INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA Nos. 622, 641, 698 & 642/Del/2024
(Assessment Years: 2013-14 to 2015-16 and 2017-18)

Income Tax Officer, Ghaziabad	Vs.	Rajeev Kumar Arora, Plot No. 17, Sector-1, Crossing Republic, Near ABES College, Ghaziabad
(Appellant)		(Respondent)

PAN: AFYPA8949P

Assessee by :	Shri Rajesh Khandelwal, CA Shri Neelhand Kahndelwal, Shri Jaind Kumar Jaiswal, Adv
Revenue by:	Ms. Banita Devi Naorem, CIT DR Shri Ravi Kant Chaudhary, Sr. DR
Date of Hearing	03/10/2024
Date of pronouncement	16/10/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These are the appeals in ITA Nos. 622, 641, 698 & 642/Del/2024 for AYs. 2013-14 to 2015-16 and 2017-18 arise out of the order of the National Faceless Appeal Centre (NFAC), Delhi dated 11.01.2024 for AY 2013-14, 18.12.2023 for AY 2014-15, 11.01.2024 for AY 2015-16 and 18.12.2023 for AY 2017-18 u/s. 147 rws 144 of the Income Tax Act, 1961 passed by NFAC, Delhi dated 30.03.202.

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. The only identical issue involved in all these appeals of the revenue is as to whether the ld. NFAC was justified in deleting the addition made towards deemed dividend u/s 2(22)(e) of the Act in the facts and circumstances of the instant case. We find that the assessee had raised a ground in petition filed under Rule 27 of the Income Tax Appellate Tribunal (ITAT) Rules before us as under:-

> *"The Assessing Officer erred in issuing notice under section 148 of the Act.*
>
> *Our client contends that the reasons recorded by the Assessing Officer to re-open the assessment suffers from various defects and as such, the re-opening of assessment in the present facts and circumstances of the case and in law is bad."*

4. We find that though the validity of re-assessment u/s 147 of the Act was challenged by the assessee before the ld. NFAC, Delhi, no finding was given by the ld. NFAC on the same. But we find that the challenge to assumption of jurisdiction u/s 147 of the Act is a legal issue and go to the root of the matter. Facts relevant for adjudication of the said legal issue are already placed on record before us in the Paper Book filed for each of the years under consideration. The issue as to whether a legal ground could be raised in a Rule 27 petition by the respondent (assessee herein) when the same was not decided by the first appellate authority was subject matter of adjudication by the Co-ordinate Bench of Mumbai Tribunal in the case of ACIT vs Shri Ashwin Narendra Lodha in ITA No. 6584/Mum/2010 dated 23.12.2016 for Asst Year 2007-08 wherein the Tribunal by placing reliance on the decisions of Hon'ble Bombay High Court in the case of B R Bamasi vs CIT reported in 83 ITR 223 (Bom) and CIT vs Gilbert & Barker reported in 111 ITR 529 (Bom) had held as under:-

> *"3. In brief, the relevant facts are that the respondent-assessee is an individual and he filed his return of income for Assessment Year 2007-08 on 27.7.2007 declaring total income of Rs.11,76,955/-, which was duly processed u/s 143(1) of the Act. Subsequently, the return of income filed by the assessee was picked up for scrutiny assessment by issuance of notice u/s 143(2) of the Act on 5.8.2008, which was served on the assessee*

on 12.8.2008. In the subsequent assessment, the Assessing Officer noted that assessee had acquired an immoveable property for a sum of Rs.1,75,00,000/- and on being show caused to explain the source, assessee, inter-alia, submitted that a sum of Rs.1,24,00,000/- was paid by a concern, M/s. Champalal Motilal Steel Co. Pvt. Ltd. on his behalf. According to the assessee, the said sum was withdrawn by him from M/s. Champalal Motilal Steel Co. Pvt. Ltd. out of the credit balance lying with the said concern. The Assessing Officer has referred to the copy of account of the assessee appearing in the books of account of M/s. Champalal Motilal Steel Co. Pvt. Ltd. which was submitted by the assessee before him. The Assessing Officer noted that as per the said Statement of Account there was an opening credit balance of Rs.2,33,00,000/- in the account of the assessee as on 1.4.2006, but after perusing the Balance-sheet of the said concern for the year ending 31.3.2006, name of assessee was not appearing in the list of creditors. On being confronted, assessee pointed out that there was a mistake committed by the accountant of M/s. Champalal Motilal Steel Co. Pvt. Ltd. inasmuch as a sum of Rs.2,33,00,000/- was received from M/s. Navmi Steel Traders Co. Pvt. Ltd. with instructions to credit the account of the assessee in the account books of M/s. Champalal Motilal Steel Co. Pvt. Ltd. Instead, the accountant had credited the account of M/s. Navmi Steel Traders Co. Pvt. Ltd. in the account books of M/s. Champalal Motilal Steel Co. Pvt. Ltd. In support of his explanation, assessee also furnished a letter of confirmation from M/s. Navmi Steel Traders Co. Pvt. Ltd. along with copy of bank statement showing the relevant entries. In this manner, assessee pointed out that the withdrawal of Rs.1,24,00,000/- made by the assessee from M/s. Champalal Motilal Steel Co. Pvt. Ltd. was in effect not loans or advances, but mere withdrawal of money lying to his credit. The Assessing Officer, however, was not satisfied with the explanation of the assessee as according to him it was an afterthought, and that in such a situation the provisions of Sec. 2(22)(e) of the Act were fully attracted inasmuch as the assessee was a shareholder in M/s. Champalal Motilal Steel Co. Pvt. Ltd. According to the Assessing Officer, the amount of Rs.1,24,00,000/- advanced by M/s. Champalal Motilal Steel Co. Pvt. Ltd. to the assessee fell within the purview of Sec. 2(22)(e) of the Act and, therefore, considering the accumulated profit of the said concern, he brought to tax a sum of Rs.81,23,481/- in the hands of the assessee as 'deemed dividend' within the meaning of Sec. 2(22)(e) of the Act. In appeal, assessee reiterated the explanation furnished in the course, of assessment proceedings and also referred to the audited Balance-sheet of M/s. Navmi Steel Traders Co. Pvt. Ltd. and a request letter of the assessee requesting for loan from M/s. Navmi Steel Traders Co. Pvt. Ltd. to justify that it was a case where assessee was making withdrawal of the credit balance already lying in the account books of M/s. Champalal Motilal Steel Co. Pvt. Ltd. The CIT(A) has since accepted the plea of the assessee and deleted the addition of Rs.81,23,481/- made by the Assessing Officer by invoking Sec. 2(22)(e) of the Act. Against such a decision of CIT(A), Revenue is in appeal before us on the basis of the aforesaid Grounds of appeal.

4. In this background, the respondent-assessee has invoked the provisions of Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 (in short 'the Rules') and has raised the following Grounds in order to support the ultimate decision of CIT(A), and has contended that the appeal of the Revenue be dismissed :-

> *"1. Notice u/s 143(2) is legally invalid On the facts and circumstances and in law, notice u/s 143(2) served by the assessing officer on August 12, 2008 was legally invalid since the same had been served after the expiry of statutory limit of twelve months from the end of the month in which the return of income was furnished by the assessee on 27.7.2007, and though as per Proviso to section 143(2)(ii), the assessing officer could have served the notice u/s 143(2) on or before 31.7.2008.*
>
> *2. Assessment order passed u/s 143(3) is also legally invalid On the facts and circumstances and in law, since the notice u/s 143(2) was legally invalid as the same had been served after expiry of statutory time limit, the consequential assessment order u/s 143(3) dated 29.12.2009 is also legally invalid ab initio.*
>
> *3. Fact of belated service of notice u/s 143(2) is obvious The fact of belated services of notice u/s 143(2) is obvious from assessment order itself; and it does not involve any examination of record or investigation into facts not already on record."*

5. According to the learned representative for the assessee, notice u/s 143(2) of the Act has been served on the assessee on 12.8.2008, which is after the expiry of the stipulated time limit of 12 months from the end of the month in which return of income was furnished by the assessee, i.e., from 27.7.2007 and, therefore, the consequential assessment finalised u/s 143(3) of the Act was invalid. In this regard, he has referred to the discussion in the assessment order itself to justify the existence of relevant facts that are required for the purpose of adjudicating the said plea. The learned representative placed reliance on the judgments of the Hon'ble Bombay High Court in the case of B.R. Bamasi vs. Commissioner of Income-Tax, 83 ITR 223 (Bom.) and Commissioner of Income-tax vs. Gilbert & Barker, 111 ITR 529 (Bom) to contend that in an appeal filed by the Revenue, the respondent is entitled to raise a plea challenging the legal validity of the Assessing Officer's assessment order in order to seek dismissal of the appeal of Revenue.

6. On this aspect of the matter, the Id. DR has not seriously opposed assessee's plea for admission of the aforesaid Ground for adjudication, but has pointed out that there was no merit in the plea raised by the assessee because of the amendment made by the Finance Act, 2008 whereby clause

(ii) of Sub-section (2) of Sec. 143 of the Act has been amended to provide that notice u/s 143(2) of the Act shall be served on the assessee within a period of 6 months from the end of the financial year in which the return is furnished. It was, therefore, contended that the return of income filed by the assessee on 27.7.2007 would be governed by the amended provisions of Sec. 143(2) of the Act and such a return could have been picked up for scrutiny assessment on or before 30.9.2008, whereas in the present case notice u/s 143(2) of the Act has been served on the assessee on 12.8.2008 itself, thereby implying that there is no infirmity in the assessment proceedings.

7. Insofar as the plea of assessee for admitting the aforesaid Grounds of appeal for adjudication are concerned, in our view, the same is admissible considering the judgment of Hon'ble Bombay High Court in the case of B.R. Bamasi (supra). Notably, the Hon'ble High Court, inter-alia, considered the following questions of law :-

> *"1. Whether, on the facts and in the circumstances of the case, the refusal of the Tribunal to allow the assessee to challenge for the first time before it the validity of notice and assessment under section 34 while considering the appeal filed by the department against the order of the Appellate Assistant Commissioner for the assessment year 1947-48 was in accordance with law?*

Further, the Hon'ble High Court answered the aforesaid controversy in the following words :-

> *"The only question is whether the Tribunal was entitled in law to refuse to allow the assessee to urge that ground in the appeal before it. Now a Division Bench of this High Court in Commissioner of Income-tax v. Hazarimal Nagji & Co., after considering the relevant sections of the Income-tax Act and the relevant Rules made thereunder, held that the powers of the Appellate Tribunal are similar to the powers of an appellate court under the Civil Procedure Code. It has further held that the respondent in an appeal is undoubtedly entitled to support the decree which is in his favour on any grounds which are available to him, even though the decision of the lower court in his favour may not have been based on those grounds. It has further held that if the appellant in his challenge to the decree of the lower court is entitled to take a new ground not agitated in the court below by leave of the court, there appears to be no reason why a respondent in support of the decree in his favour passed by the lower court should not be entitled to agitate a new ground and subject to the same limitation. A Division Bench of the Allahabad High Court has taken a similar view in Kanpur Industrial Works v. Commissioner of Income-tax. That judgment has considered the position of an appeal under section 33 of the Income-tax Act along with the relevant Rules and that of an appeal under the*

Code of Civil Procedure and the provisions of Order XLI, rule 22. The judgment holds that when the department files an appeal for an increase in the assessed income, the subject matter of the appeal is the increase claimed by the department and the assessee can urge any ground of defence even though it might have been rejected by the Appellate Assistant Commissioner for showing that there should be no increase. It has further held that that the assessee is not liable to be assessed at all is a ground for showing that there should be no further assessment and the department's appeal can therefore be resisted on that ground and that there is no incongruity in maintaining the assessment order passed against the assessee and yet refusing to increase it on the ground that he was not liable to be assessed at all. The judgment points out however that if the Tribunal accepts the ground of defence that the assessee was not liable to be assessed, it can only refuse to increase the assessed income as only such an order would be within the scope of the appeal filed by the department and any other order such as annulling the assessment would be outside the scope of the appeal. That judgment holds that the position of an appeal under section 33 of the Income-tax Act and an appeal under the Code of Civil Procedure is identical.....

If the ground succeeds, the only result would be that the appeal would fail. The acceptance of the ground would show that the entire assessment proceedings were invalid, but yet the Tribunal which hears that appeal would have no power to disturb or to set aside the order in favour of the appellant against which the appeal has been filed. The ground would serve only as a weapon of defence against the appeal. If the respondent has not himself taken any proceedings to challenge the order in appeal, the Tribunal cannot set aside the order appealed against. That order would stand and would have full effect in so far as it is against the respondent. The Tribunal refused to allow the assessee to take up this ground under an incorrect impression of law that if the point was allowed to be urged and succeeded, the Tribunal would have not only to dismiss the appeal, but also to set aside the entire assessment. The point would have served as a weapon of defence against the appeal, but it could not be made into a weapon of attack against the order in so far as it was against the assessee."

As per the aforesaid decision of the Hon'ble High Court, assessee is entitled to raise the aforesaid Grounds only as a weapon of defence against the appeal of the Revenue. Moreover, it is also evident that the facts relevant to decide the controversy in the aforesaid Grounds of appeal raised by the assessee are emerging from the discussion in the assessment order itself on which there is no dispute. Therefore, since the Grounds raise a point of law and the relevant facts being available on record, we deem it fit and proper to admit the aforesaid Grounds of appeal raised by the respondent-

assessee so far as it is to act as a weapon of defence with the respondent-assessee against the appeal of the Revenue."

4.1. Similar view was also taken by the Hon'ble Jurisdictional High Court in the case of Sanjay Sawhney vs PCIT reported in 116 taxmann.com 791 (Del HC) vide order dated 18.5.2020 .

4.2. In view of the above decisions, we are inclined to admit the ground raised by the assessee in Rule 27 petition for all the years under consideration wherein, the validity of reopening is challenged.

5. With the consent of both the sides, the appeal for the Asst Year 2014-15 was taken as the lead case and the decision rendered on those facts shall apply mutatis mutandis for other assessment years also except with change in dates and figures.

6. The reasons recorded for reopening the assessment for the Asst Year 2014-15 by the ld. AO are as under:

"Information was received from Addl.CIT, Special Range, Ghaziabad vide letter dated 16.12.2019 that during the assessment proceedings, it was noticed that M/s Proview Realtors Pvt. Ltd. Mr. Rajeev Arora, ia having 41.15% share holding in the assessee company (Proview Construction Ltd.) and is having 50% share holding in M/s Proview Realtors Pvt Lid On enquiry from Roc website, it is gathered that the assessee company has given loan/ advances to Ms Proview Realtors Pvt. Ltd. in the year 2013-14 relevant to AY 2014-15 whose details are as under:

Advance as on	*Amount of loan/ advance given*	*Relevant AY which action is proposed*	*Share holding of Shr Rajeev Arora in proview construction pvt. Ltd (assessee company)*	*Share holding of Sh. Rajeev Arora in Proview Realtech Pvt. Ltd*	*Reserve & surplus in proview construction*
31.03.2024	*19,95,65,000/-*	*2014-15*	*41.15%*	*50%*	*10,28,31,917/-*

2. From the above table, it is evident that Sh. Rajeev Kumar Arora is having more than 10% share holding in M/s Proview construction Ltd. and more than 20% share holding in M/s Proview Realtech Pvt. Ltd. the assessee company M/s Proview Construction has given loan/ advances to M/s Proview Realtech Pvt. Ltd. in the assessment years mentioned in the above table. Hence as per the provisions of the Sec. 2(22)(e) of the IT. Act 1961 and various judicial pronouncements, the said amount given as loan/advances to M/s Proview Construction Pvt. Ltd. in the A.Y. 2013-14 is deemed dividend within the meaning of provisions of section 2(22)(e) of the IT. Act 1961 in the hands of Sh. Rajeev Arora as he is a beneficial owner of shares in both the companies. On perusal of the record it is seen that the assessee has filed ITR for A.Y. 2014- 15 on 29.05.2014 declaring income of Rs. 27,80,560/-and has not disclosed the said income as his income from other sources. As per record the case has not been assessed u/s 143(3) of the Income Tax Act, 1961.

3. I have perused the record in light of the above information and also the reply filed by the assessee in response to notice u/s 133(6) issued and find that the assessee merely stated that these transactions were project related and when funds are required they are transferred to each other so as to undertake /continue unobstructed construction. Hence, they were business transactions and cannot be termed as loan /advances. In support the assessee has only filed a ledger account and bank statements of the transactions. Perusal of the reply makes it amply clear that these were actually loan as advances as they were funds transferred when required by the other concerns to continue its unobstructed construction. This partakes the colour of loan and advances. Hence, through independent opinion have reason to believe that an income to the tune of Rs. 19,95,65,000/- has escaped assessment for the Assessment Year 2014-15 as per various judicial pronouncements and provisions of section 2(22)(e) of the Act. In order to assess the above income or any other income which comes to notice subsequently in the course of proceedings u/s 147(b), issue of notice u/s 148 of the Income Tax Act, 1961 is necessary in this case. Hence, the case of Rajeev Kumar Arora is being proposed for approval under the provision of section 151(1) of the IT Act, 1961."

7. The facts of the issue concerning deemed dividend u/s 2(22)(e) of the Act are that M/s Proview Construction Pvt Ltd (PCPL in short) had advanced loans to M/s Proview Realtors Pvt Ltd (PRPL in short). Assessee holds 50% stake in PCPL and 41.15% stake in PRPL. Accordingly, the ld. AO sought to invoke the provisions of section 2(22)(e) of the Act in the hands of the assessee by seeking to bring the amounts advanced by PCPL to PRPL as deemed dividend considering the same to have been paid as loans in lieu of dividend.

8. But from perusal of the reasons recorded for reopening the assessment reproduced supra , which is common to all the years under consideration except change in figures, **we find that the ld. AO in para 1 and in initial part of para 2 states that PCPL had advanced loans to PRPL. But in later part of para 2, the ld AO says that PRPL had advanced loans to PCPL.** This clearly shows complete misunderstanding of actual facts by the ld. AO reflecting his non-application of mind. **Further the reasons recorded by the ld AO were not even signed by the ld AO digitally as required by the Act, though it was sent along with notice u/s 142(1) of the Act dated 24.11.2021 for Asst Year 2014-15 ; 142(1) of the Act dated 24.11.2021 for Asst Year 2013-14 ; 142(1) of the Act dated 25.11.2021 for Asst Year 2015-16 and 142(1) of the Act dated 25.11.2021 for Asst Year 2017-18.** Moreover, the approval u/s 151 of the Act has been obtained by the ld AO from the competent authority before issuing notice u/s 148 of the Act dated 30.3.2021 for all the years under consideration. The said approval is being sought by the ld AO from the competent authority by mentioning section 147(b) of the Act in the reasons recorded. The same is evident from the reasons reproduced supra. **It is pertinent to note that section 147(b) of the Act has been omitted from the statute long back and still the ld. AO had mentioned the said section in the reasons recorded**, which reflects complete non-application of mind of the ld. AO and also application of incorrect provisions of the Act for the purpose of reopening the assessment. **Further the reasons recorded by the ld. AO does not even contain any date thereon**.

(EMPHASIS SUPPLIED BY US)

9. We find that the aforesaid deficiencies in the reasons recorded by the ld. AO ought to have been rectified / corrected by the competent authority while granting approval u/s 151 of the Act. The approving authority also had granted approval u/s 151 of the Act without correcting the aforesaid deficiencies, thereby reflecting complete non-application of mind by the approving authority also. Hence it could be safely concluded that the competent authority u/s 151 of the Act had granted a mechanical approval for reopening the assessment. In these circumstances, whether mechanical approval granted u/s 151 of the Act by the competent authority would become fatal to the reopening per se was considered by the *Co-ordinate Bench of Mumbai Tribunal in the case of ACIT vs Bharti Axa Life Insurance Co. Ltd reported in 128 taxmann.com 23 (Mum Tribunal)* authored by the undersigned. The relevant operative portion of the said order is reproduced below:-

> *"4.9.2. We further find that the sanction obtained in terms of section 151 of the Act was not provided to the assessee along with the reasons recorded despite assessee asking for the same in writing before the ld AO. This, in our considered opinion, is against the settled principles of natural justice as reopening of an assessment is an extraordinary power available to the ld AO and it should not be done in a cavalier manner. That is why the legislature in its wisdom had put lot of restrictions by imposing conditions for seeking approval and sanction from a superior officer in terms of section 151 of the Act. Hence the said approval obtained from competent authority ought to have been furnished by the ld AO along with the reasons recorded for reopening the assessment to the assessee.*
> *…….*
>
> *4.9.3. Moreover, in the instant case, on perusal of the sanction obtained in terms of section 151 of the Act, we find that the ld PCIT had merely recorded - "Yes, I am satisfied". The same, in our considered opinion, could not be regarded as a valid satisfaction as it does not reflect due application of mind of the sanctioning authority before granting satisfaction. This cryptic noting only leads to the inescapable conclusion that there was, in reality, no independent application of mind by the sanctioning authority while according approval in terms of section 151 of the Act. This clearly vitiates the purpose behind the inbuilt safeguards and checks provided by the statute on exercise of powers by the ld AO u/s 147/148 of the Act. It is trite law that the sanctioning authority is expected to judiciously*

review and then record objective satisfaction which is conspicuously absent in the present case. Hence it could be safely concluded that the sanction in terms of section 151 of the Act had been accorded in a mechanical manner without application of mind. Reliance in this regard was rightly placed on the decision of the Hon'ble Apex Court in the case of Chhugamal Rajpal (supra) wherein it was held that :—

> *"When this appeal came up for hearing on the last occasion, as we found the affidavit filed by the Income-tax Officer to be vague and indefinite, we directed the learned counsel for the department to produce before us the records of the Income-tax Officer to show that the Income-tax Officer had complied with the requirements of section 148 and section 151(2) of the Act. When the appeal was taken up for hearing on the 18th January, 1971, only the report submitted by the Income-tax Officer to the Commissioner and the order of the Commissioner was produced. The order sheet recording the reasons of the Income-tax Officer as required by section 148(2) was not produced. Here in below, we have set out the report of the Income-tax Officer as well as the order of the Commissioner:*
>
> *"Report in connection with the starting of proceedings under section 147 of the Income-tax Act, 1961.*

	Name of district		
	Ward or Circle.....	*A-Ward, Muzaffarpur*	
	G.I.R. No.	*303-C.*	
1.	*Name and address of the assessee*		*M/s. Chugamal Rajpal, Muzaffarpur*
2.	*Status*	*—*	*R.F.*
3.	*Assessment year for which notice under s. 148 is proposed to be issued.*	*—*	*1960-61.*
4.	*Whether it is a new case or one in which reassessment (or recomputation) has to be made.*	*—*	*Reassessment.*
5.	*If a case of reassessment (or re-computation) the income (or loss or depreciation allowance) origin ally assessed/determined.*	*—*	*Rs. 73,604*
6.	*Whether the case falls under cl. (a) or (b) of s. 147.*	*—*	*147(a)*
7.	*Brief reasons for starting proceedings under s. 147 (indicate the items which are believed to have escaped assessment.)*	*—*	*Kindly see overleaf (Sd.) S.P. Chaliha, I.T.O., 30-4-66 A-Ward, Muzaffarpur.*
8.	*Whether the Commissioner is satisfied that it is a fit case for*		*Yes (Sd.) K. Narain, 13-5-66. Commissioner of*

	the issue of notice under section 148.		*Income-tax, Bihar and Orissa, Patna.*
9.	*Whether the Board is satisfied that it is a fit case for the issue of notice under s. 148.*		*Secretary, Board of Revenue.*

During the year the assessee has shown to have taken loans from various parties of Calcutta. From D.I.'s Inv. No. A/P/Misc. (5) D.I./63-64/5623 dated August 13, 1965, forwarded to this office under C.I.T., Bihar and Orissa, Patna's letter No. Inv. (Inv.) 15/65-66/1953-2017 dated Patna September 24, 1965, it appears that these persons are name-lenders and the transactions are bogus. Hence, proper investigation regarding these loans is necessary. The names of some of the persons from whom money is alleged to have been taken on loan on hundis are:

1. Seth Bhagwan Singh Sricharan.

2. Lakha Singh Lai Singh.

3. Radhakissen Shyam Sunder.

The amount of escapement involved amounts to Rs. 1,00,000.

Sd/-.

S.P. Chaliha, 30-4-66.
Income-tax Officer,
A-Ward, Muzaffarpur."

In his report the Income-tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under section 148. The material that he had before him for issuing notice under section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the Commissioner of Income-tax, Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name-lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of section 151(2). What that provision requires is that he must give reasons for issuing a notice under section 148. In other words he must have some prima facie grounds before him for taking action under section 148. Further his report mentions : "Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under section 148.

Before issuing a notice under section 148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or clause (b) of section 147 are satisfied, the Income-tax Officer has no jurisdiction to issue a notice under section 148. From the report submitted by the Income-tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he, as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either clause (a) or clause (b) of section 147. Therefore, he could not have issued a notice under section 148. Further, the report submitted by him under section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance.

In the result this appeal is allowed, the order of the High Court is set aside and the impugned notice quashed. The respondent No. 2 shall pay the costs of the appellant both in this court and in the High Court. "

We find that similar decision was rendered by Hon'ble Madhya Pradesh High Court in the case of S. Goyanka Lime & Chemicals Ltd. (supra), wherein the Special leave petition preferred by the revenue was dismissed by the Hon'ble Apex Court in S.

Goyanka Lime & Chemicals Ltd. (supra). Respectfully following the said decisions, the reopening of assessment deserves to be declared as void ab initio for improper sanction u/s 151 of the Act also.

4.10. *Since reopening of assessment is quashed for more than one reason as enumerated above, we do not deem it fit to address the other legal issues raised by the ld AR as they would be purely academic in nature and hence they are left open. Accordingly , the cross objections raised by the assessee are allowed in view of the abovementioned terms.*

10. Further we find that the *Hon'ble Madhya Pradesh High Court in the case of CIT vs S Goyanka Lime & Chemicals Ltd reported in 56 taxmann.com 390 (MP HC)* , it was held that where the Joint Commissioner of Income Tax recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s 148 of the Act, reopening of assessment was held to be invalid. It is pertinent to note that the Special Leave Petition (SLP) preferred by the revenue against this judgement was dismissed by the *Hon'ble Supreme Court in 64 taxmann.com 313 (SC)*.

11. Similar view was taken by the Hon'ble Jurisdictional High Court in the case of PCIT vs Pioneer Town Planners (P) Ltd reported in 465 ITR 356 (Del) .

12. In view of the aforesaid observations, we have no hesitation to conclude that various deficiencies as emphasized supra in the reasons recorded by the ld AO clearly depict non-application of mind by the ld AO thereby becoming fatal to the formation of belief per se on his mind that income had escaped assessment and these deficiencies not being corrected or rectified by the competent authority while according approval u/s 151 of the Act depicts non-application of mind and grant of mechanical approval u/s 151 of the Act by the competent authority, and consequentially the reopening of assessment deserves to be quashed and is accordingly quashed. Since the reopening itself is quashed by allowing the Rule 27

petition of the assessee, the grounds raised by the revenue on merits need not be adjudicated as it would become academic in nature and hence they are left open.

13. In the result, the appeals of the revenue are dismissed and Rule 27 petitions of the assessee are allowed for all the assessment years under consideration.

Order pronounced in the open court on 16/10/2024.

-Sd/-	-Sd/-
(VIMAL KUMAR)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 16/10/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi