he was not the owner of the property under question. Hence, it is hereby prayed to delete the additions so made.

3. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in law and facts by confirming the action of Ld. AO of issuing notice under section 147/148 without having any reason to believe (as on date of issuing notice) that any income has escaped assessment. The notice has been issued in haste without even applying independent mind for the information available on record. Even the reason were recorded on 28.03.2017 i.e. subsequent to the date of issue of notice. Hence, it is hereby prayed to quash the said notice and order issued thereafter.

4. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in law and facts by confirming the action of Ld. AO of issuing notice u/s 147/148 without comply with the provisions of section 151(1) i.e. without obtaining the prior approval of relevant authority. Even the approval granted was not proper. Hence, it is thereby prayed to quash the said notice as well as order passed in pursuance thereof.

5. On the facts and circumstances of the case, the Id. CIT(A) has grossly erred in approving the action of Id. AO of making the additions without considering the fact that the entire proceedings were void ab initio as reasons were recorded in individual capacity of Mr. Om Prakash Sharma whereas notice was issued in the name of M/s Om Prakash Sharma HUF. The implies that no reasons were recorded for the assessee. Hence, it is hereby prayed to quash the said notice and order issued in pursuance thereof.

6. On the facts and circumstances of the case & without prejudice to the other grounds of appeal, it is hereby prayed to allow cost of property and improvement cost as deduction to assessee from the additions so made.

7. On the facts and circumstances of the case, the Id. CIT has grossly erred in approving the action of Id. AO of rejecting application of assessee for admission of additional evidences. It is hereby prayed to hold the action of Ld. AO as invalid & against the principle of natural justice.

8. The appellant craves the leave to add, delete, amend or abandon any or more grounds of appeal at the time of or before the actual hearing of the case.”

2.2 In ITA No. 414/JPR/2024, the assessee has raised following grounds of appeal :-

“1. On the facts and circumstances of the case, the Ld. CIT(A) grossly erred in approving the action of Id. AO of imposing the penalty ignoring the fact that the entire proceedings in pursuance of which such penalty was initiated and levied were void ab initio. Thus it is hereby prayed to declare the entire penalty proceedings as void ab initio and delete the demand.

2. On the facts and circumstances of the case, the Ld. CIT(A) grossly erred in approving the action of Id. AO of imposing the penalty ignoring the fact that the Ld. AO has imposed penalty without giving the opportunity of being heard to the assessee which is against the principles of natural justice. In addition to same, the Ld. CIT(A) passed the order without considering the reply of assessee. Thus, it is hereby prayed to quash the said order.

3. On the facts and circumstances of the case, the Ld. CIT(A) grossly erred in approving the action of Ld. AO in levying penalty under section 271(1)(b) for non-compliance of a notice which was not covered by the penal provision. Therefore, the levy of penalty is not tenable under law and hence prayed for being deleted.

4. On the facts and circumstances of the case, the Ld. CIT(A) grossly erred in approving the action of Ld. AO of imposing penalty under section 271(1)(b) ignoring the fact that the notice initiating such penalty was itself void for the reason that neither the particular date was mentioned which was allegedly not complied with nor the charges in that notice were specific. In addition to this, the notice was issued without recording necessary satisfaction of the Ld. AO as contemplated by law. Thus it is hereby prayed to declare the entire penalty proceedings as void ab initio and delete the demand.

5. On the facts and circumstances of the case, the Ld. CIT(A) grossly erred in approving the action of Ld. AO of imposing penalty under section 271(1)(b) inspite of knowing about the circumstances of the assessee (Reasonable cause for non-appearance). Thus it is hereby prayed to quash the said order.

6.The appellant craves the leave to add, alter or withdraw any one or all of the grounds of appeal at the time of or before the actual hearing of the case.”

3.1 At the outset of hearing, the Bench observed that there is delay of 16 & 15 days in filing of the appeals by the assessee for which the Id. AR of the assessee filed applications for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

“ It is hereby prayed that on order against assessee was passed under section 250 on 18.01.2024. However, owing to the fact that the Authorised Representative of assessee was engaged in hospital due to angioplasty of his order and post angioplasty complications cause; appeal was delayed.

In view of above, the assessee hereby prayed for condonation of delay in filing of appeal owing to above reasons.”

In support of the contentions so raised the Authorised person has filed an affidavit to support the contentions raised in the prayer for condonation of delay in filing the appeals.

3.2 The Id. AR of the assessee appearing in these appeals submitted that the assessee is serious on the duties and the delay of 16 & 15 days is on medical exigencies resulted in delay. Considering the decision of the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji& Others 167 ITR 471(SC) wherein it was directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

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

3.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the reasons advanced by assessee for condonation of delay of 16 & 15 days are sufficient to condone the delay and it has merit. Thus, we concur with the submission of the assessee and condone the delay of 16 & 15 days in filing the appeals by the assessee in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee was prevented by sufficient cause.

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4. Brief facts of the case are that the assessee has sold Shop. No.183 Municipal No.311/2 Chandpole Bazar, Jaipur amounting to Rs.19,51,000/-, which was valued by the Sub-registrar at Rs.25,77,750/- for the purposes of charging stamp duty. Notice u/s 133(6) of the I.T. Act was issued to assessee on 3.3.2017 for verification of the above property transaction. In response thereto, the assessee has submitted that the said transaction was not disclosed in his return of income. On verification of record, it was found that assessee has not filed return of income for AY 2010-11. Thus, the assessee failed to disclosed fully and

truly all material facts necessary for assessment of income. Therefore, a notice u/s 148 was issued on 23.3.2017 after recording valid reasons and taking prior approval from the Pr. CIT-2, Jaipur. The notice was served through speed post/AD. The assessee has not complied the notice. The registered sale deed has been received from the Sub-Registrar-V, Jaipur in compliance to letter issued u/s 133(6) of the I.T. Act. A letter was issued on 30.6.2017 alongwith copy of notice u/s 148 for furnishing the return of income. The letter was served on 4.7.2017 through notice server. But assessee has not responded. Thereafter, a notice u/s 142(1) and query letter was issued on 7.9.2017. The said notice was served on 8.9.2017 through notice server. No return of income has been filed in response to notice issued u/s 148 and no information has been furnished in response to notice u/s 142(1) of the Act. All the notices/letters issued remained un-complied with. Therefore, a show cause letter was issued on 20.10.2017. Ld. AO noted that the said show-cause letter was served on 24.10.2017 through notice server. The case was fixed on 26.10.2017. The assessee neither attended the hearing nor filed any written submission. As the assessee vide reply dated 17.3.2017 in response to notice u/s 133(6) stated that the transaction mentioned in notice are correct and even though the same was not disclosed in the ITR. The show cause letter has already issued and duly served at the last known address of the assessee. Sufficient

opportunities are provided to assessee. The conduct of the assessee shows that the assessee has nothing to say in his defence and they are trying to avoid the assessment proceedings. Since the assessment getting time barred the Id. AO has no option but to complete the assessment u/s 144 Act.

4.1 As per records it is evident that the assessee has sold his property on 19.11.2009 for sale consideration of Rs.19,51,000/-. The Sub Registrar-V, Jaipur has adopted the value of property at Rs. 25,77,750/- for the purposes of charging stamp duty. As per sale deed assessee received the property through inheritance on 7.10.1984 and consideration was received in cash. In absence of cost of acquisition, the total sale consideration valued by Sub-Registrar was considered as long-term capital gain of the assessee for an amount of Rs. 25,77,750/-.

5. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds of the appeal so raised by the assessee, the relevant finding of the Id. CIT(A) is reiterated here in below:-

“5. Findings and Decision

I have carefully considered Form 35, statement of facts, order u/s 147 r.w.s. 144, submission/details uploaded in the system, computation of total income and the Grounds of Appeal raised. The present appeal is filed against the order u/s 147 r.w.s. 144 dated 24/11/2017.

During the course of appellate proceedings, the appellant filed his submission wherein additional evidences and additional ground were raised and requested to admit the additional evidence under rule 46A.

On an analysis of the assessment order it is found that the appellant has been given 6 opportunities vide dated 03/03/2017, 23/03/2017, 30/06/2017, 07/09/2017, 20/10/2017 and 24/10/2017. For all these opportunities though the notices were served the appellant has not responded to the notices and shown non-cooperation towards the proceedings initiated by the department by either seeking the information for reopening, by filing adjournment letters, by filing details and by filing explanations to the show cause notice issued.

Therefore, the claim of the appellant has been examined with reference to the circumstances (a), (b), (c) & (d) of sub-rule (1) of provided under Rule 46A and found that the appellant does not satisfy any of the circumstances/conditions provided for filing the additional evidence. This office has examined Form no. 35, appeal memo wherein at column 12 for the query as to "Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income Tax authority has been filed in terms of Rule 46A", the appellant has stated as "No" Further, this office has neither requested for the additional evidence nor asked the appellant to prove the valuation with fresh material evidence in support of his claim. With regard to the admission of additional evidence the appellant has failed to show satisfactorily and failed to substantiate that the additional evidence is required to be admitted.

As discussed earlier on plain reading of Rule 46A, clearly mandates that the appellant is not entitled to produce additional evidence as a matter of right. He can only do so after fulfilling the relevant procedure and satisfying the conditions given therein. The appellant has failed to make out his case with valid reasons as to why the same was not filed before the AO during the course of assessment proceedings. In the instant case it is found that the appellant has not satisfied the conditions in sub rules under Rule 46A.

It must be mentioned here the decision given by the Hon'ble Kerala High Court in the case of C. Unnikrishnan Vs CIT (1998) reported in 233 ITR 485 that Rule 46A provides certain conditions and situations under which an additional evidence can be filed before the CIT(A). Where the material on record makes it clear that no attempt was made before the AO or shows no regard to follow the requirement of Rule 46A, the additional evidence could not be administered.

It may not be out of place to mention here that the Hon'ble ITAT Delhi in the case of Mrs. Jyotsna Suri Vs DCIT (1997) reported in 61 ITD 139 has held that an assessee cannot adduce additional evidence before Appellate Authority as a matter of right. The CIT (A) is justified in refusing to entertain additional evidence sought to be produced by an assessee which they failed to produce before the AO.

In the light of the above observation I am not satisfied with the additional evidence uploaded at the time of appellate proceedings, since the appellant has not satisfied the conditions provided under Rule 46A. Hence the additional evidence uploaded is not admitted/and the grounds raised are adjudicated as under:

Ground No.1: On the facts and circumstances of the case the Ld A.O has erred in law by making assessment under section 144 rws 147 of the Income tax Act, 1961 and thereby making an addition of Rs. 2577750.00 without giving adequate opportunity of hearing to the assessee considering the circumstances of the assessee.

The ground raised has been examined with reference to the assessment order and found that the Assessing Officer had given 6 opportunities vide dated 03/03/2017, 23/03/2017, 30/06/2017, 07/09/2017, 20/10/2017 and 24/10/2017. This clearly proves that the AO has given sufficient opportunities. Therefore, there is no substance in the ground raised by the appellant, Hence, the ground is dismissed.

Ground No.2: On the facts and Circumstances of the case, the Ld A.O. has erred in making addition of Rs. 2577750.00 in hands of the assessee due to following reason- a The assessee did not sold alleged property and it was not the owner of property under question.

The ground raised has been carefully examined and found that during the assessment proceedings, when the opportunities were given, the appellant has miserably failed to substantiate its claim. Whereas, as per the information received by the Income Tax Department, it was clear that the appellant has sold a shop bearing no. 183, Municipal no. 311/2, Chandpole bazaar, Jaipur for a sum of Rs. 19,51,000/-, which was valued by the sub-registrar at Rs. 25,77,750/-. Therefore, the assessment concluded is in order. Accordingly, the ground raised is dismissed.

Ground No.3. On the facts and circumstances of the case, the Ld A.O has erred in issuing notice under section 147/148 without having any reason to believe (as on date of issuing notice) that any income has escaped assessment. The notice has been issued in haste without even applying independent mind for the information available on record. Even the reason were recorded on 28.03.2017 Le subsequent to the date of issue of notice i.e. 23.03.2017 which is bad in eyes of law.

The ground raised has been examined carefully and found that the AO issued a notice u/s 133(6) on 03/03/2017 to the appellant with an intention to verify the transaction made was correct and whether the said transaction was disclosed in the return of income filed. Admittedly, as per assessment order Para-02 the appellant has stated that he has not disclosed the said transaction in the return of income. In view of this fact, after recording the reasons and obtaining the prior approval from the PCIT-2, Jaipur, the AO has issued notice u/s 148 on 23/03/2017 for which there was no response from the appellant. These chronological event shows that, the AO has issued a letter for the verification of the transaction, after satisfying himself and recording the reasons, he has taken the prior approval from PCIT-2, Jaipur and subsequently, after obtaining the prior approval, the notice u/s 148 was issued on 23/03/2017. Thus, it could be very well stated that the AO has scrupulously followed the procedure laid down under the Income Tax Act, 1961. Under the circumstances, there is no force in the ground raised by the appellant and therefore, the ground raised is dismissed.

Ground No.4 That the appellant prays that the addition of Rs. 2577750.00 made in respect of assessee be deleted.

The ground raised is general in nature that does not require adjudication.

Ground No.5 That the appellant craves the right to add, delete, amend or abandon the ground of this appeal at the time of before the actual hearing of the case.

The ground raised is general in nature that does not require adjudication

Additional ground raised during the course of appellate proceedings

Ground No.6. On the facts and circumstances of the case, the Ld. AO erred in issuing notice u/s 147/148 without complying with the provisions of section 151(1) i.e., without obtaining the prior approval of the relevant authority. Even the approval granted was not proper.

The ground raised has been examined carefully and found that the AO issued a notice u/s 133(6) on 03/03/2017 to the appellant with an intention to verify the transaction made was correct and whether the said transaction was disclosed in the return of income filed. Admittedly, as per assessment order Para-02 the appellant. has stated that he has not disclosed the said transaction in the return of income. In view of this fact after recording the reasons and obtaining the prior approval from the PCIT-2, Jaipur, the AO has issued notice u/s 148 on 23/03/2017 for which there was no response from the appellant. These chronological event shows that, the AO has issued a letter for the verification of the transaction, after satisfying himself and recording the reasons, he has taken the prior approval from PCIT-2, Jaipur and subsequently, after obtaining the prior approval the notice u/s 148 was issued on 23/03/2017. Thus, it could be very well stated that the AO has scrupulously followed the procedure laid down under the Income Tax Act, 1961. Under the circumstances, there is no force in the ground raised by the appellant and therefore, the ground raised is dismissed.

Ground No.7 On the facts and circumstances of the case, the entire On the proceedings were void-ab-initio as the reasons were recorded in individual capacity of Mr. Om Prakash Sharma whereas, notice was issued in the name of M/s Om Prakash Sharma, HUF. This implies that no reasons were recorded for the assessee.

The ground raised has been carefully examined with reference to the documents uploaded and found that the reasons were recorded in the status of HUF, the notice u/s 148 was issued in the status of HUF, the assessment order and the demand notice was issued in the name of the HUF. The relevant portion of the documents are enclosed below for ready reference.”

6. Aggrieved from the order of the Id. CIT(A), the assessee has filed the present appeal on the grounds as stated herein above. To support

the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the following written submission :

“Brief facts of the case are as under:

The assessee is a HUF and there is / was no property, movable or immovable owned by the assessee. The property under question was property of Shri Om Prakash Sharma, karta of assessee HUF which became the property of karta by way of will dated 18.06.1959 by Mrs Raj Kanwar who adopted Mr Om Prakash Sharma. A copy of said adoption deed is enclosed with paper book vide Pages 1-4. This property was sold by Mr Om Prakash Sharma on 19.11.2009 for a consideration of Rs 1951000.00. The stamp duty value of that property was Rs 2577750.00. The said sale deed is enclosed with paper book vide Pages 5-18. These two documents are very important as they prove the ownership of the property under question. Since the assessee had no income, it did not file its return of income. A notice under Section 148 was issued upon the assessee on 23.03.2017. A copy of said notice is enclosed with paper book vide Page 19. The son of assessee died on 25.10.2017 due to which assessee was unable to attend proceedings owing to his state of mind due to incident. A copy of newspaper report is enclosed with paper book vide Page 20 as an evidence of same. The assessee, along with his AR, however visited the Ld. A.O's office to ask more time but Ld. A.O denied for same and even denied to accept the adjournment letter. It is also pertinent to note that when erstwhile AR of the assessee visited during 133(6) proceedings at Ld. A.O office, he forcefully got written few things from him on the adjournment application itself. The copy of said letter is enclosed as Page 59 of paper book. Finally, an assessment order was issued upon the assessee dated 24.11.2017 making addition towards sale of said property of Rs 2577750.00 (Stamp duty value). Penalty proceedings under Section 271(1)(b), 271(1)(c) and 271F were also initiated on same day. Aggrieved by the said additions, the assessee file appeal before the Ld. CIT(A) on 22.12.2017. The copy of Form 35 is enclosed with paper book vide Pages 30-32. The assessee filed his submissions before the Ld. appellate authority alongwith an application for admission of additional evidences. Said submissions is enclosed with paper book vide Pages 33-37. The Ld. appellate authority asked for remand report from Ld. A.O which was submitted by him on 15.03.2019. A copy of said remand report is enclosed vide Page 38-40 of paper book. The assessee also filed a rejoinder to same which is enclosed as Page 41-43 of paper book. The Ld. CIT(A) dismissed the appeal of the assessee vide order dated 18.01.2024 which is enclosed vide Page 44-56 of paper book. Aggrieved by the same, the assessee is in appeal before the Hon'ble bench.

Now we hereby submit ground wise reply as under:

Ground No. 1

On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in approving the action of the Ld. A.O in making assessment under Section 144 r.w.s 147 of The Income Tax Act, 1961 and thereby making an addition of

Rs 2577750.00 without giving adequate opportunity of hearing to the assessee considering the circumstances of the assessee. Same is against the principles of natural justice. Further, the reply of the assessee has not been considered and repeated by a fully vague and non-speaking order. Hence, it is hereby prayed to delete the additions so made.

The Ld. A.O did not considered the genuine circumstances of the assessee and passed the assessment order. The young son of karta died due to which he or any other family was not able to participate in the proceedings. Further, the assessee appointed AR from whom the papers were not accepted by the Ld. A.O and the order was passed. The copy of newspaper report of death of karta's son is contained in paper book page no. 20 as an evidence of same. The Ld. A.O mentioned that assessee has submitted that transaction was not disclosed in his return of income. The fact is that AR of the assessee presented letter of adjournment during 133(6) mentioning clearly that he was appointed same day as AR. He was there to give power of attorney only. The Ld. A.O got the matter written on spot by the Ld. A.R. without allowing him time to appreciate the facts. Even the AR was asked to write that the said transaction was not disclosed in his return of income. The fact was that the assessee has not filed any income tax return for the period under consideration.

Thus, the order must be quashed for being against principle of natural justice as it was not made without providing proper opportunity of being heard.

Further, the Ld. CIT(Appeals) also failed to appreciate the facts of the matter and submissions of the assessee thus denying another opportunity of justice to the assessee. A non speaking order was passed against the assessee.

Few examples of same are as follows:

- a. While deciding ground where assessee has challenged the ownership of property under question and where copy of registry was available on record with Ld. A.O as well as Ld. appellate authority, the Ld. appellate authority:

"The ground has been carefully examined and found that during the assessment proceedings, when the opportunities were given, the appellant has miserably failed to substantiate its claim. Whereas, as per information received by the income tax department, it was clear that the appellant has sold a shop bearing No. 183, Municipal No. 311/2, ChandpoleBazar, Jaipur for a sum of Rs 1951000.00 which was valued by the sub registrar at Rs 2577750.00. Therefore, the assessment concluded is in order. Accordingly, the ground raised is dismissed".

- b. While deciding the ground raised by the appellant where he has submitted that the reasons were recorded on 28.03.2017 whereas thenotice U/s 148 was issued on 23.03.2017 i.,e well before recording reasons, the Ld. CIT(A) mentioned as under:

"The ground raised has been examined carefully and found that the AO issued a notice u/s 133(6) on 03/03/2017 to the appellant with an intention to verify the transaction made was correct and whether the said transaction was disclosed in the return of income filed. Admittedly, as per assessment order

Para-02 the appellanthas stated that he has not disclosed the said transaction in the return of income. Inview of this fact, after recording the reasons and obtaining the prior approval from thePCIT-2, Jaipur, the AO has issued notice u/s 148 on 23/03/2017 for which there wasno response from the appellant. These chronological event shows that, the AO hasissued a letter for the verification of the transaction, after satisfying himself andrecording the reasons, he has taken the prior approval from PCIT-2, Jaipur andsubsequently, after obtaining the prior approval, the notice u/s 148 was issued on23/03/2017. Thus, it could be very well stated that the AO has scrupulously followedthe procedure laid down under the Income Tax Act, 1961. Under the circumstances,there is no force in the ground raised by the appellant and therefore, the groundraised is dismissed.”

Thus, he even did not looked into the records available with him as well as the Ld. A.O where a copy of the reasons recorded (paper Book Page 23) as well as notice U/s 148 was available for justifying claim of the assessee.

It is hereby thus prayed to quash the order so passed by the Ld. appellate authority as well as Ld. assessing officer for violation of principles of natural justice.

We rely on following judicial pronouncements in support of our contentions:

H.W.R. Wade in Administrative Law, 5th Edition, pages 310-311, has stated that the act, in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice, is void or of no value.

In Ridge v. Baldwin [1964] AC 40 and Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 AC 147, the House of Lords held that breach of natural justice nullifies the order.

The order passed in violation of the principles of natural justice is of no value as held by the Supreme Court in R. B. ShreeramDurga Prasad and Fatech and Nursing Das v. Settlement Commission [1989] 43 Taxman 34 (SC).

In Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC), the SupremeCourt emphasised that the principles of natural justice are applicable tothe proceedings under the Income-tax Act. It observed:

“It is ... surprising that the Tribunal took from the representative of the department statement of gross profit rates of other cotton mills withoutshowing the statement to the assessee and without giving him an opportunityto show that statement had no relevancy whatsoever to the case ofthe mill in question.”

In the case of Gargi Din Jwala Prasad v. CIT [1974] 96 ITR 97 (All.) also,the Court has held similarly.

The power of revision conferred by section 25 of the Wealth Tax Act, 1962is not administrative but quasi-judicial in nature. The expression ‘may makesuch inquiry and pass such order thereon’ does not confer any absolutediscretion. In exercising the power the Commissioner must decide theissue with an unbiased mind, consider the objections of the affected partyimpartially and decide the dispute by following the principles of naturaljustice. He cannot

make his judgment based on matters not disclosed to the assessee. He cannot act according to the dictates of another authority. This was so held by the Supreme Court in Sirpur Paper Mill Ltd. v. CWT [1970] 77 ITR 6 (SC).

Ground No. 2

On the facts and circumstances of the case, the LD. CIT(Appeals) has grossly erred in approving the action of the Ld. A.O in making additions in the hands of the assessee ignoring the fact that the assessee did not sold alleged property and was not the owner of the property under question. Hence, it is hereby prayed to delete the additions so made.

The assessee submitted as follows before the Id. Appellate authority:

The assessee was not seller or owner of the property under question. The copy of registry of alleged transaction sold by Mr Om prakash Sharma (karta of assessee) is enclosed in paper book (page no. 5-18). Also, godnama of karta is enclosed (Paper book page no. 1-4) which clearly specifies that karta was the owner of property in individual capacity and transferred the same in that capacity only. This proves that assessment was done on wrong assessee. Thus, the demand against the assessee is prayed for being deleted.

While deciding this ground, the Ld. CIT(A) has mentioned as under:

“The ground raised has been carefully examined and found that during the assessment proceedings, when the opportunities were given, the appellant has miserably failed to substantiate its claim. Whereas, as per the information received by the Income Tax Department, it was clear that the appellant has sold a shop bearing no. 183, Municipal no. 311/2, Chandpole bazaar, Jaipur for a sum of Rs. 19,51,000/-, which was valued by the sub-registrar at Rs. 25,77,750/-. Therefore, the assessment concluded is in order. Accordingly, the ground raised is dismissed.”

Therefore, it can be clearly seen that the Ld. CIT(Appeals) failed to appreciate the records and submissions of the assessee and relied totally on the order.

It is pertinent to note that on page 2 of remand report, The Ld. A.O has mentioned that ‘The assessee has sold his property in the capacity of HUF, which was mentioned in the sale deed itself at the last page at 6 i.e AAAHO1118B for sale consideration of Rs 1951000.00’. This is totally false as evident from the record itself. Merely mentioning PAN of HUF by the deed writer on registry does not convey ownership or decide tax liability. The assumption adopted by the Ld. authority is not acceptable by any stretch of mind. Also, a PAN can be recognized by a bare look regarding its status i.e of Individual, HUF or as the case may be and it is the department who issues PAN. If the department itself cannot verify / identify whether the PAN belong to individual or HUF, a layman assessee cannot be expected to do the same. The language of registry clearly tells that the property has been sold in individual capacity and also the way it has been acquired in individual capacity. Further, this also proves that the Ld. A.O did not go through the registry or other documents and proceeded to reopen the case without application of independent mind. Thus, the allegation of Ld. A.O is baseless and on the basis of premature conclusion of the material on record.

Even in assessment order in Para 10, the Ld. A.O has admitted that property has been transferred through inheritance on 07.10.1984. Also, he mentioned in the order that that "He' has received consideration in cash.Both these things are not applicable for a HUF and hence it can be concluded safely that even after being aware of the fact that property was owned in individual hands of assessee, the assessment proceedings were completed in hands of HUF.

We also draw attention of the Ld. members towards Page 57 of paper book in which it can be seen that the reasons were recorded in the name of karta of HUF i.e Om Prakash Sharma (Form for recording reasons) but reopening was done for assessee i.e HUF. The status has also been mentioned as individual. It is only while providing copy of reasons to assessee where Ld. A.O changed the name of assessee from individual to HUF (Page 23 of paper book).

Hence, it is hereby prayed to delete the additions so made.

Ground No. 3

On the facts and circumstances of the case, the LD. CIT(Appeals) has grossly erred in law and facts by confirming the action of the Ld. A.O of issuing notice under Section 147/148 without having any reason to believe (as on the date of issuing notice) that any income has escaped assessment. The notice has been issued in haste without even applying independent mind for the information available on record. Even the reasons were recorded on 28.03.2017 i.e subsequent to the date of issue of notice. Hence, it is hereby prayed to quash the said notice and order issued thereafter.

- a. The Ld. A.O has no reason to belief as on the date of issue of notice that any income has escaped assessment. This is clearly evident from the fact that he even did not read the registry obtained by him as it was clearly mentioned in the registry that assessee is not the owner of the property. Thus, reopening was a result of receipt of information by the Ld. A.O from some other wing of department and issuing a notice without any application of mind. The entire proceedings were initiated as well as concluded in haste.
- b. The copy of reasons recorded provided to assessee clearly mentions the date of recording reason as 28.03.2017 whereas notice U/s 148 was issued on 22.03.2017.

Hence, as the notice was issued before recording reasons, same is void ab initio and hence prayed for being quashed. Kindly refer Page 23 of paper book for same.

While deciding this ground, the Ld. CIT(A) wrote as under:

"The ground raised has been examined carefully and found that the AO issued a notice u/s 133(6) on 03/03/2017 to the appellant with an intention to verify the transaction made was correct and whether the said transaction was disclosed in the return of income filed. Admittedly, as per assessment order Para-02 the appellant has stated that he has not disclosed the said transaction in the return of income. In view of this fact, after recording the reasons and obtaining the prior approval from the PCIT-2, Jaipur, the AO has issued notice u/s 148 on 23/03/2017 for which there was no response from the appellant. These chronological event shows that, the AO has issued a letter for the verification of the transaction, after satisfying himself and

recording the reasons, he has taken the prior approval from PCIT-2, Jaipur and subsequently, after obtaining the prior approval, the notice u/s 148 was issued on 23/03/2017. Thus, it could be very well stated that the AO has scrupulously followed the procedure laid down under the Income Tax Act, 1961. Under the circumstances, there is no force in the ground raised by the appellant and therefore, the groundraised is dismissed.”

Thus, it can be clearly seen that the Ld. CIT(A) did not have any look at the documents on record before deciding the issue. He even did not considered the reply of the assessee and acted on the order of Ld. A.O.

Hence, where the notice has been issued without recording reasons as per mandate of Section 148, same is without jurisdiction and thus void.

We rely on following judicial pronouncement in support of our contention:

PCIT vs Tata Sons Ltd, [2019] 110 taxmann.com 115 (Bombay).

A copy of said judgement is enclosed with paper book vide Pages 76-77.

Ground No. 4

On the facts and circumstances of the case, the LD. CIT(Appeals) has grossly erred in law and facts by confirming the action of the Ld. A.O of issuing notice under Section 147/148 without complying with the provisions of Section 151(1) i.e without obtaining the prior approval of relevant authority. Even the approval granted was not proper. Hence, it is thereby prayed to quash the said notice as well as order passed in pursuance thereof.

While deciding this ground, the Ld. CIT(A) wrote as under:

“The ground raised has been examined carefully and found that the AO issued a notice u/s 133(6) on 03/03/2017 to the appellant with an intention to verify the transaction made was correct and whether the said transaction was disclosed in the return of income filed. Admittedly, as per assessment order Para-02 the appellant has stated that he has not disclosed the said transaction in the return of income. In view of this fact, after recording the reasons and obtaining the prior approval from the PCIT-2, Jaipur, the AO has issued notice u/s 148 on 23/03/2017 for which there was no response from the appellant. These chronological event shows that, the AO has issued a letter for the verification of the transaction, after satisfying himself and recording the reasons, he has taken the prior approval from PCIT-2, Jaipur and subsequently, after obtaining the prior approval, the notice u/s 148 was issued on 23/03/2017. Thus, it could be very well stated that the AO has scrupulously followed the procedure laid down under the Income Tax Act, 1961. Under the circumstances, there is no force in the ground raised by the appellant and therefore, the groundraised is dismissed.”

Thus, it can be clearly seen that the Ld. CIT(A) did not have any look at the documents on record before deciding the issue. He even did not considered the reply of the assessee and acted on the order of Ld. A.O.

We hereby reproduce relevant extract of Section 151 which is as follows:

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

Thus, it is quite evident that the approval under Section 151 is required to be taken before issuing any notice under Section 148.

We now draw attention of the Ld members towards form for recording reasons enclosed with paper book vide Pages 57-58 in which it can be clearly seen that the approval of Ld PCIT has been taken on 25.03.2017 whereas notice under Section 148 was issued on 23.03.2017 (page 19 of Paper Book). Thus, the notice is void ab initio in absence of requisite approval under section 151.

Even the approval granted was not proper and the Ld. authority merely marked 'yes'. This clearly indicates that the approval was granted in a mechanical manner without application of independent mind by the Ld. authority. He even did not went through the documents / details available with the Ld. A.O like registry etc before giving such approval and relied on opinion of Ld. A.O completely.

We rely on following judicial pronouncements in support of same:

PCIT v Pioneer Town Planners (P.) Ltd., [2024] 160 taxmann.com 652 (Delhi)

The Delhi High Court held that the satisfaction of the AO is a sine qua non for a valid approval by the higher authorities under Section 151. The section stipulates that the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner must be "satisfied" on the reasons recorded by the AO that it is a fit case for issuing such notice.

In the instant case, the Principal Commissioner of Income Tax (PCIT) merely wrote "Yes" without specifically noting his approval while recording the satisfaction that it is a fit case for issuing notice under Section 148. The satisfaction arrived at by the PCIT must be clearly discernible from the expression used when affixing its signature, according to approval for reassessment under Section 148.

The approval cannot be granted mechanically as it links the facts considered to the conclusion reached. Merely appending the phrase "Yes" does not appropriately align with the mandate of Section 151 as it fails to set out any degree of satisfaction, much less an unassailable satisfaction, for the said purpose. The approval in the instant case is akin to the rubber stamping of "Yes".

In light of above, we hereby pray the Ld. authority to quash the notice so issued as well as the order passed in pursuance thereof.

Ground No. 5

On the facts and circumstances of the case, the LD. CIT(Appeals) has grossly erred in approving the action of Ld. A.O of making the additions without considering the fact that the entire proceedings were void ab initio as reasons were recorded in individual capacity of Mr Om Prakash Sharma whereas notice was issued in the name of Om Prakash Sharma HUF. This implies that no reasons were recorded for the assessee. Hence, it is hereby prayed to quash the said notice and order issued in pursuance thereof.

While deciding this ground, the Ld. CIT(A) wrote as under:

“The ground raised has been carefully examined with reference to the documents uploaded and found that the reasons were recorded in the status of HUF, the notice u/s 148 was issued in the status of HUF, the assessment order and the demand notice was issued in the name of the HUF”

The inference drawn by Ld. CIT(A) is erroneous due to following:

We hereby draw attention of the Ld. Members toward two documents. Firstly, the form for recording reasons enclosed as page 57-58 of paper book in which reasons have been recorded for Mr Om Prakash Sharma in individual capacity. Another document is copy of reasons provided to assessee which is enclosed as Paper Book Page No. 23 in which the title has been given Om Prakash Sharma HUF. Clearly, the former is the original document whereas latter (page 23) is just a retyped copy of former. Hence, as no reasons have been recorded in name of assessee, the assumption of jurisdiction under Section 147/148 is invalid and hence it is hereby prayed to quash the notice issued under Section 148 as well as the order passed in pursuance thereof.

It is pertinent to note that the Ld CIT(A) failed to appreciate the form for recording reasons which was available with him on record.

Ground No. 6

On the facts and circumstances of the case and without prejudice to the other grounds of appeal, it is hereby prayed to allow cost of property and improvement cost as deduction to assessee from the additions so made.

Without prejudice to above submissions, we also pray the Ld. authority that the Ld. A.O has erred in facts and circumstances of the case by not allowed the cost of the property to be reduced from the sale proceeds and adding the entire sale proceeds as income. A copy of value of property as on 01.04.1981 is attached herewith as Paper Book Page No. 60-75. There was subsequent improvement in property also for which necessary details will be furnished, if required. Hence, it is hereby prayed to allow the consequential relief to the assessee.

Ground No. 7

On the facts and circumstances of the case, the LD. CIT(Appeals) has grossly erred in approving the action of the Ld. A.O of rejecting application of the assessee for admission of additional evidences. It is hereby prayed to hold the action of the Ld. A.O as invalid and against the principles of natural justice.

On Page 3-4 of the order of Ld. CIT(Appeals), it has been mentioned as under:

“On an analysis of the assessment order, it is found that the appellant has been given 6 opportunities vide dated 03.03.2017, 23.03.2017, 30.06.2017, 07.09.2017, 20.10.2017 and 24.10.2017. For all these opportunities though the notices were served the appellant has not responded to the notices and shown noncooperation towards the proceedings initiated by the department by either seeking the information for reopening, by filing adjournment letters, by filing details and by filing explanations to the show cause notice”

Thus it can be clearly seen that how vague language (bold fonts) has been used by Ld. appellate authority while adjudicating application for additional evidences. Further, the main ground for admission of same under Rule 46A i.e death in family of assessee has not been commented upon at all. Further, the contention of Ld. CIT(A) that if additional evidences has not been produced with form 35, same cannot be produced later is totally wrong and against the provisions of law. Hence, it is hereby prayed to hold the action of Ld. CIT(A) as invalid.

Ground No. 8

The appellant hereby craves the leave to add, delete, amend or abandon any or more grounds of appeal at the time of or before the actual hearing of the case.

This ground of appeal does not require any submission.

With the above submissions, we hereby pray the Ld. Bench to allow the appeal of the assessee.”

7. To support the various grounds so raised by the Id. AR of the assessee and has relied upon the following evidences in support of the contentions so raised:-

S. No.	Brief Description of document	Page No.	Filed/available before Ld. Income Tax Officer, ward4(1), Jaipur/CIT(A)
1.	Adoption deed of Mr. Om Prakash Sharma	1-4	Yes (only before Ld. CIT(A))
2.	Copy of sale deed by Mr. Om Prakash Sharma dated 19.11.2009	5-18	Yes
3.	Copy of notice u/s 148 dated 23.03.2017	19	Yes
4.	Newspaper report of death of son of Karta of assessee	20.	Yes (only before Ld. CIT(A))
5.	Copy of notice dated 07.09.2017	21-22	Yes
6.	Copy of reasons submitted to the assessee with letter dated 07.09.2017	23	Yes
7.	Copy of assessment order	24-29	Yes
8.	Copy of Form 35 filed by the assessee	30-32	yes

9.	Copy of reply filed by the assessee before the Ld. Appellate authority	33-37	Yes
10.	Copy of remand report by Ld. AO	38-40	Yes
11.	Copy of rejoinder filed by the assessee	41-43	Yes
12.	Copy of order of the Appellate authority	44-56	Yes
13.	Copy of form for recording the reasons	57-58	Yes
14.	Copy of letter given by the assessee	59	Yes
15.	Copy of valuation report as on 01.04.1981 of the property under question	60-75	Yes
16.	Decision in the case of PCIT vs. Tata sons Ltd.	76-77	Yes

8. The Id. AR of the assessee in addition to the detailed written submission vehemently argued that the assessee filed an application under Rule 46A before the Ld. CIT(A) advancing the reason as to why they remain non complaint before the Assessing Officer. The Id. CIT(A) after having been convinced with the reason so advanced by the assessee considered the additional evidence. After admitting that application for additional evidence he sought a remand report from the Assessing Officer. The Assessing Officer has not given comment on the merits of the case, but merely stated that the application of the assessee for admitting the additional evidence should be rejected.

On perusal of the order of the Id. CIT(A) there was no discussion as to the remand proceedings and the contention of the AO in the remand proceedings. He simply relied on the view of the AO, therefore, the order of the Id. CIT(A) is against the principles of natural justice.

9. Per contra, Id. DR relied upon the orders of the lower authorities.

10. We have heard both the parties and perused the materials available on record. The bench noted that in this case, the order of the Id. Assessing Officer is ex-parte. In the proceedings before the Id. CIT(A) the assessee placed on record the additional evidence to support the correct amount to be charged as capital gain by making an application under Rule 46A. The assessee also advanced the reasons as to why the assessee could not present that additional evidences before the Id Assessing Officer. The assessee contended before the Id. CIT(A) that Karta's son has expired and it was except for him nobody in the family was able to represent the case or file document in relation that too reopened assessment. Therefore, there was noncompliance before the Id. Assessing Officer. After having gone through the reasons advanced by the assessee, Id. CIT(A) admitted the additional evidences. He also sent those record to Id. Assessing Officer for his comment. The Id. Assessing Officer has merely submitted that the assessee was given sufficient time and he has not submitted any reply and has not filed return of income in response to notice u/s 148 of the Act. Therefore he refrain from commenting upon the additional evidences and even Id. CIT(A) has not commented upon as to why these additional evidences after having been admitted not considered while adjudicating the appeal of the assessee.

Considering that specific failure, the Bench deem it fit case to remand back the matter to the file of the Id. CIT(A) to decide the appeal of the assessee based on the additional evidence placed on record by the assessee with these remarks the appeal of the in ITA No. 413/JPR/2024 is allowed for statistical purpose. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. CIT(A) independently in accordance with law.

11. Now, we take up the appeal of the assessee in ITA No. 414/JPR/2024. In this appeal the assessee has disputed the levy of penalty u/s 271(1)(b) of the Act for an amount of Rs. 10,000/- imposed by the Id. Assessing Officer for non compliance by the assessee in the assessment proceedings u/s. 271(1)(b) of the Act.

The Bench noticed that based on the reasons given in ITA No. 413/JPR/2024 that son of the karta of assessee HUF was died and there was no one in the family member to deal with the assessment proceeding reply and provide the documents related to the issue. Even the karta of HUF was not having a mental situation to deal with the proceeding before the Id. AO. Even the Id. CIT(A) has appreciated this

aspect of the matter and admitted additional evidence filed by the assessee. Considering that aspect of the matter the penalty levied by the Id. Assessing Officer is not correct and considering the provisions of Section 273B of the Act that the assessee was prevented with reasonable cause for such non compliance before the Id. Assessing Officer. Therefore, we direct the Id. Assessing Officer to delete the penalty levied u/s 271(1)(b) of the Act. In the result, the appeal of the assessee in ITA No. 414/JPR/2024 is allowed.

In the result, the appeal of the assessee in ITA No. 413/JPR/2024 is allowed for statistical purposes and in ITA No. 414/JPR/2024 of the assessee is allowed.

Order pronounced in the open court on 20/08/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 20/08/2024

*Santosh

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

1. The Appellant- Sh. Om Prakash Sharma HUF, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(1), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 413 & 414/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar