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

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

आयकर अपील सं./ITA No. 1136/JP/2024
निर्धारण वर्ष/Assessment Years : 2010-11

Kushal Chand Patni, SC 1 Ganesh Marg, Goverdhan Path Bapu Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward 6(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARPP 1220 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Ashok Kumar Gupta, Adv.
राजस्व की ओर से/ Revenue by : Sh. Gautam Singh Choudhary, JCIT

सुनवाई की तारीख/ Date of Hearing : 10/10/2024
उदघोषणा की तारीख/Date of Pronouncement: 14/10/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the assessee because the assessee dissatisfied with the order of the Addl. / Jt Commissioner of Income Tax (Appeals), Agra dated 05/07/2024 [for short CIT(A)]. The dispute relates to the assessment year 2010-11. The order passed by ld. CIT(A) because the assessee challenged the finding of an order dated 26.12.2017 passed under section 143(3) r.w.s 147 of the Income Tax Act, [for short Act] by ITO, Ward-5(4), Jaipur [for short AO].

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

"1. The impugned order U/s 147/143(3) dated 26/12/2017 as confirmed by Ld. CIT(A) (NFAC), Initiation, assessment order as well as complete proceedings in respect thereto are illegal, bad in law for wants of jurisdiction, barred by limitation and various other reasons (grounds), against the provisions and contrary to the lawful procedure and real facts of the case hence complete proceedings and orders including assessment order are liable to be quashed.

2. The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 16,91,100/- made by the Ld. AO on account of Long Term Capital Gain, and also erred without bringing any cogent material and corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense therefore the same may kindly be deleted in toto.

3. The Ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition as made by the Ld. AO without issuing specific show cause notice to the assessee before making such addition hence violation of naturaj justice therefore complete addition should be deleted in toto.

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

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

3. Succinctly, the fact as culled out from the records is that the case of the assessee was selected for scrutiny based on notice issued u/s 148 of the Act on 25.03.2017 (to Sh. K. C. Patni, S/o Sh. Mool Chand Patni, B-121, Mangal Marg, Bapu Nagar, Jaipur, without PAN) and on 27.03.2017 (to Sh. Kushal Chand Patni, SC-1, Ganesh Marg, Goverdhan Path, Bapu Nagar, Jaipur with PAN- AARPP1220E) by ITO, Ward 6(2), Jaipur. Later

on, vide order dated 01.06.2017 u/s 127 of the Act, jurisdiction over the case of Sh. K. C. Patni (i.e assessee without PAN) has been transferred to ITO, Ward-5(4), Jaipur and jurisdiction over the case of Sh. Kushal Chand Patni (i.e. with PAN AARPP1220E) has been transferred to ITO, Ward-5(5), Jaipur. In compliance to notice issued under section 148, Sh. K.C. Patni has filed ITR by declaring income of Rs 1,01,290/-on 19.08.2017 and submitted it before ITO, Ward-5(4), Jaipur on 23.10.2017. Notice under section143(2) & 142(1) of the 1.T. Act 1961 issued on 23.10.2017. Later on, it was brought in knowledge that proceedings u/s 148 in the case of same assessee are also under progress with ITO, Ward-5(5), Jaipur. Hence, the case was discussed with ITO, Ward-5(5), Jaipur and he transferred the said record to the AO, because the PAN of assessee was lying with ITO, Ward-5(4), Jaipur. As per records the reasons recorded for re-opening the case in both the folders was that the assessee during the year under consideration, made cash deposit aggregating to Rs. 7,50,000/- with a banking company but he has not filed return of income for the year under consideration and assessee also sold the immovable property at Rs. 13,75,000/- However, the sub-registrar has valued at Rs. 16,91,100/- for the purpose of charging stamp duty.

3.1 In the re-opened proceeding the assessee has filed the return of Income declaring an income of Rs. 1,01,290/- as on 19.08.2017. As per information available on record, the assessee has sold an immovable property at Rs. 13,75,000/- but for stamp duty purpose, it was valued at Rs. 16,91,100/-. In this regard, assessee was asked to state his case with regard to applicability of capital gain on sale of immovable property. After repeated opportunities assessee vide letter dated 09-11-2017 stated that "two registries got made by me on 06.10.2009 & 21.10.2009 as power of attorney holder of M/s Hi Rise Developers plot no.- C-115, Savitri Path, Jaipur and the sale proceeds thereof was accounted for with books of M/s Hi Rise Developers." As per assessee's contention, he was asked to furnish the copy of power of attorney and other relevant documents to justify his claim as mentioned in his letter dated 09.11.2017, but assessee neither furnished any document nor any reply to justify his claim. Therefore, a show cause notice was given to the assessee on 13.12.2017 to furnish the requisite details by 18.12.2017. In compliance to said show cause assessee furnished a reply dated 18.12.2017, which was received by AO on 19.12.2017 by speed post. On examination of said reply, it has been noticed that assessee relied upon the facts mentioned in his letter dated 09-11-2017 and also mentioned that he is trying his best get the copy of

said registered documents, but till date no such details have been filed by the assessee. Hence, in the absence of any of the supporting documents, the entire sale receipts of Rs. 16,91,100 (i.e. DLC Rate) is treated long term capital gain in the hands of assessee and same was added to his total income for the year under consideration.

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

> "5. Decision
> I, have carefully gone through the facts of the case and grounds of appeal submitted by the appellant. Moreover, all notices were duly served upon the appellant through email. The appellant opted not to respond to the above notices for the reason best known to him. No documents were produced before me on ITBA in support of his grounds of appeal or to rebut the assessment order despite being given sufficient opportunities.
> In view of the above facts and circumstances, it is clear that the appellant is not interested in pursuing the present appeal on merits and therefore in absence of any evidence to rebut the assessment order, the assessment order is confirmed and accordingly the appeal is dismissed. Hence all grounds of appeal raised by the appellant are dismissed.
> 6. In result, the assessment order is confirmed."

5. As the assessee did not find any favour, from the appeal so filed before the ld. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the ld. AR of the assessee, has filed the

written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

"In this matter it is pertinent to mention that the assessee was partner in the firm named M/s Hi Rise Developers since 31/08/1995. The income of the assessee for the AY 2010-11 was below taxable limit, hence, he did not file the income tax return.

Further, the case of the assessee was selected for scrutiny and the notice u/s 148 of the act issued on 25.03.2017, although, the same has not been served to the assessee and it is undisputed fact.

Further, in continuation of the earlier notice u/s 148 a new notice u/s 148 of the act had been issued to the assessee on 11/08/2017.

In response to the notice u/s 148 the assessee filed return of income dated 19/08/2017 declaring income of Rs. 101290/- further the notice u/s 142(1) and 143(2) had been issued and the same has been duly replied by the assessee.

Subsequently the Ld. AO passed an assessment order dated 26/12/2017 by making addition of Rs. 16,91,100/- on account of LTCG on sale of property.

Further, the assessee had challenged the assessment order dated 26/12/2017 before Ld. CIT and the same was decided by the Ld. CIT vide order dated 05/07/2024 in ex-party.

The assessee being aggrieved by the order of Ld. CIT preferred this instant appeal by raising following grounds:

Grounds of appeal;

1. The impugned order U/s 147/143(3) dated 26/12/2017 as confirmed by Ld. CIT(A) (NFAC), Initiation, assessment order as well as complete proceedings in respect thereto are illegal, bad in law for wants of jurisdiction, barred by limitation and various other reasons (grounds), against the provisions and contrary to the lawful procedure and real facts of the case hence complete proceedings and orders including assessment order are liable to be quashed.

2. The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs. 16,91,100/- made by the Ld. AO on account of Long Term Capital Gain, and also erred without bringing any cogent material and corroborative evidence and without considering the materials and explanations available on records in their true perspective and sense therefore the same may kindly be deleted in toto,

3. The Ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition as made by the Ld. AO without issuing specific show

cause notice to the assessee before making such addition hence violation of naturaj justice therefore complete addition should be deleted in toto.

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

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

Submission;

Ground No. 1:

A. Notice u/s 148 of the act not served to the assessee

In this case it is pertinent to mention that the Ld. AO issued a notice u/s 148 of the act to the assessee on 25.03.2017 at the address "B-121, Mangal Marg, bapu Nagar, Jaipur".

However, the same has not been served to the assessee and returned back to the Ld. AO. And this is undisputed fact.

Further, in continuation of the earlier notice u/s 148 a new notice u/s 148 of the act had been issued to the assessee on 11/08/2017 at the address B-121, SC-1, Ganesh Marg, Goverdhan path, Bapu Nagar, Jaipur, wherein it was admitted by the Ld. AO that the notice dated 25.03.2017 had been return to the Ld. AO. (Refer PB 8).

The notice u/s 148 dated 11/08/2017 served to the assessee and in response to the assessee filed his return of income.

It is pertinent to mention that the notice u/s 148 dated 11/08/2017 is time barred as per clause (b) of sub-section (1) of section 149 as more than six years have elapsed from the end of the relevant assessment year.

Further, it is well settled law that the reassessment proceeding is invalid if notice u/s 148 of the act does not serve to the assessee.

Our aforesaid view is supported by the following judgements:-

Jurisdictional ITAT

In the matter of Mohammed Sabir Babubhai Shaikh ITA No. 687/JP/2023 dated 05/06/2024;

"11. We have heard the rival contentions and perused the material placed on record and gone through the judicial decision cited to drive home to the

contentions so raised. First, we take up additional ground challenging the validity of the notice issued u/s. 148 of the Act. The brief facts as emerges Mohammed Sabir Babubhai Shaikh vs. ITO from the records is that the assessee has challenged that the issue of notice u/s. 148 to him on 20.07.2016 being barred by limitation and is beyond the time for which the notice can be issued. The assessee also submitted that the notice alleged to have been issued within the time i.e. on 14.03.2016 was never served to the assessee. This fact is clear from the remand report submitted by the ld. AO. Even the ld. DR, not controverted the facts placed on record in the form of remand report wherein the it is transpire that the notice u/s 148 was issued to the assessee on 18.03.2016. The address mentioned in the notice though the same, but the city was instead of Ahmedabad written as Jaipur. Thus, that notice issued in March was not served and received back from the post as unserved. The present assessment year is 2009-10 and as per provisions of section 149 the last date for issuance of section 148 of the Act in the case of the assessee was 6 years from the end of the relevant assessment year which in this case expires on 31st March, 2016 thus as it clearly evident from the record that the notice u/s 148 though issued on 20.07.2016 is barred by limitation. The assessee cited the judgment of CIT Vs. Dr. Ajay Prakash [42 taxmann.com 387 (Allahabad)] wherein the court has held as under :

"6. We have examined the findings and do not find any good reason to disagree with the findings of CIT (A) and ITAT in which they have held that notices were sent at a wrong address. The finding recorded by Tribunal in para 3 of the order is quoted as under:--

"Here we are concerned only with the valid service of a notice issued u/s 148 of the Act. The invalidity of the notice issued under Section 148 renders the entire reassessment proceedings as null and void whereas non service of a notice issued u/s 148 renders the assessment framed as bad in law. in this case there is no doubt that notice u/s 148 was served on an incorrect address and against which the explanation of the department is that the address of the assessee is well known and the Inspector of the department had gone to a correct address to serve this notice, is not tenable in the eyes of the law when the record reveals that the notice was never served upon the assessee. A notice issued u/s 142 (1) was sent back by Shri Alik Farsaiya, the legal consultant on the reasoning that the notice did not belong to any of his clients. Another notice, allegedly, sent and received by Shri Mahesh, the alleged employee of Dr. Ajay Prakash, when it is found that he was not an employee of the assessee, cannot be said to be duly served. The entire records were produced before the ld. CIT (A) and he found the above contention of the assessee to be correct. Unless a particular person is authorized to receive a notice as his agent, any notice served or received by him would not bind the assessee. In this case, nobody participated in the re-assessment proceedings and the objection regarding the service of notice was taken before ld. AO himself. Therefore newly inserted provisions of Section 292-BB would also not help the department. This is trite law that unless a valid notice is served upon the assessee any reassessment framed has to be quashed. In this regard, the binding decision of jurisdictional high court in the case of Madan Lal Agrawal v. CIT 144

ITR 745 (Ald), inter alia, is relevant and can be cited as relevant decision, being that of the jurisdictional High Court. The ld. AO has refrained from sending his comments even in his reply in remand report despite the fact it was sent to him with a specific direction by the ld. CIT (A) and therefore it is confirmed on record that the AO had nothing to say in the matter. Since the notice was not issued on the known address of the assessee and there being no valid evidence of proper service of this notice, the impugned order passed by the ld. AO becomes bad in laws. Therefore, the ld. CIT (A) has correctly quashed the impugned assessment order. Hence, we cannot allow the appeal of the Revenue and the same is hereby dismissed."

7. The findings recorded by the Income-tax authorities that the notice was sent on wrong address and that the person Mahesh alleged to be an employee of assessee was not authorized to receive notice is a finding of fact. We do not find that the questions of law as framed are such that the same are to be admitted."

Since, the fact that the notice issued dated 14.03.2016 is not disputed and the notice dated 20.07.2016 is not as per the limit line prescribed under the Act. Thus, in the light of the discussion so recorded herein above quash the order of the assessment and the legal ground raised by the assessee is allowed. Since we have decided the appeal of the assessee on legal ground, the other grounds on merits of the case are not required to be adjudicated upon as they become infructuous.

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

Order pronounced in the open court on 05/06/2024."

In the matter of Girirajkripa Developers Private vs Ito Ward 3 (2)Hon'ble ITAT Jaipur on 11 September 2020 held that:

"From the entire crux of the matter, we found that the revenue has failed to bring on record any positive evidence to prove that the notice U/s 148 of the Act was served upon the assessee whereas the assessee has successfully placed on record letter dated 07/11/2017 issued by the department wherein it has no where been mentioned that the notice U/s 148 was ever served upon the assessee. In view of the above facts and circumstances, we can safely conclude that there was no 'proper service' of notice U/s 148 of the Act was effected in the present case before completion of reassessment u/s 147 r.w.s 143(3). Therefore, we set aside the orders of the lower authorities and quash the proceeding U/s 148 of the Act. This ground of appeal is allowed."

In the matter of ITO Jaipur vs Mahla Real Estate Pvt Ltd Hon'ble ITAT Jaipur on 23 January 2020 held that:-

"9.1. Since as per the facts, no notice under section 148 of the Act was validly served upon the ssessee on 14.03.2014, therefore, the AO could not have assumed the jurisdiction to assess the income of the assessee without authority of

law as we are of the considered view that non service of notice issued under section 148 of the Act is a jurisdictional issue and is not a mere procedural irregularity. Thus the ld. CIT (A), in our view has rightly quashed the order of assessment by holding it without jurisdiction and bad in law."

We have also relied on the following judgements:

Ø Commissioner of Income-tax (Central)-I v/s Chetan Gupta (DELHI HC Dated 15/09/2015)

Ø Principal Commissioner of Income-tax v/s Atlanta Capital (P.) Ltd. (Supreme Court Dated 07/01/2020)

Thus in view of the aforementioned judgement we submit that the assessment order is liable to be set aside.

B. Mechanical sanction

In this case it is pertinent to mention that the sanction given by the PCIT-II , Jaipur was mechanical as mere phrase 'Yes' having been appended as approval. (refer PB 7)

And such sanction is not proper approval in the eyes of law.

Our aforesaid view is supported by the following judgements:-

In the matter of "Shri Anshuman Singh" ITA No. 733 & 739/JP/2023 dated 10/04/2024 Honble ITAT Jaipur held as follows:-

"We have heard both the parties and perused the materials available on record. It is noted from the assessment order that the AO on the basis of information available in ITS of the assessee made two additions i.e. Rs.50,15,829/- and Rs.13,36,329/- by observing at para 3 & 4 of his assessment order dated 30-11-2017 u/s 147 r.w.s. 144 of the Act. However, in first appeal, the ld. CIT(A) has dismissed the appeal of the assessee on the ground of non-appearance and not controvering the order of the AO. The moot question raised by the ld AR of the assessee is that order passed by the AO is illegal and bad in law and it lacks jurisdictional error on the point of no satisfaction of competent authority. The Bench has meticulously gone through the orders of the lower authorities and taken in the consideration the oral arguments advanced by the ld. AR of the assessee encountering the assessment order as invalid and beyond jurisdiction. It is noted on perusal of the reasons recorded and approval u/s 151 by the competent authority indicates that Pr. CIT has not applied his mind on the reasons recorded by lower authorities and he has only expressed or mentioned 'Yes' on the reason forwarded (PBP-5). It is worthwhile to mention that as per decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 where in it has been held that Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' or

'Yes' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up before him. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed. It is also noted that the ld. AR of the assessee has advanced his paper book at Pages 3 to 5 as to reasons recorded for no satisfaction by the ld. Pr. CIT, the satisfaction if any was of the AO, who is not competent in the present case. In the case of N.C. Cables (supra) following case laws were relied therein.

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

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

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

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

TARA ALLOYS LTD. vs. ITO (2018) 63 ITR (Trib) 0484 (Delhi) And the ld. CIT(A) kept mum on this very legal plea, which shows his contradictory approach.

Therefore the notice, reasons recorded assessment all are the illegal bad void ab-initio and barred by limitation and liable to be quashed.

It is also noted that the Joint CIT has forwarded a letter of consolidated approval of 26 assessee's vide his order 23.03.2017 (PB5A-5C) and this shows as to how the Ld. Pr. CIT has acted in formal way. On inspection of the assessment record, it has also been noticed that there was no approval in original letter or documents and there is no tick on the name of the assessee (vide Sr. No. 13 at PB-5B). It is surprising as to how an approval can be given of all the 26 different assessee's in one documents whereas all are the independent or separate assessee and their reasons are different. Hence in view of the above facts and circumstances of the case the action taken u/s 148 of the Act and consequent proceedings needs to be quashed for which we rely on the following judgements.

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

"19. We have considered the rival contentions of both the parties and perused the material available on record. From perusal of the record, we observed that the A.O. has reopened the case of the assessee for escaping the income of Rs.1,15,00,500/- on account of cash deposit in his bank account and assessee has not filed his return of income and issued notice u/s. 148 of the Act on 29.03.2016 after recording reasons that income of assessee had escaped assessment in the meaning u/s 147 of the Act. Thereafter the AO framed

assessment u/s. 144 r.w.s. 147 of the Act by making addition of Rs.1,15,00,000/- and the ld. CIT(A) upheld the order of AO. Before us the ld. A/R has drawn our attention to the reasons recorded and satisfaction of the Pr. CIT and Addl. CIT placed at page No. 10-11 of the assessee's paper book where the Addl. CIT has mentioned only "Recommended" and Pr. CIT has mentioned only "Yes", which shows no application of mind and proper satisfaction by them on the reasons recorded by the AO. In this regard, we draw strength from the decison in the case of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 Del HC wherein it has been held that Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

We also draw strength from the decision in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP) wherein it has been held that While according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied" If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 147, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

The ld. A/R has also drawn our attention on the approval of the Pr. CIT placed at page Nos. 7-8 of the paper book and also from the assessment record placed before us, we found that he has given one consolidated approval of 56 different assessee's in one shot through one letter dated 29.03.2016 which is even not signed by him but signed by ITO (T&J), who is not a competent authority to give and signed the approval letter, which shows how the PR. CIT has acted in very formal way. When we examined of the assessment record, it is gathered that the approval was in photocopy and not in original or there was no original letter or documents of approval. Further the name of the assessee was at Sr. 46 out of 56 assessee's and even there was no tick on the name of the assessee in the approval list, which creates a doubt that the approval has been received before the issue of notice u/s 148 of the Act as the approval letter lying on the file after issuance of the notice u/s 148 or not before or attached with the notice u/s 148 and may reach in the office of the AO after 31.03.2016. Thus, in our view, approval u/s 151 cannot be given of all the 56 assessee's in a single documents, as all assessee's are the independent and separate also the reason recorded are different in each case and it is not possible that there shall be same reasons. Looking to these facts and record it is also held that the procedures and way of

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

Once, we quash the proceeding U/s 147 of the Act, therefore, there is no need to adjudicate the other grounds raised in this appeal."

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

3.1 As regards the penalty appeal of the assessee, it is not required to deal with for the reason that when the quantum appeal has been allowed then consequently penalty order of the ld. CIT(A) is infructuous

4.0 In the result, both appeals of the assesee are allowed Order pronounced in the open court on 10 /04/2024."

In Principal Commissioner of Income Tax v. N. C. Cables Ltd; [2017] 88 taxmann.com 649/391 ITR 11 (Delhi), therein the reasons recorded for re-opening of assessment under Section 148; after the expiry of 4 years, which required approval of the Commissioner of Income Tax, when put up to the approving authority, was approved by a single word i.e. 'Approved'. The mere expression 'approved' denotes nothing, was the finding of the High Court of Delhi.

Principal Commissioner of Income Tax v. Pioneer Town Planners Pvt. Ltd.; [2024] 160 taxmann.com 652/465 ITR 356 (Delhi) also indicated the mere phrase 'Yes' having been appended as approval which was held to be mechanical, on the face of it. The question dealt with was as to whether simply penning down a 'Yes' would be requisite satisfaction, as per Section 151 of the Act. N. C. Cables (supra) was relied on to find the approval to be not in consonance with the approval required under Section 151.

Chhugamal Rajpal v. S. P. Chaliha and Other; [1971] 79 ITR 603 (SC) was a case in which it was found that even the Income Tax Officer had not come to a prima facie conclusion that the loan transactions to which he referred were not genuine transactions and he appeared to have entertained only a vague feeling that they

might be bogus transactions, which conclusion did not fulfill the requirement of Section 151(2). It was held that the Assessing Officer has to give reasons for issuing a notice under Section 148 and there should be some prima facie grounds before him, for taking such action. Therein, the reasons recorded by the Income Tax Officer that proper investigation regarding some loans is necessary, was itself faulted. The conclusion of the Assessing Officer was only that there is a case for investigation as to the truth of the alleged transactions, which was held to be not a reason to issue notice under Section 148. Further, the Commissioner had noted the word 'Yes' as an approval without anything more.

C. Reasons to believe are arbitrary, vague and insufficient

In this case it is pertinent to mention that the reason to believe formed by the Ld. AO is arbitrary, vague and insufficient as the information on the basis of which the reason to believe was formed was not pertaining to the assessee directly.

As per the form for recording reason to believe (annexed at PB "6-7") the Ld. AO received the information that for the year under consideration the assessee has sold the immovable property at Rs. 13,75,000/- and the sub registrar has valued the same at Rs. 16,91,100/- for the purpose for charging stamp duty.

In this regard we submit that the assessee have not sold any property of his own, whereas the property in question was belonged to the partnership firm (deed annexed at PB "20-22") of the assessee named M/s Hi Rise Developers. And the assessee merely executed the questioned transaction of sale as power of attorney holder.(POA annexed at PB "23-26")

Thus it is clear the Ld. AO had no cogent and concrete information to form reason to believe that any income of the assessee had escaped the assessment.

Further there is no live nexus or direct link between the information received and reason formed.

To support our contention we are relaying on the following judgement:

In the matter of ITO v. Lakhmani Mewal Das [1976]103 ITR 437(SC); [1976] 3 SCC 757 (paras 11 and 12), the hon'ble Supreme Court has held as under (page 448 of 103 ITR):-

"As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every

material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."

Ground No. 2;

Apropos to this ground we submit that the Ld. AO made addition of Rs. 16,91,100/- on account of Long Term Capital Gain arise from alleged sale of following property :-

1. Stilt Floor, Car Parking, C-115 Hi Rise Apartment C-115 Bapu Nagar Jaipur on 10/06/2009.

2. Basement Floor, C-115 Hi Rise Apartment C-115 Bapu Nagar Jaipur On 21/10/2009.

In this case it is pertinent to mention that Ld. AO made addition in the hands of the without verifying the seller of the property.

It is pertinent to mention that the above mention property belong to the partnership firm named M/s Hi Rise Developers, wherein the assessee was a partner and the assessee merely executed the sale deed in the capacity of power of attorney holder and the same is axiomatic form the sale deed of the properties. (sale deed annexed at PB "27-40").

The assessee had already disclosed the above mentioned facts to the Ld. AO vide reply date 09/11/2017 annexed at PB "16" and vide reply dated 19/12/2017 annexed at PB "18" .

Thus, we submit that the Ld. AO wrongly made addition in the hands of the assessee for a property which does not belong to him.

Thus we submit that the entire addition made is liable to be quashed.

Furthermore, we want permission from the Honorable Bench to submit a detailed submission later.

Prayer;

Hence in view of above facts submissions and legal position of law, the addition may kindly be directed to be deleted."

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

S. No.	Particular	Page No.	Remarks
1.	ITR With Form in compliance Notice 148	1-3	
2.	Notice Under Section 148 dated 25.03.2017 along with Reasons Recorded and Sanction	4-7	
3.	Notice Under Section 148 dated 11.08.2017	8-9	
4.	Letter for adjournment 12/10/2017	10	
5.	Notice under Section 143(2) dated 23.10.2017	11	
6.	Notice 142(1) 23/10/2017	12	
7.	Letter for adjournment 6/11/2017	13	
8.	Medical Report With Receipts	14-15	
9.	Reply 09/11/2017	16	
10	Notice Under Section 142(1) dated 13.12.2017	17	
11`	Reply 19/12/2017	18	
12	Note sheet	19	
13	Partnership Deed of HIGHRISE DEVELOPPERS	20-22	
14	Copy of Power of Attorney in favour of Assessee	23-26	
15.	Copy of sale deed dated 21/10/2009	27-40	

Case laws relied upon:

S.NO.	PARTICULAR	PAGE NO.
1.	Mohammed Sabir Babubhai Shaikh vs. ITO ITAT JAIPUR Dated 05/06/2024	1-17
2.	M/s Girirajkripa Developers P ltd. Vs ITO ITAT JAIPUR Dated 11/09/2020	18-48
3.	M/s. Mahla Real Estate Pvt. Ltd., Jaipur ITAT JAIPUR Dated 23/01/2020	49-85
4.	ANSHUMAN SINHA VS ACIT, CIRCLE-1, JAIPUR ITAT JAIPUR Dated 10/04/2024	86-96
5.	PCIT V/s M/s Mahla Real Estate Pvt. Ltd., ITAT JAIPUR Dated 09/11/2021	97-99
6.	Income-tax Officer v/s Lakhmani Mewal Das ITAT JAIPUR Dated 30/03/1976	100-109

7. The ld. AR of the assessee fairly admitted that at present the assessee is under bed rest and is having the age of 92 year old. Due to his health issue he has reason not appear as the out of the 4 notice 3 were issued in same months and due to his age he could not verify the online notice being issued. The ld. AR of the assessee submitted that tribunal is very well within their power to dispose off the appeal on merits even though the assessee did not appear before the lower authority as there is no dispute over the facts already on record of assessment folder. The ld. AR of the assessee while arguing the ground no. 1 stated that the notice issued on 25.03.2017 is without quoting of PAN number. Whereas the sanction was also without PAN even thought the revenue was having the PAN number of the firm based on this re-opening was made. So far as the merits of the case the case ld. AR of the assessee submitted the assessee has signed the documents as partner of the firm. The PAN number quoted in the agreement is of the firm, money has been received by the firm and therefore, addition if any is required to be made is to be made in the hands of the firm and not to the assessee.

8. The ld DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the

order of the ld. CIT(A). The ld. DR also submitted that the legal ground has not merits as the subsequently assessee participated in the assessment proceedings. The assessee has not submitted anything in an appeal filed before ld. CIT(A).

9. We have heard the rival contentions and perused the material placed on record. The bench noted that in this case the assessee is running at of 92 years and has reasons for not placing on record the replies to the notices so issued. Considering the aspect of the matter that the assessee should get justice when there is no new material is required to deal with the appeal filed by the assessee and therefore, we decided to deal with the appeal filed by the assessee based on the details placed on record. The bench noted that the case of the assessee was reopened because revenue has the information that the assessee has sold the property at Rs. 13,75,000/-. The sub registrar has valued that property for an amount of Rs. 16,91,000/-. The case of re-opened in this case without quoting of PAN and even the sanction was obtained from the competent authority without PAN. The bench noted from the said sanction that when the revenue was having the deed wherein the PAN number of firm is mentioned as seller how the case can be re-opened in the case where the assessee has acted as

merely Power of attorney holder. The revenue has issued the notice without going into the facts on record and the wrong notice is issued to the assessee even without quoting the PAN number and that notice was came back to the file of the ld. AO and thereafter ld. AO issued another notice dated 11.08.2017 confirming that the notice issued on 25.03.2017 [without PAN] received back and therefore, the same was forwarded with that letter dated 11.08.2017. Since the original notice dated 25.03.2017 was not served within the time frame of six years the reassessment proceeding for A. Y. 2010-11 gets barred by limited on 11.08.2017. The assessee cited various judgment and the same being not countered by the ld. DR on facts. One of the judgment cited was of judgment of CIT Vs. Dr. Ajay Prakash [42 taxmann.com 387(Allahabad) and various judgment of this bench, on being consistent we quash the proceeding and subsequent assessment framed by the ld. AO. Based on this observations ground no. 1 raised by the assessee is allowed. Ground no. 2 on merits and 3 deals that the addition was made without show cause notice does not require our finding as we have quashed the assessment itself. Ground no. 4 being consequential in nature does not require our adjudication. Ground no. 5 being general does not require our adjudication.

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

Order pronounced in the open court on 14/10/2024.

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

जयपुर / Jaipur
दिनांक / Dated:- 14/10/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Kushal Chand Patni, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1136/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar