

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

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

आयकर अपील सं./ITA No.236/JPR/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Income Tax Office, Ward-6(2), Jaipur.	बनाम Vs.	Medical Designs India Pvt. Ltd. 324, NCRB, Statue Circle, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AACCM7178G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Ratan Lal Goyal (C.A.) &
Shri Tarun Mittal (C.A.)
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 08/08/2024
उदघोषणा की तारीख / Date of Pronouncement: : 27/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the revenue and is arising out of the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi[here in after "CIT(A)/NFAC"] dated 05.01.2024 for assessment year 2011-12, which in turn arise from the order dated 13.12.2018 passed under section 144 r.w.s. 148 of the Income Tax Act, 1961 (here in after " Act"), by the ACIT, Circle-1, Alwar.

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

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,57,69,640/- made by the AO on account of reasons wrongly recorded u/s 147 as the assessee made a purchase of immovable property instead of a sale in spite of the fact that the reasons were rightly recorded on the basis of information received from the Sub-Registrar, Bhiwadi vide letter dated 04.09.2012 and the assessee remained non-complaint during entire assessment proceedings.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,57,69,640/- made by the AO in spite of the fact the assessee has not declared LTCG/STCG in either AY 2007-08 or AY 2011-12 and not filed its ITR.”

3. Brief facts of the case are that as per information available with Department, the assessee company had purchased immovable property, during the relevant year, for 5,57,69,640/-. On verification of record revealed that the assessee company had not filed his ITR, for the relevant year. Therefore, source of investment in respect of purchase of immovable property & taxability thereof, could not be ascertained, which resultant to income escaped assessment to the tune of 5,57,69,640/-. In these circumstances, reasons were recorded by Income Tax Officer, Ward-Bhiwadi, and proposal was moved to the Principal Commissioner of Income Tax, Alwar, for granting approval to issue of notice u/s 148, and the same was approved. Subsequently, notice u/s 148 dated 28.03.2018 was issued,

by the Income Tax Officer, Ward-Bhiwadi, to the assessee company. However, the same remained un-complied with.

3.1 The Id. AO noted that the case was transferred, u/s 127 of the Income Tax Act, to ACIT, Circle-Alwar, by the Principal Commissioner of Income Tax, Alwar, vide order No. PCIT/Alwar/ITO(H)/2018-19/800 dated 25.07.2018. Consequently, notice u/s 142(1) dated 21.08.2018, requiring the assessee company to file its ITR, for the relevant period, and furnish certain information/documents, was issued. This notice too remained un-complied with. In these circumstances, a last & final opportunity was given to the assessee company by issuing notice u/s 142(1) dated 24.09.2018. Through this notice, the assessee company was clearly intimated that in case of non-compliance of this notice proceedings will be completed ex-parte based on material available on record. It is also intimated that this is the last & final opportunity, and no further opportunity will be given. However, this notice too remained un-complied with.

3.2 The Id. AO noted that it is crystal clear that plenty of opportunities were provided to the assessee company, but the assessee company didn't come forward to comply with any of the notice issued to him. This shows complete non-cooperation of the assessee company with the Department. In these circumstances, Id. AO left with no other option but to complete the

case ex-parte, u/s 144 of the Income Tax Act, based on material available on record.

3.3 Ld. AO noted that the Department has concrete & enough evidence, in the shape of Non- PAN AIR that the assessee company had purchased immovable property, during the relevant year, for Rs. 5,57,69,640/-, whereas it failed to file its ITR, for the relevant year. Plenty of opportunities were provided to the assessee company, requiring it to file its ITR, for the relevant year, and certain information/documents, therefore, the onus is upon the assessee company to file its ITR and requisite information/documents. However, the assessee company didn't comply with the notices issued. This clearly shows that the assessee company is not having any explanation. In the light of these discussion, Id. AO noted that it is quite clear that assessee company had made investment of 5,57,69,640/-, in purchase of immovable property, therefore, the same was added into the total income of the assessee company u/s. 69B of the Act as unexplained investment.

4. Aggrieved from the order of the assessment making addition, assessee preferred an appeal before the Id. CIT(A)/NFAC. Based on the various aspects raised by the assessee before the National Faceless Appeal Centre (NFAC) the appeal of the assessee was considered by

passing a detailed order by NFAC, while allowing the appeal of the assessee. The relevant finding of Id. CIT(A) is reiterated here in below:-

“Decision: I have carefully considered the facts of the case, submission made by the appellant, order passed u/s 144 of the Act and subsequently remand report submitted by the Assessing Officer. All the documentary evidences have been duly verified and placed on record. The brief facts of the instant case are that, the appellant is a company whose case was re-opened on the basis of information available with the Department that the appellant company had purchased immovable property for Rs.5,57,69,640/- and not filed its return of income for the relevant assessment year. In order to verify the source of investment made in immovable property the case was reopened and the AO has issued all the notices as per the provision of the Act. However, the appellant did not replied to any notice and therefore the AO has made addition of Rs. 5,57,69,640/- on account of unexplained investment u/s 69B of the Act.

During the appellate proceedings, the appellant has filed the additional evidences in support of his contention and the same were forwarded to the AO, who has submitted the remand report to the NFAC after due verification. The remand report submitted by the AO and subsequent rejoinder filed by the appellant have been verified and placed on record. The main contention of the case is that the AO has reopened the assessment on the basis of the information received that the appellant has purchased immovable property and source of the said investment is remained unexplained since the appellant has not filed return of income, whereas the appellant has contended that the said property was not purchased but was sold and physical possession was also handed over during the financial year 2006-07 and only the registration has taken place during the year under consideration.

All the documents have been perused carefully, from which it is concluded that the reason for which the assessment was reopened and the satisfaction of escapement was recorded was not verified properly. The AO was in receipt of information which contained the sale deed received from the registrar, wherein the appellant was seller and not the purchaser, however it was wrongly held as the purchaser which is the contrary to the reasons recorded for reopening of assessment. This fact is clarified by the AO in the remand report. The relevant portion of the remand report is reproduced as under:

“It is clear that immovable property was sold vide registered sale deed dated 29.12.2010 and thereafter, possession was handed over to the purchaser party. The stamp duty authority has determined value of property at Rs. 5,57,69,640/- for the purposed of stamp duty which is full value of sale consideration. The assessee company failed to file its return of income for the relevant assessment year 2011-12 and failed to disclose capital gain accordingly.

In this regard, reliance is placed on the recent judgement of Hon'ble Delhi High Court in the case of Krishna Diagnostic Pvt. Ltd. Vs. ITO reported in 294 Taxman 109 wherein it has been held as under.

Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside.

From the above discussion it is clear that the alleged property in question for the reassessment was sold by the appellant and not purchased by the appellant. Therefore, the ground raised by the appellant is hereby allowed.

6. In the result, the appeal is Allowed.”

5. Feeling dissatisfied with the above findings of the Id. CIT(A)/NFAC, the Revenue has preferred the present appeal on the grounds as reiterated in para 2 above. In support of the grounds of appeal, Id. DR of the Revenue relied upon the following written submission:-

“In the above mentioned case, a report was called from the AO to ascertain the facts of the case. On the basis of this report it is submitted that the assessee company had not filed its return of Income for A.Y 2011-12. On initial stage, the information was received from the DIT(CIB) Jaipur and on the basis of the same requisite information was requested from the assessee for verification of financial

transaction by issuing of notice u/s 133(6) of the income tax act, 1961 dated 16.04.2012, The notice remained un-served and returned. Subsequently, vide letter no. 438 dated 18.07.2012, the AO issued letter to Sub registrar Bhiwadi for providing complete postal address of the assessee alongwith other relevant details. The sub-registrar provided complete address and other relevant details wherein the assessee has been mentioned as a purchaser (letter no. 412 dated 04.09.2012 from sub registrar- (copy enclosed) and jumbo chemical and Allied Industries Pvt. Ltd as a seller.

Thereafter, case was re-opened on the basis of information received from the Sub- registrar, Bhiwadi as the assessee has purchased a property to the tune of Rs. 5,57,69,640/- and for ascertaining the taxability of above transaction case was re- opened u/s 148 of the income tax act, 1961 after taking approval from the competent authority, notice u/s 148 of the income tax act, 1961 was issued on 28.03.2018. As the sub registrar not provided the copy of registered deed therefore at time of reason recorded the same was not available with the AO, During assessment proceedings notice (s) u/s 142(1) of the Act were issued 21.08.2018 & 24.09.2018, but, the assessee remained non-complaint to these notice(s). Furthermore, notice(s) u/s 133(6) were also issued to Sub-registrar, Bhiwadi and Jumbo Chemical and Allied Industries Pvt. Ltd for providing copy of the sale deed and details of the transaction in respect of immovable property but they did not provide copy of registered sale deed therefore at the time of assessment

proceeding registered sale deed was not available with the A.O. The assessee remained non- compliant during assessment proceedings, the onus is upon assessee to file its ITR and requisite information/documents. However, the assessee company did not comply with the notice(s) issued to it. No response(s) were received in compliance to the Notice(s) issued u/s 133(6) of the Income Tax Act, 1961. Therefore, the AO concluded the assessment proceedings u/s 144 rws 148 at a total income of Rs.5,57,69,640/- by treating the entire amount of property purchased u/s 69B as unexplained investment.

During remand proceedings, it is clear that assessee sold the land vide registered sale deed dated 29.12.2010 and the details of payment received is as under:-

Sr. No.	Details of payment on sale	Amount
1.	As per agreement dated 12.06.2006 (Excluding RIICO Dues)	55,01,000
2.	RIICCO Dues on 01.06.2010	2,78,68,244
3.	RIICCO Dues on 01.06.2010	4,32,901

Total	3,38,02,125
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The stamp duty authority has determined value of property at Rs. 5,57,69,640/- for the purpose of stamp duty. The assessee company failed file return and disclosed capital gain.

Furthermore, the assessee has not shown any Capital Gain neither in A.Y. 2007-08 nor A.Y. 2011-12. The case law relied upon by the assessee is not applicable in assessee's case as the case was rightly re-opened on the basis of information received from Sub-Registrar, Bhiwadi wherein the assessee had been shown as purchaser and the assessee remained non-compliant during entire assessment proceedings.

Therefore, the AO rightly re-opened the case on the basis of the information received from Sub Registrar, Bhiwadi and proceeded to complete the assessment making the addition because the assessee was non compliant during the assessment proceedings. These facts have not been appreciated by Id. CIT(A) in his order.”

6. Per contra, the Id. AR of the assessee submitted that the order passed by the Id. NFAC is in the faceless regime and after considering the submission of the assessee. Therefore, he supported the detailed finding of the Id. NFAC on legal grounds as well as on the merits of the case. In support of the order of the Id. NFAC the assessee has filed a detailed written submission and the same is reproduced here in below:-

“Departmental Grounds of Appeal Nos. 1:

In these departmental grounds of appeal, Id. DR has challenged the action of Id. CIT(A) in deleting the addition of Rs. 5,57,69,640/- u/s 69B of the Income Tax Act, 1961.

At the outset it is submitted that the re-assessment order was passed ex-party and the notice u/s 147 was never served upon the assessee therefore no submission could be made before the Id. AO. It is only when a show cause notice for levy of penalty u/s 271(1)(c), 271(1)(b) and 271F dt. 27.05.2019 (APB 1) were

served upon the assessee company at its registered office, the fact of any such re-assessment proceedings for AY 2011-12 had come to the knowledge of the management and immediately a prayer was made to the Id. AO to supply the copy of the assessment order so that necessary action could be taken (APB-2). Only after the receipt of the certified copy of the order, the appeal could be filed before Id. CIT(A). Under these circumstances certain documents which are crucial and are having direct bearing on the issue in hand were submitted before Id. CIT(A) and a separate prayer is being made u/r 46A for the admission of same as additional evidences, which were duly considered by the Id. CIT(A) and sought remand report from the Id. AO.

Ld. AO vide remand report dated 11.09.2023, (APB 84-91) raised objection regarding the admission of additional evidences solely on the ground that assessee was provided sufficient opportunity. However, Id. AO while raising the objections failed to acknowledge that fact that no notice u/s 148 of the Act being served upon the assessee and thus no return was filed by the assessee u/s 147 of the Act as no notice was ever received by him. Further on the perusal of assessment order it is evident that the notice u/s 147 was issued at the address of the property already sold (i.e. the property as stated in AIR information) by the assessee and not at its registered office though the registered office address was clearly stated in the registered document based on which the re-assessment proceedings stated to have been initiated. This clearly fortifies the contention of the assessee that notice u/s 147 was not served upon the assessee. It is also relevant to state that it is not the case where the Id. AO does not have knowledge of the address of the registered office of the assessee company as is evident from the fact that a show cause notice for levy of penalty u/s 271(1)(c), 271(1)(b) and 271F dt. 27.05.2019 was issued at the registered office of the assessee company (APB-1). Thus the admission of additional evidence u/r 46A of Income Tax Rules, 1962 is within the prescribed law and same is also rightly confirmed by the Id. CIT(A) by accepting the evidence so produced.

At the outset, it is also submitted that Id. AO in remand report further observed that the case of assessee is not acceptable on merits also though no submission is made on the validity of reasons recorded for initiation of the proceedings u/s 148.

In this regard, to begin with, submission regarding validity of assessment proceedings completed u/s 148 is made prior to submission on merits, accordingly, reasons recorded for reopening as reproduced in assessment order are reproduced hereunder:

“As per information available with department, the assessee company had purchased immovable property during the relevant year for Rs. 5,57,69,640/-. On verification of record revealed that the assessee company had not filed his ITR, for the relevant year. Therefore, source of investment in respect of purchase of

immovable property and taxability thereof, could not be ascertained, which resultant to income escaped assessment to the tune of Rs. 5,57,69,640/-

In concluding para of remand report (reproduced herein below for the sake of ready reference), the Id. AO has observed as under:

"It is clear that immovable property was sold vide registered sale deed dated 29.12.2010 and thereafter, possession was handed over to the purchaser party. The stamp duty authority has determined value of property at Rs.5,57,69,640/- for the purposed of stamp duty which is full value of sale consideration. The assessee company failed to file its return of income for the relevant assessment year 2011-12 and failed to disclose capital gain accordingly."

From perusal of above, it is evident that while recording the reason for reopening, satisfaction of escapement of income has been formed that assessee has purchased immovable property, source of which remained unverified as no Return of Income was filed. The reassessment order was also passed by holding that assessee has made undisclosed investment in purchase of property and made the addition u/s 69B of the Act though the information received from the sub-registrar was with regard to the registration of the sale deed in which the assessee company was the seller and not the buyer, thus it is clear that while recording the reasons before the initiation of the reassessment proceedings, no effort was made to apply mind on the information supplied and in mechanical manner the reasons were recorded stating wrong facts. However, in Remand Report, Id.AO himself, has concluded and thus finally admitted that assessee has sold immovable property (and not purchased), capital gain whereof was not disclosed which is totally a contrary to the satisfaction reached in the reasons recorded as well as conclusion drawn in the reassessment order.

It is thus evident that no proper satisfaction was ever recorded before initiation of proceedings u/s 148 in respect to the non-disclosure of Capital Gain nor this issue had found place in the re-assessment order so passed. Therefore, alleging that assessee has not disclosed the capital gains in remand proceedings is an attempt made by present Id. AO in vain who tried to justify the addition by now considering it to be deemed sale value, which was never be the subject matter of reassessment proceedings. As submitted above, only issue on which satisfaction was recorded, is with respect to source of investment in purchase of immovable property, addition for which has been made by Id.AO u/s 69B in regard to it as stated above, assessee have never purchase immovable property instead it has sold immovable property to M/s Jumbo Chemicals & Allied Industries Pvt. Ltd. Therefore entire reassessment proceedings based on wrong satisfaction deserves to be held bad in law and consequent additions deserves to be deleted. From the perusal of the remand report it is evident that Id. AO has failed to comment on such issue or in other words has deliberately refrained himself to make any comment on the same, as he has nothing to say in support of this issue of addition of investment in purchase of property.

It is, therefore, submitted that action of the Id. AO of not doubting the arguments of the assessee regarding wrong satisfaction recorded in the reasons recorded for reopening the assessment, also leads to the conclusion that the entire reassessment proceedings being initiated on wrong satisfaction and therefore deserves to be held bad in law and consequent additions deserves to be deleted.

In this regard, reliance is placed on the recent judgement of Hon'ble Delhi High Court in the case of Krishna Diagnostic Pvt. Ltd. Vs. ITO reported in 294 Taxman 109 wherein it has been held as under:

Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside.

In this regards reliance is placed on the following judicial pronouncements:

Ram Singh 306 ITR 343 (Rajasthan)

Reassessment – Income escaping assessment – Income believed to have escaped investment explained by assessee – Tribunal rightly holding reassessment proceedings initiated on non-existing facts and invalid – I.T.Act, 1961, ss. 147, 148.

Hon'ble Court in this case has inter alia held that:

29. *To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under [section 147](#), the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under [section 147](#)."*

By following the aforesaid judgment, hon'be jurisdictional high in the case of MS Prime Chem Oil Ltd. Vs. ACIT in DBITA No. 220/2017 vide order dt. 17.4.2018 has also expressed the same view.

Further reliance is placed on the judgement of Hon'ble Bombay High Court in the case of Arvind Sahdeo Gupta vs Income Tax Officer, Ward – 1 in Writ Petition No. 4793 of 2021 wherein it was held as under—

- “15. *From the aforesaid, it is clear that the notice dated 24/3/2020 issued under Section 148 of the Act of 1961 seeking reopening of the assessment is*

based on incorrect facts. The objections raised by the petitioner pointing out the relevant facts including the proper Assessment Year to which the said transaction pertained being Assessment Year 2012-13 coupled with the fact that the amount of Rs.9,90,314/- that was stated to be the amount being profit from the sale of shares having been explained to be the amount of loss, the objections having been decided without any speaking order and not dealing with the undisputed factual aspects leads to the conclusion that the re-opening of the assessment is without there being any reason to believe that the income has escaped assessment. In these facts, the notice dated 24/3/2020 suffers from fundamental factual errors. An exceptional case thus having been made out to interfere in exercise of writ jurisdiction, the impugned notice dated 24/3/2020 issued under Section 148 of the Act of 1961 is quashed and set-aside. Consequentially, further steps taken by the respondents based on said notice would no longer survive.”

It is submitted that the validity of initiation of reassessment proceedings has to be judged with regard to the material available with the assessing officer and that too by framing the opinion strictly based on the documents and information in possession, that certain income has escaped assessment and not in a mechanical manner, which has been done in the case in hand. Thus, re-opening of the case based on the borrowed satisfaction on the information provided by some other official without carrying out independent verification of the information with reference to whether assessee has sold the immovable property or purchased the property and without recording her own independent satisfaction on the basis of such independent verification deserves to be held illegal.

In this regard further reliance is placed on judgement of Hon'ble High Court in the case of CIT Vs. Atul Jain (Delhi) reported in 299 ITR 383 where in Hon'ble High Court has dismissed the appeal of Revenue by stating below reasons:-

Looked at in the light of the decisions placed before us and the law laid down therein, it is necessary to appreciate the information available with the Assessing Officer in the present case. The only information is that the assessed had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque of that amount. The information does not indicate the source of the capital gains (which in this case are shares). We do not know which shares have been transacted and with whom has the transaction taken place. There are absolutely no details available and the information supplied is extremely scanty and vague. In so far as the basis for the reasons is concerned, even this is absent. The Assessing Officer did not verify the correctness of the information received by him but merely accepted the truth of the vague information in a mechanical manner. The Assessing Officer has not even recorded his satisfaction about the correctness or otherwise of the information or his satisfaction that a case has

been made out for issuing a notice under Section 148 of the Act. Read in this light, what has been recorded by the Assessing Officer as his "reasons to believe" is nothing more than a report given by him to the Commissioner of Income Tax. As held by the Supreme Court in Chhugamal Rajpal, the submission of a report is not the same as recording of reasons to believe for issuing a notice. The Assessing Officer has clearly substituted form for substance and, therefore, the action of the Respondent falls foul of the law laid down by the Supreme Court in ChhugamalRajpal which is clearly applicable to the facts of these appeals.

Further Hon'ble Gujarat High Court in the case of Seth Brothers Vs. CIT reported in 169 CTR 519 has laid down following principles for re-opening of the assessment u/s 148 of the Income Tax Act, 1961: (Reproduced in 28 TW 57,79)

"11 (a) There must be material for belief

- Circumstances must exist and cannot be deemed to exist for arriving at an opinion.*
- Reason to believe must be honest and not based on suspicion, gossip, rumour or conjuncture.*
- Reasons referred must disclose the process of reasoning by which he holds 'reasons to believe' and change of opinion does not confer jurisdiction to reassess.*
- There must be nexus between material and belief.*
- The reasons referred must show application of mind by the assessing officer."*

In this regard reliance is placed on the decision of Hon'ble Delhi High court in case of Sarthak Securities Co. Pvt. Ltd. Vs. ITO reported in 329 ITR 110 wherein it has been held as under:

Reassessment – Notice – Condition precedent – Formation of belief that income escaped assessment – Assessing Officer treating share application money as bogus accommodation entries – Payments through banking channel and companies investing money genuine – No independent application of mind by Assessing Officer but acting under information from investigation wing – Notice to be quashed – Income Tax Act, 1961, ss. 147, 148.

The Hon'ble ITAT, Delhi in the case of Uma Strips Ltd. vs DCIT in ITA Nos. 3284/Del/2019 vide orders dt. 11.05.2022 held as under:

9. *From the above, we find that there is no live link presented by the AO between the material available with him i.e. the report of the investigation and to reason to believe that the assessee has tried to evade the assessment for the particular year in question. Simply stating and doubting that the assessee is involved in obtaining accommodation entries without providing proof, reason, information to back-up the claim cannot be considered as a valid reason to issue notice u/s 148 of the I.T. Act. There is no independent application of mind that could be deciphered from the reasons recorded. There is no reference to examination of*

the returns filed and whether the entries taken or on account of bogus capital, a balance sheet item or on account of bogus sales or purchases on account of revenue account. As per the record and the reasons recorded, no enquiries have been conducted by the Assessing Officer to come to a conclusion or reasons to belief with regard to evasion of tax which has escaped assessment.

10. *Placing reliance on the decisions of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT Vs. Meenakshi Overseas (P) Ltd. 395 ITR 677, G&G Pharma 384 ITR 147, Subh Infrastructure 398 ITR 198 and Pr. CIT Vs. RMC Polyvinyl (I) Ltd. 396 ITR 5 wherein the Delhi High Court has held that observations of the Investigation Wing should not be treated as conclusions without the AO independently verifying the same, in the absence of which the Hon'ble Court held that the reopening of assessment was bad in law.*
11. *Hence, we hold that the proceedings u/s 148 of the I.T. Act are void ab initio and are liable to be quashed."*

In case of PCIT vs. RMG Polyvinyl (I) Ltd [2017] reported in 83 taxmann.com 348 (Delhi) it is held by Hon'ble Delhi High court that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified.

In case of PCIT vs. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300 (Delhi) it is held by the Hon'ble Delhi High court that where reassessment was resorted to on basis of information from DIT(Investigation) that assessee had received accommodation entry and there was no independent application of mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified.

In the circumstances it is submitted that in the instant case also, from the perusal of the reasons recorded for reopening the assessment as stated in the assessment order, it is evident that the Id. AO has simply proceeded with the information received from Sub Registrar, and no independent inquiry whatsoever was carried out by Id. AO before reaching to the conclusion that income has escaped assessment in the case of assessee. Thus, it is submitted that since there was no independent application of mind by Id. AO while recording the satisfaction of escapement of income before issue of notice u/s 148 and he simply proceeded on borrowed satisfaction reached by some other officials without verifying the same, therefore, the entire proceedings initiated u/s 148 deserves to be held bad in law.

It is further submitted that Id. CIT(A) after duly considering the submission of assessee and relying on the Judgement of Hon'ble Delhi High Court, in the case of Krishna Diagnostic Pvt. Ltd. Vs. ITO (supra), allowed the appeal of assessee

has deleted the addition. Relevant extract of order is reproduced as under for ready reference—

All the documents have been perused carefully, from which it is concluded that, the reason for which the assessment was reopened and the satisfaction of escapement was recorded was not verified properly. The AO was in receipt of information which contained the sale deed received from the registrar, wherein the appellant was seller and not the purchaser, however it was wrongly held as the purchaser which is the contrary to the reasons recorded for reopening of assessment. This fact is clarified by the AO in the remand report. The relevant portion of the remand report is reproduced as under:

It is clear that immovable property was sold vide registered sale deed dated 29.12.2010 and thereafter, possession was handed over to the purchaser party. The stamp duty authority has determined value of property at Rs.5,57,69,640/- for the purposed of stamp duty which is full value of sale consideration. The assessee company failed to file its return of income for the relevant assessment year 2011-12 and failed to disclose capital gain accordingly.

In this regard, reliance is placed on the recent judgement of Hon'ble Delhi High Court in the case of Krishna Diagnostic Pvt. Ltd. Vs. ITO reported in 294 Taxman 109 wherein it has been held as under:

Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside.

From the above discussion it is clear that the alleged property in question for the reassessment was sold by the appellant and not purchased by the appellant. Therefore, the ground raised by the appellant is hereby allowed.

With regards to the merits of the case, it is submitted that the assessee company has entered into an agreement to sale on 12.07.2006 (APB 16-18) with M/s Jumbo Chemicals & Allied Industries Pvt. Ltd. for sale of immovable property situated at Industrial Area Bhiwadi bearing Plot No. SP-501(B) for a total consideration of Rs. 55,01,000/- which has been received by the assessee company as under:

S.No.	Mode of payment	DD No.	Date of DD / Cash	Amount
1	Cash	--	25.07.2005	1,01,000.00
2	DD	978681	28.07.2005	5,00,000.00
3	DD	678791	05.08.2005	5,00,000.00
4	DD	169616	11.07.2006	9,00,000.00

5	DD	169617	11.07.2006	9,00,000.00
6	DD	169618	11.07.2006	9,00,000.00
7	DD	169619	11.07.2006	9,00,000.00
8	DD	169620	11.07.2006	8,00,000.00
			Total	55,01,000.00

The aforesaid amount so received by the assessee company was duly deposited in its bank account and possession was handed over to the buyer and the relevant part of the agreement to sale dated 12.07.2006 reads as under (APB-17):

“And whereas the party of the first part, under the circumstances, agreed to sale the said property on “as it is, where it is basis”. The party of the second part agreed to purchase the same for a total consideration of Rs. 55,01,000/- (Rupees Fifty Five Lacs One Thousand Only), (excluding the dues of RIICO Ltd., as per the modified condition mentioned here under). The party to second part has already paid Rs. 11,01,000/- (Rupees Eleven Lacs One Thousand Only) by cash and different Demand Drafts from time to time towards advance payment of the said consideration i.e. Rs. 1,01,000/- (Rupees One Lac One thousand only) on 25.07.05, Rs. 5,00,000/- (Rupees Five Lacs only) D.D. No. 978681 dt. 28.07.05 & Rs. 5,00,000/- (Rupees Five Lacs only) D.D. No. 678791 dated 05.08.05 of O.B.C., Jaipur. The balance payment of Rs. 44.00 Lacs (Rs. Forty Four Lacs Only) is being paid today. In addition to above the execution of sale / conveyance deed will be made on following terms and conditions.”

From the perusal of the above facts, it is clear that the assessee company had sold the industrial plot owned by it in F.Y. 2006-07 relevant to AY 2007-08 and the major part of the sale consideration was also received in the same year itself through banking channels and possession of the same was also handed over to the buyer. A power of attorney in favour of the buyer was also executed in July, 2006 (APB-15) so that the necessary compliances of payment of dues with RIICO and other legal formalities of transfer of title before the respective authorities could be done. The buyer after completing all the necessary compliance with the RIICO and payment of the due etc. which forming part of the sale consideration had executed the sale deed on 29.12.2010 to get the title in its name in the revenue records (APB 4-12). In the said sale deed, the assessee company was appearing as the seller and M/s Jumbo Chemicals & Allied Industries Pvt. Ltd. was the buyer and the said sale deed have due mention of the agreement to sale executed in July, 2006 and the DLC price of such

document is Rs. 5,57,69,640/- which has been considered as the purchase price of the property acquired by the AO while making the impugned addition.

The Hon'ble Supreme Court in case of Sanjiv Lal vs. CIT 365 ITR 389 while considering the question as to whether the date on which agreement for sale was executed could be considered the date on which the property was transferred for the purpose of charging the capital gains has held in para 20 to 25 as under:- (Copy at paper book page Nos.59-66)

"20. The question to be considered by this Court is whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred. In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

2(47) "transfer", in relation to a capital asset, includes,-

*(i) ** ** **

(ii) the extinguishment of any rights therein; or.'

21. Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforesaid definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had

been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed. In the light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

22. *In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also*

said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69 this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforesaid observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

25. In view of the aforesaid peculiar facts of the case and looking at the definition of the term "transfer" as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector 9-C, situated in Chandigarh and used for purchase of a new asset/residential house."

Following the aforesaid order of the Apex Court, the hon'ble ITAT, Jaipur bench in the case of Rajasthan Agencies Pvt. Ltd. in ITA No. 680 & 681/JP/17 vide orders dt. 25.1.2018 has held as under, (Copy at paper book page Nos. 34-58):
“.....Thus, it was held by the Hon'ble Supreme Court that when agreement to sale in respect of immoveable property is executed a right in personae is created in favour of the vendee and thereby the vendor is restrain from selling the property to someone else because the vendee gets the legitimate right to enforce specific performance of the agreement. In view of the above facts and circumstances of the case as well as the decision of Hon'ble Supreme Court we hold that the transfer of the land in question would be regarded as on the date of agreement to sale dated 11.04.2007. The order of the authorities below qua this issue are set aside.”

Hence the addition so made without any basis and without making proper enquiry in the matter solely by misinterpreting the document available. If the Id. AO had made the proper enquiry the necessary documents would have be submitted which itself explained the true nature of transaction. Further the sale deed was executed in December, 2010 was through power of attorney holder of the purchaser company who had already taken the possession in the year 2006 and the registered deed was executed for the formalities to be complied for getting the property in the name of the purchaser i.e. M/s Jumbo Chemicals & Allied Industries Pvt. Ltd. Thus the capital gains, if any, leviable, the same is payable in the AY 2007-08 relevant to FY 2006-07 when the actual transaction of sale had taken place. Moreover, in section 50C, the word “assessable” is inserted w.e.f. 1.10.2009 thus the sale consideration as appearing in the agreement to sale executed in period relevant to AY 2007-08 cannot be replaced by the value determined based on the DLC rate prevailing in the period relevant to AY 2011-12. It is also a matter of fact that the entire sale consideration was received by the assessee through banking channel way back in FY 2006-07 (receipts issued are placed at paper book pages 20-22) and possession was handed over to the buyer company (ABP-19) thus, it cannot be said that the entire set of documents is an afterthought.

Under these circumstances, the Id. CIT(A) rightly deleted the addition made u/s 69B as unexplained investment in acquisition of immovable property at Rs. 5,57,69,640/- as same is also illegal as no transaction what so ever of purchases of any immovable property was ever executed by the assessee in the year under appeal.

Departmental Grounds of Appeal Nos. 2:

Under this grounds of Appeal, Id. AO has challenged the action of Id. CIT(A) in deleting the addition of Rs. 5,57,69,640/- stating that there should LTCG/STCG in the hands of assessee in either A.Y. 2007-08 or A.Y. 2011-12, which is not in parity with the addition made.

It is reiterated that Id. AO solely on the basis of information from Sub-registrar received from third party re-opened the case of assessee and alleged that assessee has purchased the immovable property. However on perusal of sale agreement it is evident that assessee had sold the industrial plot owned by it in F.Y. 2006-07 relevant to AY 2007-08 and sale consideration was also received in the same year itself and possession of the same was also handed over to the buyer. A power of attorney in favour of the buyer was also executed in July, 2006 (APB-15) so that the necessary compliances of payment of dues with RIICO and other legal formalities of transfer of title before the respective authorities could be done. The buyer after completing all the necessary compliance with the RIICO and payment of the due etc. which forming part of the sale consideration had executed the sale deed on 29.12.2010 to get the title in its name in the revenue records (APB 4-12). In the said sale deed, the assessee company was appearing as the seller and M/s Jumbo Chemicals & Allied Industries Pvt. Ltd. was the buyer and the said sale deed have due mention of the agreement to sale executed in July, 2006.

At this juncture, it is categorically submitted that adjudication on aforesaid ground of appeal is against the law as in the instant case Id. AO could have called for sale deed from the Sub-registrar before framing the reasons in the mechanical manner and gone through the information received from sub-registrar, at that instance only correct reasons for reopening the assessment could have been framed. It is further submitted that Id. AO could not take recourse to open to remedy the error resulting from his oversight in the assessment proceedings.

Further reliance is placed on the Judgement of Honble Bombay High Court in the case of Emkay Global Financial Services Limited Vs. Assistant Commissioner of Income Tax on 06.02.2024 wherein it was held that the assessment cannot be reopened by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts, as the Income Tax Officer had material facts before him when he made the original assessment.

Similarly, in the instant Id. AO has all the information available with him before issuing notice u/s 148 of the Act, merely on account of failure on the part of Id, AO illegal order could not be revived, even otherwise there are plethora of

judgements in the favour of assessee as stated above. Further, assessment should attain finality at some moment of time and by allowing to adjudicate from entirely new angle would violate this principle and result in undue hardship on the assessee.”

7. The Id. AR of the assessee also filed a detailed paper book placing reliance on the following documents, records in support of the contentions recorded in the written submission:-

S. No.	Particulars	Page Nos.
1.	Copy of notice u/s 271(1)(c), 271(1)(b) and 271F dated 27.05.2019	1
2.	Copy of letter requesting for supply of certified copy of assessment order	2
3.	Copy of letter issued by ITO supplied the certified copies	3.
4.	Copy of registered sale deed.	4-12
5.	Copy of Board Resolution	13-14
6.	Copy of Power of Attorney	15
7.	Copy of Agreement to sale	16-18
8.	Copy of possession letter	19
9.	Copy of payment receipts	20-22
10.	Copy of order of Hon'ble ITAT in the case of Shri Bhagwan Sahani vs. ITO, Ward7(2) Jaipur in ITAT No. 51/JP/2017	23-33
11.	Copy of order of Hon'ble ITAT in the case of M/s Rajasthan Agencies Pvt. Ltds Vs. ITO, Ward7(2) Jaipur in ITAT No. 680 & 681/JP/2017	34-58
12.	Copy of judgment of Hon'ble Supreme court in the case of Sanjiv Lal Vs. CIT, in (2014) 365 ITR 389 (SC)	59-66
13.	Copy of submission dated 28.01.2021 filed before Id. CIT(A).	67-77
14.	Copy of application U/r 46A dated 28.01.2021 for submitting additional evidences	78-80
15.	Copy of reply dated 22.07.2023 filed before Id. AO	81-83
16.	Copy of Remand Report issued bearing DIN No. ITBA/N/FAC/F/24/2023-24/1055926775(1) dated 11.09.2023.	84-91
17.	Copy of reply dated 27.09.2023 filed before Id. CIT(A) requesting remand report issued by Ld. AO.	92-93

18.	Copy of reply in response to Remand Report dated 11.09.2023 filed before Ld. CIT(A)	94-98
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8. Before us both the parties have supported the orders of the lower authority as favorable to them.

9. In support of the ground so raised Id. DR vehemently argued that the case of the assessee was reopened, because the assessee was issued notice u/s 133(6) of the Act and has not supplied the details called for. Accordingly, notice u/s 148 of the Act was issued. In that reassessment proceeding the assessee remain non complied and thus, ultimately, the assessment was completed u/s 144 of the Act. In the proceedings before the Id. CIT(A), assessee submitted additional evidence and in the remand proceedings Id. AO raised an objection regarding admissibility of the additional evidence.

10. Even though that additional evidence was entertained and admitted while deleting the addition made by the AO the reason advanced by the Id. CIT(A) is not correct. The assessee being non filler, non-complaint on the assessment has rightly been made in the hands of the assessee. The assessee has not shown transaction arising out of the property transaction and assessment has rightly been made after making do process of law. Though consideration received by the assessee is in the year 2005-06 and

the balance consideration was paid in the year under consideration. Based on this argument, Ld. DR relied upon the order of the Id. Assessing Officer.

11. Per contra, Ld. AR for the assessee submitted that the reasons recorded were not correct. The assessee has not purchased property but in fact sold the property, for that he referred to paper book page 5 wherein the relevant agreement executed was referred. In that agreement in itself, the payment made in the year 2005-06 for an amount of 55,01,000/- duly recorded. Therefore, the contention raised by the Assessing Officer is not correct. The Id. CIT(A) has after perusing the material placed on record, he has rightly allowed the appeal of the assessee. As regards non-compliance before the Assessing Officer, Ld. AR of the assessee fairly submitted that notices were not issued at the registered office address and this reasons the assessee in the entire proceedings remain complaint. The Ld. AR stated that the Assessing Officer failed to issue notice at the correct address. The Id. AR of the assessee has further submitted that the assessee has already passed on a risk reward and possession of the property when the money were received in 2005-06, the balance payment if anywhere made by the purchaser directly to the RICCO. The details of the payments received by the assessee and details of payment made to RICCO is summarized as under:-

S No.	Mode of payment	DD No.	Name of bank	Date	Amount	Receipt of payment
1.	Cash	-		25.07.2002	1,01,000.00	Mentioned in Agreement to sell
2.	Demand Draft	978681	Oriental Bank of Commerce	28.07.2005	5,00,000.00	ABB-21
3.	Demand Draft	678791	Oriental Bank of Commerce	05.08.2005	5,00,000.00	ABB-20
4.	Demand Draft	169616	Oriental Bank of Commerce	11.07.2006	9,00,000.00	ABB-22
5.	Demand Draft	169617	Oriental Bank of Commerce	11.07.2006	9,00,000.00	ABB-22
6.	Demand Draft	169618	Oriental Bank of Commerce	11.07.2006	9,00,000.00	ABB-22
7.	Demand Draft	169619	Oriental Bank of Commerce	11.07.2006	9,00,000.00	ABB-22
8.	Demand Draft	169620	Oriental Bank of Commerce	11.07.2006	8,00,000.00	ABB-22
					55,01,000.00	

Based on the above submission, Ld. AR of the assessee is relied upon the order passed by the Ld. CIT(A) in National Faceless Appeal Centre.

12. We have heard the rival contention and perused the material available on record. The Bench noted that in this appeal, the Revenue has raised two grounds effectively challenging the action of Id. CIT(A) in deleting the addition of Rs. 5,57,69,640/- . The brief facts related to the issue is that the Revenue was in position of the information that the assessee has purchased property for an amount of Rs. 5,57,69,640/-. The Id. AO noted that since for the year under consideration the assessee has not filed any return of income, therefore, notice u/s 148 dated 28.03.2018

was issued to the assessee and accordingly, as noted that the notices were not issued to the registered office address of the assessee and therefore, the assessee remain non complaint in the reopened proceedings and thereby the assessee was completed at Rs. 5,57,69,640/- adding the purchase made by the property u/s 69B of the Act. The assessee challenged that order of the Assessing Officer before the Id. CIT(A) the appeal of the assessee was decided on 05.01.2024 by the National Faceless Appeal Centre wherein the appeal of the assessee was allowed. In the appeal filed by the assessee before the Ld. CIT(A), the assessee contended that as notices were issued at the wrong address. They have sufficient reason to advance the additional evidence in the first appeal and thereby an application under Rule 46A of the Income Tax Rules vide which following additional evidence was placed on record:

- copy of agreement to sale dated 12.06.2006.
- Copy of Power of Attorney dated 12.07.2006.
- Copy of payment receipts issued by the director of appellant company after receiving the sale consideration of Rs. 55,01,000/- from time to time.
- Copy of possession letter.
- Copy of minutes of Board Resolution of the appellant company authorizing its director to execute the agreement to sale and further authorize/appoint Shri Rajendra Gupta as the power of attorney holder.

The Id. AO did not consider the additional evidence as the assessee was in the assessment proceedings given sufficient opportunity to file the defense reply on the merit but did not do so. The Id. AO further reported that the contention of the assessee that the property was sold with sale consideration of Rs. 55,01,000/- but again that transaction has not been disclosed in the year of assessment i.e. A.Y. 2011-12 as the property were registered on 29.12.2010. As is evident that the assessee has filed all the details related to the payment received by them in 2005-06 and after that payment directly paid to RICCO being the dues of RICCO. The assessee placed on record relevant details in the paper book at page 7. The Ld. CIT(A) having been admitted the additional evidence forwarded the same to the Id. AO for his comments, in the interest of principals of natural justice. Having received the remand report and the submission of the assessee on the said remand report was also filed. The Id. CIT(A) forwarded the additional evidence in support of his contention and the same were forwarded to the AO, whose report in the remand proceeding was called for by the NFAC taking due process of law. The remand report submitted by the AO and subsequent rejoinder reply filed by the appellant- assessee have been considered by Ld. CIT(A). The main contention of the AO on the basis of

the information received that the appellant has purchased immovable property and source of the said investment was remained unexplained since the appellant has not filed return of income. Whereas the appellant has contended that the said property was not purchased but was sold and physical possession was also handed over during the financial year 2006-07 and only the registration has taken place during the year under consideration.

The Id. CIT(A) has perused all the documents and concluded that, assessment was reopened without appreciating the correct set of facts and the satisfaction of escapement was recorded was not verified properly with the information available. The AO was in receipt of information which contained in the sale deed received from the registrar, wherein the appellant was seller and not the purchaser, however it was wrongly held as the purchaser which is the contrary to the reasons recorded for reopening of assessment. This fact is clarified by the AO in the remand report also.

Considering that factual aspect of the matter and relying on the decision of the Krishna Diagnostic Pvt. Ltd. vs. ITO reported at 294 Taxman 109 wherein the High Court of Delhi has held as under:-

“Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside.”

Based on the above discussion and the overall factum of the detailed discussion so recorded the appeal of the assessee has rightly been allowed by the Id. CIT(A)/NAFC. The order has been passed after giving due opportunity to the assessee to deal with the facts presented by the assessee. Thus, we do not find any infirmity in the order of the Id. CIT(A) and therefore, the appeal filed by the Revenue stands dismissed on both grounds so raised.

In the result the appeal of the Revenue stands dismissed.

Order pronounced in the open court on 27/09/2024.

Sd/-

Sd/-

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

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

जयपुर / Jaipur

दिनांक / Dated:- 27/09/2024

*Santosh

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

1. The Appellant- ITO, Ward-6(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Medical Designs India Pvt. Ltd., Jaipur.

3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त (अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No. 236/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar