

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'SMC', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.133/Lkw/2024  
Assessment Year:2011-12

Shri Bhanu Pratap, S/o Shri Bulak Rai, Jaju Nagar, Chomahalla, Baheri, Bareilly. PAN:DNYP3913D	Vs.	Income Tax Officer-2(1) Bareilly.
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

**ORDER**

(A) This appeal vide I.T.A. No.133/Lkw/2024 has been filed by the assessee for assessment year 2011-12 against impugned appellate order dated 20/12/2023 (DIN & Order No.ITBA/NFAC/S/250/2023-24/105816437(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) This appeal has been filed by the assessee, beyond time limit prescribed under section 253(3) of IT Act. As per noting of registry, this appeal is time barred by 24 days. The assessee has submitted application for condonation of delay in filing of the appeal on medical ground, supported by medical certificate; pleading that the delay was unintentional and beyond the control of the assessee and has requested to admit the

appeal for hearing. The learned Sr. Departmental Representative for Revenue did not express any objection to assessee's application for condonation of delay in filing of the appeal. In view of the foregoing, and in specific facts and circumstances of the present appeal before us, the delay in filing of this appeal is condoned; and the appeal is admitted for hearing.

(C) The assessment order in this case was passed on 26/12/2018 u/s 144/147 of the Income Tax Act, 1961 ("IT Act" for short) ex-parte qua the assessee by making addition of Rs.4,27,460/- on account of Long Term Capital Gain. The assessee filed appeal against the assessment order in the office of learned CIT(A). Vide DIN & Order No.ITBA/NFAC/S/250/2023-24/105816437(1) dated 20/12/2023, the assessee's appeal was dismissed by the learned CIT(A). The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 20/12/2023 passed by the learned CIT(A).

(D) At the time of hearing, there was no representative from the assessee's side. In the absence of any representation from assessee's side, we have heard learned Sr. Departmental Representative. He relied on the orders dated 26/12/2018 and dated 20/12/2023 passed by the Assessing Officer and the learned CIT(A) respectively.

(D.1) The first ground of appeal is regarding the jurisdiction of the Assessing Officer to initiate proceedings u/s 148 of the IT Act. The second ground of appeal is regarding validity of reassessment proceedings on the ground that the reasons recorded suffered from infirmities and the belief of the Assessing Officer was erroneous. The aforesaid two issues have been dealt with by the learned CIT(A) in detail in his impugned appellate order

dated 22/12/2023. The relevant portion of the order dated 22/12/2023 of learned CIT(A) is reproduced as under:

**4.0 Submission of the appellant filed during the appellate proceeding is reproduced as under:**

*"The reassessment proceedings in the above mentioned case was completed by the Ld Income Tax Officer Ward 1(1) Bareilly at an income of Rs. 427460/- on account of alleged Long Term Capital gains. The grounds of appeal raised by the assessee read as under-*

- 1. The Learned assessing officer has erred in assuming jurisdiction to initiate the reassessment proceedings u/s 147/148 of the Income Tax Act, 1961.*
- 2. The Learned Assessing Officer has erred in completing the assessment of the assessee at an income of Rs. 427455 while framing assessment u/s 144 r.w.s. 147 of the Income Tax Act 1961, with total disregard to the facts and circumstances of the case.*
- 3. The Learned Assessing Officer has further erred in treating the entire share of the alleged sales consideration of the property at Rs. 427455/- as income of the assessee, with total disregard to the facts and circumstances of the case.*
- 4. The Learned Assessing officer has further erred in not giving the credit for the cost of purchase of the property, while determining the income from Sale of Property, with total disregard to the facts and circumstances of the case.*
- 5. The entire assessment framed u/s 144 r.w.s. 147 of the Income Tax Act is arbitrary, illegal and baseless.*
- 6. The assessee reserves its right to add, amend, alter or delete any ground of appeal at the time of hearing.*

*In regard to the above mentioned grounds of appeal, we would like to give our submissions before your Honour on the following basis. All of them challenge the validity of initiation of reassessment proceedings by the Assessing officer and also the mechanical approval by the superior authorities. The challenge is being made on the following issues :*

- 1. The Sanction accorded by Superior Authorities is Mechanical and thus is no sanction in eyes of law.*
- 2. The Reasons are vague and incomplete*

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The Reasons recorded for reopening the assessment state as under

The assessee has sold an immovable property located at vill jaju nagar, Baheri Bareilly with 10 other persons. The immovable property lies within Municipal limits of Baheri and which is a capital asset within the meaning of section 2(14) of the IT act 1961 further, the assessee was given sufficient time to furnish his explanation but he failed to submit the same. The assessee has not filed his ITR thereby it is evident that the assessee has no intention to declare capital gain on sale of the above capital asset.

As per section 50C of the IT act 1961 the full value of consideration of the immovable property is ₹ 4,702,000 instead of ₹ 2,150,000 received by the assessee. The LTCG is calculated as under-

Full value of consideration	47,02,000
Less indexed cost of acquisition	----
Less Stamp duty borne by the seller	----
Net LTCG	47,02,000
Deduction under section 54F	----
Effective LTCG	47,02,000

1/11th share of the assessee (4702000/11) 4,27,455

In view of the facts and circumstances, information available on record and as for the provisions of section 147 of the income tax act 1961, I have reason to believe that the income to the tune of rupees 427455 being long term capital gain on sale of immovable property has escaped assessment for the year under consideration, i.e. assessment year 2011 - 12. In order to assess LTCG or any other income which comes to the notice of the undersigned during the course of assessment proceedings under this section for assessment year 2011-12, I propose to issue a notice under section 148 of the income tax act 1961.

The reasons do not give credit for the purchase cost of the assessee. No efforts were made by the Assessing officer to arrive at the correct cost of purchase thereby not arriving at the correct capital gains. The reasons state the sales consideration to be the capital gains which by no stretch of imagination can be an acceptable proposition.

The sanction to the issue of notice under section 148 in the instant case was given both by the learned principal Commissioner of income tax Bareilly as well as the additional Commissioner of income tax Bareilly. While according the sanctions u/s 151, the superior authorities stated as under-

**Recording of Sanction by the Additional Commissioner of Income Tax**

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"Having gone through the reasons recorded, I am satisfied that it is a fit case for the issue of notice under section 148"

**Recording of Sanction by the Ld Principal Commissioner of Income Tax**

"I am satisfied on the basis of reasons recorded by the AO that it is a fit case for issue of notice under section 148"

Though the case is sought to be reopened after a period of four years, sanction of the Principal Commissioner of Income Tax Bareilly was mandatory which has been taken by the assessing officer well within time.

On going through the approvals to reopen the assessment given by the learned Commissioner of income tax, it is seen that the same is mechanical in nature and the Commissioner has solely relied upon the reasons recorded by the assessing officer.

The copy of reasons recorded by the AO and approval granted by the Principal Commissioner of Income Tax, wherein the AO has erred in assumption of jurisdiction u/s. 147/148 of the Act on the basis of invalid and mechanical approval granted by the Addl. CIT, Bareilly as "Having gone through the reasons recorded, I am satisfied that it is a fit case for the issue of notice under section 148", which shows that Ld. Addl. CIT has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. Similarly the Ld Principal Commissioner of Income Tax Bareilly has also given a mechanical approval stating as "I am satisfied on the basis of reasons recorded by the AO that it is a fit case for issue of notice under section 148"

It is further stated that this legal/jurisdictional ground is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 21.8.2019 in the case of Gopal Chand Manudhra and Sons; Damyanti Mundhra; Ramdev Mundhra; Shriya Devi Mundhra and Gopal Chand Mundhra vs. ITO, Wards 55(5), New Delhi decided in ITA No. 1375; 1721; 1722; 1523-1524/Del/2019 respectively relevant to assessment year 2011-12 and therefore, it is requested that the same ratio may be followed in the present case and appeal of the assessee may be allowed accordingly by quashing the reassessment proceedings.

Reliance is further placed on the following-

**IDENTICAL SANCTIONS HELD TO BE MECHANICAL BY VARIOUS COURTS**

In the following undermentioned cases, the identical sanctions (as in the case of the assessee) have been held to be mechanical and wherein reassessment proceedings have held to be null and void

1. **Apc Air Systems P.Ltd, New Delhi vs ITO Ward-3(1), ND, ITA 4715/Del/2018**

1. At the time of hearing, Ld. Counsel for the assessee argued only ground no. 2 which is

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legal in nature and drew my attention towards page no. 48-53 of the Paper Book which is a copy of reasons recorded u/s. 148 of the Act alongwith copy of approval granted by the Addl. CIT, Range-3, New Delhi for issuance of notice u/s. 148 of the Act and stated that the AO has erred in assumption of jurisdiction u/s. 147/148 of the Act on the basis of invalid and mechanical approval granted by the Addl. CIT, Range-3, New Delhi wherein it was mentioned "Yes, I am satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act.", which shows that Addl. CIT, Range-3, New Delhi has not recorded proper satisfaction and without application of mind gave the approval in a mechanical manner. She further stated that this legal/jurisdictional ground no. 2 is squarely covered by the decision of the ITAT, SMC, Bench, New Delhi dated 01.03.2018 in the case of Tara Alloys Ltd. vs. ITO Ward 25(1), New Delhi decided in ITA No. 2421/Del/2017 relevant to assessment year 2005-06 and therefore, she requested that the same ratio may be followed in the present case and appeal of the assessee may be allowed accordingly by quashing the reassessment proceedings.....

4.2 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I am of the considered view that approval granted by the Addl. CIT, Range-3, New Delhi is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings issue of notice u/s. 148 of the I.T. Act, 1961 and is not in accordance with section 151 of the I.T. Act, 1961, thus, the notice issued u/s. 148 of the Act is invalid and accordingly the reopening in this is bad in law and therefore, the same is hereby quashed. Accordingly, the legal ground no. 2 raised by the assessee is allowed. Since the other grounds were not raised by the Assessee, the same are dismissed as such. Accordingly, the assessee's appeal is partly allowed.

**1. Dharmender Kumar vs. ITO ITA No. 2728/Del/2018.**

In the instant case a similar and identical legal/ jurisdictional issue has been adjudicated and decided in favour of the assessee. For the sake of convenience, the relevant portion of the findings of the Tribunal in the aforesaid case are reproduced as under:-

"5. I have heard both the parties and carefully considered the case laws and the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act as well as the Paper Book filed by the Assessee containing pages 1-41 of the Paper Book in which he has attached the copy of AIR information; copy of reasons recorded; copy of approval performa u/s. 151; letter dated 26.2.2015 issued by AO; letter dated 12.3.2015 issued by AO; cash flow statement; confirmation from Rama Devi; bank statement of Ram Devi; copy of PAN card of Rama Devi; confirmation from Shyam Sunder; bank statement of Shyam Sunder; copy of PAN card of Shyam Sunder; confirmation from Virender

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Kumar; confirmation from Eshwar Dutt; Confirmation from Dayanand Sharma; jewellery sale bill to assessee; jewellery sale bill to Rohtash (2 in no"s); jewellery sale bill to Kumud; sub. To CIT dated 18.8.17; RR dated 27.10.17; Sub. To CIT(A) dated 7.12.17 (Rejoinder to RR) and Sub. To CIT(A) dated 15.2.2018 and especially the page no. 2- 3 of the Paper Book which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 and for obtaining approval of Addl. CIT, Range-65, New Delhi in which Addl. CIT, Range-65, New Delhi has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961. It is noted that approval u/s. 151 of the Act was granted by the Addl. CIT, Range-65, New Delhi vide Column No. 11 by mentioning as under:-

**"Yes, I am satisfied on the reasons recorded by AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."**

5.1 After perusing the aforesaid remarks of the Addl. CIT, Range-65, New Delhi, I find that **the approval granted by the Addl. CIT, Range-65, New Delhi is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Addl. CIT, Range-65, New Delhi for reaching to the satisfaction for granting approval.** Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. My aforesaid view is fortified by the following decisions:-

**(A)United Electrical Company (P) Ltd. Vs. CIT & Ors. 258 ITR 317 (Del.)**

In this case, approval by the Addl. CIT u/s. 151 was given in the following terms:-

**"Yes, I am satisfied that it is a fit case for issue of notice u/s. 148 of the Income Tax Act."**

Analyzing, the above satisfaction/approval, it has been held that the CIT is required to apply his mind to the proposal put up to him for approval in the light to the material relied upon by the AO. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case, there has been no application of mind by the Addl. CIT before granting the approval. (Para 19).

**(B) Hon"ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon"ble High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime**

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**& Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).**

"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee)."

**3. CIT Vs S Goyanka Lime & Chemicals Ltd. 56 taxmann.com 390 (MP)**

**HELD**

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so **"Yes, I am Satisfied"**. In the case of Arjun Singh Vs Asstt. DIT (2000) 246 ITR 363 (MP), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format **"Yes, I am satisfied"** which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material

**8. 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 148, 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."**

**4. United Electrical Co. Pvt. Ltd. Vs CIT 257 (DEL HC)**

**HELD**

"the proviso to sub-section (1) of section 151 of the 10 Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some inbuilt safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval

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for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. **The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".**

The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO.

**5. Pr CIT Vs NC Cables Ltd. in ITA No. 335/2015 (Del HC)**

HELD-

11. Section 151 of the Act clearly stipulates that the CIT(a), 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(A) 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."**

**6. Jaipal Vs Income Tax Officer (ITAT Del) in ITA no. 2750/Del/2019**

I have heard both the parties and carefully considered the case laws and the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act placed at page no. 11 of the Paper Book, which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 for obtaining approval of Pr. CIT, Karnal who has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961 vide Column No. 12 by mentioning as under:-

**"Yes, it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."**

4.1 After perusing the aforesaid remarks of the Pr. CIT, Karnal, I find that the approval granted by the Pr. CIT, Karnal is a mechanical and without application of mind,

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for action under section 147 mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. **The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".**

The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO.

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11. Section 151 of the Act clearly stipulates that the CIT(a), 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(A) 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."**

**6. Jaipal Vs Income Tax Officer (ITAT Del) in ITA no. 2750/Del/2019**

I have heard both the parties and carefully considered the case laws and the relevant documents available on record especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act placed at page no. 11 of the Paper Book, which is a copy of performa for recording the reasons for initiating proceedings u/s. 148 for obtaining approval of Pr. CIT, Karnal who has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961 vide Column No. 12 by mentioning as under:-

**"Yes, it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."**

4.1 After perusing the aforesaid remarks of the Pr. CIT, Karnal, I find that the approval granted by the Pr. CIT, Karnal is a mechanical and without application of mind,

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*which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Pr. CIT, Karnal for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. The judicial decisions relied upon by the Ld. Sr. DR, have been duly considered. In my considered view, I do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asst. Year in dispute is bad in law and deserves to be quashed.*

**7. Shri Jaysukhbhai Nanubhai Dudhat Ankleshwar Vs Ito Ward 3 Bharuch ITA 2677 and 2871/Ahd/2013**

**HELD**

Hon<sup>ble</sup> Gujarat High Court in the case of Adani Ports & Special Economic Zone (supra) has considered the issue wherein the Hon<sup>ble</sup> Court has taken into consideration section 151 of the Income Tax Act, and thereafter expounded the meaning and scope of conditions enumerated in sections 147, 151 and 148. The discussion made by the Hon<sup>ble</sup> High Court reads as under:

"9. The present being a case of issuance of notice after four years from the end of relevant assessment year, and therefore, proviso to sub-section (1) of Section 151 would apply. In such a case, irrespective of the level of Assessing Officer issuing notice for reopening, a pre-condition of the Chief Commissioner or the Commissioner being satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issuance of such notice must be satisfied. This additional safe-guard not only involves the application of mind on the part of the Chief Commissioner or the Commissioner but his satisfaction, which would be based on the reasons recorded by the Assessing Officer, and such satisfaction should be that it is a fit case for issuance of the notice.

10. Admittedly, in the present case, these requirements have not been fulfilled. What the Revenue however argues is that when the Commissioner had perused the suggestions of the audit party, the same should be seen as substantial compliance of such a requirement. 11. We are afraid, such a contention cannot be accepted. Sub-section (1) of Section 151 of the Act is an important procedural safeguard against arbitrary exercise of power of issuing a notice for reopening of assessment previously framed after scrutiny. Proviso to sub-section (1) of Section 151 is applicable, where such notice is issued after expiry of four years from the end of relevant assessment year. In such a case, the requirement of satisfaction to be recorded is that of the Chief Commissioner or Commissioner. Such requirement cannot be seen as technical. Compliance of such

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**requirement is therefore, necessary before issuance of notice under section 148 of the Act. Delhi High Court in case of CIT v. SPL's Sidhartha Ltd. [2012] 345 ITR 223/204 Taxman 115 (Mag.) 17 taxmann.com 138 (Delhi)held and observed as under :-**

*"Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now well-settled. In Sheo Narain Jaiswal v. Income-tax Officer [1989] 176 ITR 352 (Patna), it was held :*

***"Where the Assessing Officer does not himself exercise his jurisdiction under section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the condition precedent."***

12. Under the circumstances, only on this ground, impugned notice dated 21st March 2012 is quashed."

**8. Sh. Rajendra Agrawal, New Delhi vs Ito, New Delhi on 2 December, 2019 I.T.A. No. 4624/Del/2014**

5.3 Since in the present case the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by mentioning only that "ON THE BASIS OF 'A' ABOVE, I AM SATISFIED", in the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl. Commissioner of Income Tax, Range-23, New Delhi, a copy thereof is placed at page no. 1 of the Paper Book, and therefore, the legal issue in dispute is squarely covered by the aforesaid finding of the Tribunal, hence, respectfully following the aforesaid precedent i.e. ITAT, SMC, Bench, New Delhi decision dated 21.8.2019 in the case of Gopal Chand Manudhra and Sons; Damyanti Mundhra; Ramdev Mundhra; Shriya Devi Mundhra and Gopal Chand Mundhra vs. ITO, Wards 55(5), New Delhi decided in ITA No. 1375; 1721; 1722; 1523-1524/Del/2019 respectively relevant to assessment year 2011-12, the reassessment is hereby quashed and accordingly the additional ground no. 2 is allowed. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

The Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha & Ors (supra) has held that where the commissioner had mechanically recorded permission and the important safeguards provided in the section 147 and 151 were lightly treated

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by the officer and the commissioner, the notice issued u/s 148 was held as invalid. The various other decisions relied on by the Id. counsel for the assessee in the paper book also support his case. Since, in the instant case, admittedly, the Id. PCIT while granting approval has simply mentioned "Yes. I am satisfied" therefore, following the decisions of the various tribunals and High courts and Apex Court on this issue which are binding, the reassessment proceedings may kindly be treated as not in accordance with the law since the approval has been given in a mechanical manner without due application of mind by the approving authority.

Since, in the instant case, both the approving authorities have given approval in a mechanical manner without due application of mind, therefore, such reassessment proceedings have to be treated as not in accordance with law and deserve to be quashed.

It has also been laid down that whenever any statutory obligation is cast upon any authority, such authority is legally required to discharge the obligation by application of mind. At this juncture, it is pertinent to mention that the **Hon'ble Apex Court in the case of Sahara India (Firm) v. CIT & Anr. (2008) 216 CTR (SC) 303 : (2008) 7 DTR (SC) 27 : (2008) 300 ITR 403 (SC)**, while discussing the requirement of prior approval of Chief Commissioner or Commissioner in terms of provision of section 142(2A) of the Act, opined that the requirement of previous approval of the Chief Commissioner or Commissioner in terms of said provision being an inbuilt protection against arbitrary or unjust exercise of power by the assessing officer, casts a very heavy duty on the said high-ranking authority to see it that the approval envisaged in the section is not turned into an empty ritual. The Hon'ble Apex Court held that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case.

**9. German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom).**

CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable.

**10. ITAT Delhi in ITO 10(3) v. Direct Sales (P) Ltd. 2015.**

Merely stating "Approved" is not sufficient sanction of CIT and renders reopening void. Commissioner has to apply mind and due diligence before according sanction to the reasons recorded by the AO.

**11. DCIT v. Dharampal Satyapal Ltd. (2006) 175 TTJ 663:130 DTR 241(ITAT Delhi)**

Additional Commissioner of Income-tax and the Commissioner of Income-tax having simply written "yes, I am satisfied" on the same while according sanction under section 151, it does not in any manner shed any light as to whether there was any application of mind at all by the two senior officers.

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Therefore, sanction granted by the Commissioner of Income-tax is invalid and consequently, the notice under section 148 issued by the tax is invalid and consequent, the notice under section 148 issued by the Assessing Officer is bad in law. (Assessment Year 2004-05).

**Other Reliances :**

**Blue Chip Developers (P) Ltd. Vs ITO (ITAT Delhi) ITA 1061/Del/2019**

**ITO Vs Virat Credit & Holdings Pvt.Ltd (ITAT Delhi) ITA 89/Del/2012**

*Sunil Agrawal vs. ITO, in ITA No. 988/Del/2018.*

*Hari Ram Gupta vs. ITO ITA No.5111/Del/2013.*

*Tara Alloys Ltd. Vs. ITO in ITA No.2421/Del/2017*

*Bijendra Kumar Mathura vs ITO,-1 (3)(1),Mathura ITA Nos.409 & 419/Agra/2017*

**The above issue has now been confirmed by the Apex Court in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon<sup>ble</sup> High Court of Madhya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP) wherein the Honourable Bench of Apex Court held as under-**

*"Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee)."*

**From the above judgment of the Supreme Court and various other courts relied upon by the assessee it is prayed that the reassessment proceedings may kindly be held to be void and illegal.**

**THE REASONS RECORDED IN WRITING ARE DEFECTIVE AND NO WORKING OF CAPITAL GAINS HAS BEEN ARRIVED AT. THE SALES CONSIDERATION HAS BEEN ERRONEOUSLY TREATED AS ESCAPED INCOME WHICH IS NOT PERMISSIBLE IN LAW**

*The second issue on which the reassessment proceedings are being challenged is the fact that the Assessing officer has failed to work out the correct quantum of income escaping assessment. How can the Sales consideration of the property be the entire income to have escaped assessment. The Assessing officer has not applied his mind as to when was the property purchased and what should be the correct amount of income in the form of Short term or long term capital gains which*

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has escaped assessment No independent enquiries have been conducted by the Assessing officer to arrive at the correct cost of property sold by the assessee. No efforts have been done by the Assessing officer and no enquiries have been conducted by the Assessing officer clearly showing no application of mind. It is very clear from the reasons recorded that the Assessing officer has sought to tax the entire share of sales consideration of the assessee which by no stretch of imagination is possible. It is the duty of the Assessing officer to work out the correct quantum of income that has escaped assessment.

**The ITAT Delhi in an identical case of Shri Mohd. Yameen Munna, Ghaziabad Vs Income Tax Officer Ward 2(1) Ghaziabad in ITA No.ITA.No.7134/Del./2018 has held as under-**

In the instant case the reasons for reopening were recorded by the Assessing officer as under-

On the basis of AIR information, verification letter was issued to the assessee to verify the sale of immovable property during F.Y. 2008-09 relevant to A.Y. 2009-10 for Rs.86,08,000/- in which assessee's share was Rs.43,04,000/-. Though the verification letter was duly received by the assessee, no compliance" was made. Again a letter dated 13-10-15 was issued to furnish the computation of capital gain and explain the source of income but this too remained un-complied with. The assessee has not filed return of income for the A.Y.2009-10. Hence, I have reason to believe that capital gain on sale consideration of Rs.43,04,000/- chargeable to tax has escaped assessment within the meaning of section 147 of the I T. Act, 1961 for the A.Y 2009-10. Therefore, notice u/s 148 may be issued.

**The Assessee inter alia contended before the Bench as under-**

3.1. He has referred to sale deed which is executed by the assessee and the co-owner Mr. Iqbal. He has submitted that in case of co-owner Mr. Iqbal, the A.O. passed the assessment order under section 147/143(3) Dated 06.12.2016 and returned income have been accepted at Rs.1,99,980/-. Copy of the computation of income is also filed in which long term capital gains on the same property have been computed at Rs.1,47,975/- and after adding the interest income, total income was declared in a sum of Rs.1,99,980/- which is accepted by the A.O. Learned Counsel for the Assessee, therefore, submitted that A.O. has not verified any information and did not apply the mind to the facts of the case. The entire amount of sale consideration could not be disclosing capital gains, therefore, there were no reason to believe to the A.O. to have reopened the assessment. He has submitted that the issue is covered by the Order of ITAT, Agra Bench in the case of Rameshwar vs. ITO 6(2), Jhansi in ITA.No.20/Agra/2014, Dated 28.02.2014. Copy of the Order is placed on record and provided to the Ld. D.R. The Ld. D.R. merely relied upon the Orders of the authorities below.

**The Honourable Bench held as under-**

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It is well settled Law that validity of reopening of the assessment shall have to be judged with reference to the reasons recorded for reopening of the assessment. In the present case, the A.O. has mentioned in the reasons that assessee sold the property and his share comes to Rs.43,04,000/-. Since, no compliance was made by the assessee, the A.O. therefore, presumed that there is an escapement of income on account of long term capital gains. The A.O. therefore, recorded reasons to believe that capital gains on sale consideration of Rs.43,04,000/- chargeable to tax has escaped assessment. The A.O. did not verify the information and even did not compute as to how much capital gain have been escaped assessment in the facts of the case. The reasons are thus, vague and did not show any application of mind on the part of the A.O. The A.O. in the case of the co-owner of the same property Shri Iqbal has accepted the long term capital gains in a sum of Rs.1,47,975/- on the same set of facts. It would show that A.O. did not verify the information as to how much capital gains has escaped assessment. The A.O. therefore, acted only on the basis of suspicion and it could not be said that it was based on belief that income chargeable to tax had escaped assessment. The A.O. had to act on the basis of the reasons to believe and not on reasons to suspect. The issue is, therefore, covered in favour of the assessee by the Order of ITAT, Agra Bench in the case of Rameshwar, Jhansi vs. ITO 6(2), Jhansi (supra). Following the same decision, I set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. Appeal of Assessee is allowed.

**In another identical case of Income Tax Appellate Tribunal Agra, in Usha Agarwal Agra Vs Income Tax Officer Ward 4(4) Agra, in ITA No 167/Agra/2018, The Honourable Bench held the reassessment proceedings as illegal.**

**In the instant case before the Agra Bench, the following were the reasons recorded by the AO to form belief of escapement of income:**

"The information has been received from Jt. CIT Range 4, Agra that Smt. Usha Agarwal, 95, KaveriKunj, Phase 2, Kamla Nagar, Agra, sold the property on 02.12.2006 for Rs. 14,00,000/- whereas, its valuation for the purpose of stamp duty was at Rs. 17,40,000/- thus taking into the value according to section 50C of the Act, taking its purchase cost, the net capital gain does arise above the taxable limit prevailing in the year in question."

From the record available in this office, the assessee has not submitted its return for the year under consideration. Since, the assessee to tax and therefore the income as a result of capital gains resulted into escapement of assessment and to assess it, issuance of Notice u/s 148 is considered necessary as it is a case of income escaping assessment, under the provision of section 147 of the Act. Therefore, I have reasons to believe that an income chargeable to Capital Gains on the amount of Rs. 17,40,000/- a value taken for stamp duty escaped assessment subject to index cost of acquisition."

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**Before the Honourable ITAT, The assessee raised specific ground as under**

*BECAUSE, the so called 'Reasons' are purely 'reasons to suspect'. Notice having been issued only for the purpose of verification, on the wrong assumption of material facts with no evidence on records before recording reasons about the facts of assessee's case and as such 'reasons' do not show any application of mind on part of the 'AO' to show that any Income liable for Tax has escaped Assessment warranting recourse to Notice under section 148 of the Act.*

**The assessee further contended-**

*It has been contended that during the course of assessment proceedings before the AO vide letter dated 04.03.2015 (APB-51-53), it was specifically submitted before the AO that the alleged escapement of income has been presumed without having any idea about the purchase cost, or the year in which purchase was made and without which, no working of capital gain could have been arrived at by any person of ordinary prudence and reasonable intelligence and, therefore, no allegation can be made that sale of property resulted into capital gain, which capital gain, whether it was long term or short term and which represents income that had escaped assessment.*

**The Honourable Tribunal held-**

23. *The ratio decidendi of both the decisions of the Hon<sup>ble</sup> Jurisdictional High Court evidently is that in the absence of anything in the reasons recorded to suggest that the income chargeable to tax which has escaped assessment is one lac rupees or more, the notice issued u/s 148 of the Act beyond four years of the end of the relevant assessment year, is invalid.*

24. *Both „Mahesh Kumar Gupta“, (supra) and „Amar Nath Agarwal“, (supra) have been followed by this Bench in „Pataria vs. ITO“, vide order (APB 56-72) dated 28.02.2017 in ITA No. 29/Agra/2015 for A.Y. 2006-07, while deciding this issue in favour of the assessee under similar facts and circumstances.*

25. *The Id. CIT(A), therefore, has clearly erred in not taking into consideration, „Mahesh Kumar Gupta“, (supra) rendered by the Hon<sup>ble</sup> Jurisdictional High Court. „Raymond Woolen Mills Ltd. vs. ITO“, rendered by the Hon<sup>ble</sup> Supreme Court, as referred to by the Id. CIT(A) in para 5.3 of the order under appeal, is not at all concerned with the issue at hand and, as such, it is of no help to the Department.*

26. *In view of the above, the grievance of the assessee, raised by way of Ground Nos. 1 to 3 is justified and it is accepted as such. Respectfully following „Mahesh Kumar Gupta“, (supra) and „Amar Nath Agarwal“ (supra), the notice (APB-7) dated 20.03.2014, issued u/s 148 of the IT Act and all proceedings pursuant thereto, culminating in the order under appeal are held to be null & void ab-initio*

27. *As such, nothing further survives for adjudication, nor was anything else argued.*

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28. In the result, the appeal is allowed

**The Jurisdictional ITAT in the case of In Allen De Noronha Vs. ACIT-1, Kanpur ITA No.338/LKW/2015 held as under:**

"5. To this reason for initiating proceedings u/s. 147/148 of the Act, assessee has filed objections which are appearing from pages 98 to 103 of the paper book. Para 5 of the objection is relevant where the assessee has categorically stated that reasons recorded are not based on relevant material and credible information. It is further stated therein **that assessee has sold any property for sale consideration of Rs.4,68,00,000/- stamp value of which has been taken at Rs.6,68,86,000/-.** On the other hand, the assessee and other co-owners have executed sale deed of a portion of the property no. 63/2/C, the Mall, Kanpur for a sum of Rs 2,34,00,000/- wherein the assessee's share is only 1/4th. This shows that "reasons recorded" are not based on 'credible' and 'relevant information' and on this reasoning alone, the proceedings initiated should be dropped.....

7. We have perused the case records, heard the rival contentions and in order to address the issue before us regarding validity of the reasons recorded for initiation of proceedings under section 147/148 and to determine the fate of re-assessment order let us consider the judgment of Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd. vs. R.B. Wadkar* [2004] 137 Taxman 479 wherein it is categorically held that reasons that are recorded by the Assessing Officer for reopening of assessment are only reasons which can be considered when formation of belief is impugned, such reasons cannot be allowed to grow with age and ingenuity by devising new grounds in replies and affidavits not envisaged when reasons for reopening an assessment are recorded. In the case before us, assessee has categorically objected to the reasons that the facts by which reopening are done are wrongly mentioned. While disposing of this objection of the assessee, Assessing Officer in his order dated 9/12/2010 has not at all stated whether these objections were correct or not and has simply stated that the reason to believe is based on credible and relevant information. However, again the Assessing Officer has failed to elaborate on those credible and reliable information. This is nothing but devising new grounds for replies and affidavits and it is something which cannot be said to be a proper reasons to form a belief for reopening an assessment. We also refer to the co-ordinate ITAT Bench decision in ITA No.557/LKW/2016 in the case of *Ajay Singh Chandraul vs. Income Tax Officer 2(1), Kanpur* wherein it was held that in absence of basic details of property in the reasons recorded, like address, location, whether the assessee was owner or co-owner, date of sale, correct sale consideration, then it is to be inferred that the reasons were recorded mechanically without application of mind.....

.....The objections of the assessee stating that certain wrong facts are recorded that is also not categorically rebutted by the Department. We are,

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28. In the result, the appeal is allowed

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7. We have perused the case records, heard the rival contentions and in order to address the issue before us regarding validity of the reasons recorded for initiation of proceedings under section 147/148 and to determine the fate of re-assessment order let us **consider the judgment of Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [2004] 137 Taxman 479 wherein it is categorically held that reasons that are recorded by the Assessing Officer for reopening of assessment are only reasons which can be considered when formation of belief is impugned, such reasons cannot be allowed to grow with age and ingenuity by devising new grounds in replies and affidavits not envisaged when reasons for reopening an assessment are recorded. In the case before us, assessee has categorically objected to the reasons that the facts by which reopening are done are wrongly mentioned. While disposing of this objection of the assessee, Assessing Officer in his order dated 9/12/2010 has not at all stated whether these objections were correct or not and has simply stated that the reason to believe is based on credible and relevant information. However, again the Assessing Officer has failed to elaborate on those credible and reliable information. This is nothing but devising new grounds for replies and affidavits and it is something which cannot be said to be a proper reasons to form a belief for reopening an assessment. We also refer to the co-ordinate ITAT Bench decision in ITA No.557/LKW/2016 in the case of Ajay Singh Chandraul vs. Income Tax Officer 2(1), Kanpur wherein it was held that in absence of basic details of property in the reasons recorded, like address, location, whether the assessee was owner or co-owner, date of sale, correct sale consideration, then it is to be inferred that the reasons were recorded mechanically without application of mind.....**

.....The objections of the assessee stating that certain wrong facts are recorded that is also not categorically rebutted by the Department. We are,

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*therefore, of the considered view as per our aforesaid discussion based on the case laws and on the factual matrix, we hold that reasons recorded for initiation of proceedings under section 147/148 is arbitrary and bad in law and therefore assessment framed consequent thereto is obviously illegal and void ab initio and liable to be quashed. We accordingly set aside the order of the Id. CIT(A) and hold re-assessment proceedings bad in law and also directing quashing of the re-assessment order."*

**The Jurisdictional ITAT in the case of Ajay Singh Chandraul Vs. Income Tax Officer - 2(1) ITA No.557/LKW/2016 held that:**

*"7. From the said reasons, it is apparent that the Assessing Officer has not brought on record which of the property has been sold by the assessee, where the property was situated and whether the assessee was the owner or co-owner of the said property. Even date of the sale and the consideration received by the assessee has not been mentioned. The Assessing Officer must have received copy of the sale deed or the information from the office of the Sub Registrar and on that basis he must have recorded the reasons. The reasons recorded should be self explanatory and should not keep the assessee for guessing of the reasons. From these reasons, it is apparent that there is no application of mind on the part of the Assessing Officer while recording the reasons. We, therefore, quash the reassessment proceedings."*

**The Delhi ITAT in the case of Jagat Singh Vs ITO ITA 2749/Del /18 dt 4.9.18**

*The A.O. did not explain as to under which provision of law, he has issued the letter to the assessee to seek explanation of assessee on 17.09.2014 when no return for assessment year under appeal was legally pending for assessment before A.O. It, therefore, appears that the A.O. merely in absence of any reply from the assessee and on assumption of incorrect facts, formed his opinion that income chargeable to tax has escaped assessment. The A.O. did not verify the AIR information before taking any action against the assessee because the assessee did not sold the property for a total sale consideration of Rs.65,84,000/- as noted in the reasons. It is the case of non application of mind by the A.O. to the AIR information and that the A.O. recorded incorrect facts in the reasons for reopening of the assessment.*

*We respectfully hope that your Honour finds the above mentioned explanation to your satisfaction and we hope that you Honour provides justice to the assessee by deleting the baseless addition made upon the assessee. It may further be submitted that these are submissions on legal issues. We shall be pleased to furnish any other information as desired by your Honour. In case your Honour is drawing any adverse inference against the assessee, a further opportunity of being heard may kindly be allowed to the assessee."*

**5.0 Appellate Findings:**

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5.1 I have considered the facts of the case and grounds of appeal, gone through the assessment order and reply of the appellant. In this case, information was received by the AO that the appellant and 10 other persons sold immovable property at a sale consideration of Rs. 47,02,000/-. The appellant's share of the sale consideration amounts to Rs. 4,27,455/-. Statutory notices were issued to the appellant during the assessment proceedings which the appellant did not comply to. Therefore, assessment order was passed u/s 144 rws 147 of the Act by making an addition of Rs. 4,27,455/- on account of long term capital gain.

5.2 **Ground Nos. 1 to 6:** These grounds of appeal deals with the addition of Rs. 4,27,455/- on account of long term capital gain made by the AO while passing assessment order. The appellant argued that the AO erred in treating the entire share of the appellant on the sale of the property as long term capital gain without giving credit for the cost of purchase of the property.

5.3 The appellant submitted reply in which he had challenged the validity of initiation of reassessment proceedings by the Assessing Officer stating that the reasons recorded for reopening the assessment was vague and incomplete stating that the AO did make any effort to arrive at the correct cost of purchase to arrive at the correct capital gains. However, on perusal of the reasons recorded by the AO, the AO had made several attempts to verify the information and issued verification letters to the appellant. The appellant did not submit proper explanation and did not reply to the verification letters issued by the AO. Therefore, the AO has no other option but to consider the whole sale consideration amount as the Long term capital gain of the appellant.

5.4 The appellant, in his reply also challenged the validity of initiation of assessment proceedings due to mechanical approval by superior authorities. The appellant also submitted various case laws in this regard. The appellant stated that the sanction recorded by the Addl.CIT, Bareilly as "*Having gone through the reasons recorded, I am satisfied that it is a fit case for the issue of notice under section 148*" and the sanction recorded by the Pr.CIT, Bareilly as "*I am satisfied on the basis of reasons recorded by the AO that it is a fit case for issue of notice under section 148*" are mechanical and without application of mind. It is observed that the superior authorities ie. the Addl.CIT, Bareilly and the Pr.CIT, Bareilly, while recording their satisfaction did so with their own handwriting. The superior authorities are only required to record their satisfaction and not required to provide elaborate reasons for arriving to this conclusion while recording their satisfaction. As per provision of section 151, the Pr. Commissioner is not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer. In this regard, reliance is placed on the case of **Arun Duggal,**

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**Faridabad vs DCIT, Central Circle- 1 (ITA No. 3075/Del/2018) in which the Hon'ble ITAT, Delhi held as below:**

*"95. We find in this case the due procedure, application of mind, satisfaction has been rightly derived by the revenue authorities. We rely on the judgment of Hon'ble Delhi High Court in the case of Experion Developers (P.) Ltd. vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) wherein it was held that where necessary sanction to issue notice u/s 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer. Thus, we cannot accept with arguments that the satisfaction is borrowed, the approval is mechanical and the promptness of the revenue authorities is misplaced. This is a classic case of prompt action on the part of the revenue taking into consideration the information received, having live nexus after satisfaction and the belief based on such information, the approval and satisfaction of the Id. PCIT is aptly derived."*

Therefore, it is held that not providing elaborate reasons while recording satisfaction by the sanctioning authority does not make the approval mechanical.

(D.2) Materials on record have been perused. No submissions (written or oral) have been made from the assessee's side during appellate proceedings in Income Tax Appellate Tribunal. No materials have been brought for the consideration of the Bench requiring any interference with the impugned appellate order of the learned CIT(A). The learned CIT(A) has passed a detailed and well reasoned order in the facts and circumstances of the present case. In the absence of any material to warrant interference with the impugned order of learned CIT(A), the order of the learned CIT(A) on aforesaid issues is upheld. Accordingly, ground No. 1 & 2 of the appeal are dismissed.

(D.3) Ground No. 3 of the appeal is regarding giving credit for cost of purchase of property while determining income from sale of property. On perusal of the assessment order it is found that the Assessing Officer has taxed the entire sale consideration amounting to Rs.4,27,455/- as income of

the assessee without deducting (indexed) cost of acquisition and/or cost of improvement. This act of the Assessing Officer is inconsistent with provisions of Income Tax Act regarding computation of capital gain. The Assessing Officer is directed to compute income under the head capital gains in accordance with law by deducting (indexed) cost of acquisition and/or cost of improvement from the sale consideration of the property for the purpose of determining income under the head capital gain. For this limited purpose, the matter is restored to the file of the Assessing Officer. Accordingly ground of appeal is partly allowed.

(E) In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order pronounced in the open court on 28/11/2024)

Sd/.  
**(ANADEE NATH MISSHRA)**  
Accountant Member

Dated:28/11/2024  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
  
4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar