

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 532/DEL/2024[A.Y 2012-13]

Gajendra Pal Sharma
C/o Kashyap & Co. 114,
Citi Centre, B.B. Road, Meerut

Vs. The Income-tax Officer
Ward - 1(2), Ghaziabad

PAN: AXVPS 4047 F

(Applicant)

(Respondent)

Assessee By : Shri P.S. Kashyap, CA

Department By : Shri Krishna Ramavat, Sr. DR

Date of Hearing : 11.09.2024

Date of Pronouncement : 03.12.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 06.12.2023 pertaining to A.Y 2012-13.

2. The grievances of the assessee read as under:

"i) That Ld. AO issued notice u/s 148 just on the basis of AIR information.

ii) That Ld. AO was not in possession of any tangible material which suggested that assessee has escaped assessment.

iii) The Id. Assessing Officer has recorded incorrect facts and on the basis of incorrect facts forms the reason to believe.

iv) That there is no proper compliance of section 151(2) of the Act.

2. That on facts and in law addition of Rs. 70,95,000/- made u/s 69 by the Assessing Officer is totally wrong and unjustified in appeal the Id. CIT(A) restricted the addition to Rs. 41,47,382/-. The assessee had fully explained the source of investment made for purchase of residential house. Therefore, the basis taken by the Assessing Officer as well as the Id. CIT(A) to confirm the addition of Rs. 41,47,382/- u/s 69 is totally wrong and unjustified and same deserves to be deleted in full."

3. Briefly stated, the facts of the case are that the assessee filed return of income for the year under consideration on 25.07.2012 disclosing total income of Rs. 2,34,600/- and agriculture income of Rs. 49,500/-.

4. AIR information was received from the office of the sub-registrar u/s 285BA of the Income-tax Act, 1961 [the Act, for short] relating to purchase of immovable property by the assessee for Rs. 90,95,000/- including stamp duty on 16.02.2012. The sub-registrar later confirmed that this was a residential property situated at 8/63, Chiranjeev Vihar, Ghaziabad, purchased in joint name of Mr Gajendra Pal Sharma & Mrs Meena Sharma.

5. To verify the transaction as reported in the AIR information, the Assessing Officer issued and served notice u/s 133(6) of the Act to the assessee and in response no compliance was made by the assessee. Notice u/s 148 was subsequently issued on 29.03.2019 after recording reasons and obtaining approval from the PCIT, Ghaziabad u/s 151(2) of the Act.

6. In the course of assessment proceedings, the Assessing Officer was not satisfied with the explanation of the assessee and made an addition of Rs. 70,95,000/- u/s 69 of the I T Act.

7. When the assessee went in appeal before the ld. CIT(A), the ld. CIT(A) restricted the addition to Rs. 41,47,382/-.

8. Aggrieved further, the assessee is in appeal before us.

9. Before us, the ld AR of the assessee vehemently contested the validity of the notice u/s 148. The ld. counsel for the assessee stated that the Assessing Officer issued notice u/s 148, simply on the basis of AIR Information received from sub-registrar to verify the source of investment made in purchase of house and without possession of any tangible material. The ld AR argued that the AO recorded incorrect facts as the Assessing Officer has considered entire value in the hand of assessee only as unexplained investment while assessee had only 50% ownership in the said property. There is no application of mind by Assessing Officer to form requisite satisfaction that investment in property is income of current year which has escaped assessment. It was also argued that the PCIT granted approval u/s 151 in a mechanical manner. It was further argued that the Assessing Officer has reason to suspect and not reason to believe that income chargeable to tax has escaped assessment. Hence, notice u/s 148 dated 30.03.2019 is liable to be quashed.

10. In support of the above submissions, the ld. counsel for the assessee placed reliance on various judgements. In the case of CIT Vs ***Smt Maniben Valji Shah*** 283 ITR 453, the Hon'ble Bombay High Court quashed assessment based on notice under section 148 of the Act where proceedings under section 147 was initiated to verify the source of Investment made in purchase of house.

11. The ld AR relied on the decision of the Hon'ble Gujarat High Court in the case of ***Bakulbhai Ramanlal Patel Vs ITO'***, 56 DTR 0212 for the proposition that where the reasons recorded reflect that the matter requires detailed investigation and further verification, the AO has reason to suspect and not reason to believe.

12. The ld AR relied on the Hon'ble Bombay High Court in case of ***Tata Sons Limited*** Writ Petition No. 2545/2010 decided on 3/2/2022 for the proposition that where the re-opening of the assessment was based on incorrect facts, the notice for re-opening was unsustainable. Reliance in that regard was also placed on the decisions in ***Punia Capital Pvt. Ltd.*** Writ Petition No. 1091/2022 decided on 15/2/2023 and ***Ankita A. Choksey*** 411 ITR 207.

13. The Id AR also referred to the Delhi High Court in the case of *Northern Exim Pvt. Ltd. vs. DCIT* (2013)357 ITR 586 which held that if reasons recorded for issue of notice u/s 148 are factually incorrect that cannot therefore, form the basis for the belief that income had escaped assessment.

14. On the issue of mechanical nature of PCIT's approval, the Id AR relied on *CIT v. S. Goyanka Lines & Chemical Ltd.* (2016) 237 Taxman 378 (SC) and *Pr CIT vs M/s NC Cable Ltd*, ITA No. 335/2015 (Del HC) Order dt. 11.01.2017 for the proposition that merely appending "yes, I am satisfied" or "approved" is not sufficient.

15. The Id. counsel for the assessee, on merits, submitted that the assessee during the year under consideration along with wife Mrs Meena Sharma has purchased residential property for Rs. 90,95,000/- (purchase cost 8500000+ stamp duty 550000) on 16.02.2012. That for purchase of residential property assessee took housing loan of Rs. 20,00,000/- from Canara Bank, sold plot of land for Rs. 784,000/- and took unsecured loan from friends & relatives. That the above property was purchased in co-ownership where the Assessee and his wife have equal ownership in above residential property. Assessee share comes to

Rs. 45,42,500/- (90,95,000/2) but the Ld. AO has treated total purchase value of residential property as unexplained investment in the hand of assessee only after allowing the credit of housing loan.

16. It was stated that the details of purchase consideration amounting to Rs. 85,00,000/- is given in conveyance deed at page no. 41 itself. The ld AR submitted that the assessee filed evidences in support of bank loan, sale of plot of land and unsecured loan taken from friends and relatives under rule 46A. The ld AR stated that the ld. CIT(A) while justifying the reopening the case, held that the source of investment remained unexplained but restricted the addition to Rs 41,47,382/- on the ground that similar amount has been added by the Assessing Officer of Smt Meena Sharma in her hands.

17. Per contra, the ld. DR relied upon the orders of the authorities below. The ld DR vehemently contested the ld AR's arguments that the notice u/s 148 was not valid. The ld DR took us to the reasons recorded and argued that the AO first received an information u/s 285BA of the I T Act from the office of Sub-Registrar relating to purchase of immovable property. Thereafter, the AO examined the ITR of the assessee where he found that the income and receipt declared in the

ITR was not consummate with the investment made. Accordingly, to verify the transaction, notice u/s 133(6) was issued to the assessee. At this point the ld DR vehemently contended that the ld AR is factually incorrect when he states that notice u/s 148 was issued to verify the transaction whereas in fact notice u/s 133(6) was issued to verify the transaction.

18. The ld DR stated that the AO, simultaneously issued Notice u/s 133(6) on 24.08.2018 to Sub- Registrar-V Ghaziabad for details of transaction who provided a copy of Purchase Deed to the AO on 10th September, 2018. Purchase Deed mentioned that property is Joint property and PAN Number of both Parties were available on Purchase deed. The ld DR argued that the AO thus confirmed the authenticity of the AIR information. It was further argued by the ld DR that at this point of proceedings, the AO considered the entire investment in the hands of the assessee as the purchase deed of the property does not mention that 50% of investment was made by his wife.

19. The ld DR submitted that the assessee did not comply with notice u/s 133(6) and as no explanation was forthcoming from the assessee, the AO formed his prima facie 'reason to believe' on the basis of

materials on record that the investment remained unexplained, and therefore has escaped assessment. It was submitted that the AO had tangible materials in his possession in the form of information from AIR which he verified from the sub-registrar and the ITR of the assessee showing meagre income.

20. On the issue of PCIT giving approval u/s 151(2) mechanically, the ld DR forcefully submitted that the PCIT has clearly applied his mind before giving approval. The ld DR pointed to the proforma for recording reason for initiating proceedings u/s 148, which shows that the PCIT has examined the reasons recorded by the AO and agreed and was satisfied with the views of the AO for issuance of notice u/s 148. The ld DR vehemently contested that the approval was not granted mechanically but was accorded after careful thought.

21. The ld DR, on the legal issue of assumption of jurisdiction, pointed out that the case laws relied upon by the assessee are all factually distinguishable. On merits, the ld DR relied on the orders of the CIT(A) and argued that the source of investment were not explained with documentary evidence.

22. We have heard the rival submissions and have perused the relevant material on record. Having heard the rival submission we find that the issue to be adjudicated first is the validity of assumption of jurisdiction by the AO. We find the reasons recorded for the reopening u/s 148 states as below:

"Reasons for the belief that the income has escaped assessment: AIR information was received from the office of the Sub-registrar under section 285BA of the I.T. Act, 1961 relating to purchase of immovable property by the assessee for Rs.90,95,000/-(including stamp duty) on 16.02.2012. The assessee has filed his ITR on 25.07.2012 declaring total income at Rs.2,84,099/- for A.Y. 2012-13. The investment in property is incommensurate with the income & receipts shown in ITR.

To verify the transaction, notice under section 133(6) of the I.T. Act, 1961 was issued on 13.08.2018, served through speed post, after obtaining the necessary approval from the Pr. CIT, Ghaziabad. But the assessee has not made any compliance to the notice.

As per the provisions of section 69, which is reproduced herein below for the sake of clarity:

69: Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any. maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee for such financial year."

Since the assessee has purchased immovable property and regarding source of investment no explanation has been offered, hence as per the provisions of section 69 of the I.T. Act, the unexplained investment is deemed to be the income of the assessee for such financial year. In spite of the proper service of notice, the assessee has failed to comply with the notice issued under section 133(6) the I.T. Act, which strengthens my belief that the income chargeable to tax has escaped assessment. The assessee has also failed to disclose fully and truly all material facts necessary for his assessment in the ITR filed on 25.07.2012.

Therefore, I have reason to believe that income chargeable to tax at Rs.90,95,000/- being unexplained investment in purchase of immovable property under the head 'Income from other sources' and any other income has escaped assessment within the meaning of explanation 2 to section 147 of I.T. Act, 1961. It is, therefore, requested to accord necessary approval under section 151 of I.T. Act, 1961 to issue notice under section 148 of I.T. Act, 1961 for A.Y. 2012-13.

Dated:25.03.2019

23. With regard to the approval of the PCIT, the same is reproduced below:

"In View of the reasons recorded by the A.O, I am satisfied that this is a fit case for issue of notice u/s 148.

27/3/19

Pr. Commissioner of Income-tax, Ghaziabad."

24. From the examination of the reasons recorded as above, we find that the AO recorded his reasons on 25.03.2019 mentioning the reasons for reopening. On receipt of information relating to purchase of immovable property, the AO examined the ITR of the assessee which showed the assessee had declared salary income of Rs 3,43,253/- and capital gain of Rs 1,45,566/- which led the AO to believe that the income and receipt declared in the ITR was not commensurate with the investment Rs 90,95,000/- made. Accordingly, to verify the transaction, notice u/s 133(6) on 13.08.2018 was issued to the assessee which remained uncompiled with. We therefore find for a fact that for verification of the transaction, the AO had issued notice u/s 133(6). We find that the Id DR correctly pointed out that the notice u/s 148 was not issued for verification of the source of investment rather notice u/s 133(6) was issued for verification of the information.

25. We also find that the AO had also issued notice u/s 133(6) 24.08.2018 to the Sub- Registrar-V Ghaziabad and collected a copy of Purchase Deed which mentioned that property is Joint property. We find that the purchase deed of the said immovable property, though shows the property to be registered in Joint name with wife, it nowhere mentions that both the husband and wife have equally

contributed in the investment. Since the assessee remained non-compliant to the notice u/s 133(6), the AO had no option but to form a reasonable belief that investment in property remained unexplained for considering the same as deemed income u/s 69C in the hands of the assessee himself. Further, we find that sufficient opportunity of seven months was provided to the assessee to furnish requisite explanation with regard to the investment from the date of notice u/s 133(6) and issuance of notice u/s 148. We are of the considered view that the AO had prima facie some material on the basis of which he could reopen the case by issuing notice u/s 148.

26. We therefore are not inclined to accept that the Assessing Officer issued notice u/s 148 just on the basis of AIR Information to verify the source of investment made in house and without possession of any tangible material. We also decline to agree with the assessee argument that as the AO did not specify the name of the property in which investment was made, he had no tangible material. We are of the considered opinion that the AO had tangible material before him in the form of AIR information, verified from the Sub-registrar office and the ITR of the assessee, devoid of any information on investment or source of investment in the property. We are supported on this issue

by the Hon'ble Supreme court which held in the case of *Raymond Wollen Mills Pvt Ltd Vs ITO* (1999) 236 ITR 34 (SC), that the sufficiency or correctness of the material is not a thing to be considered at this stage.

27. We also agree with the revenue contention that the AO formed a 'reason to believe' and not 'reason to suspect'. The AO had verified information in his possession that the assessee had made investment in the said property. Besides, the AO had in front of him the ITR of the assessee showing meager income not commensurate with the investment made. Following the principal of natural justice, the AO gave the opportunity to the assessee to explain the investment before taking recourse to section 148 of the IT Act. In absence of any explanation in response to the notice u/s 133(6), in respect of investment, the AO formed a 'reason to believe' and reopened the assessment u/s 148 of the I T Act. It does not lie in the mouth of the assessee now to say that the AO should have verified from the AO of the wife of the assessee whose name/PAN featured in the purchase deed when he himself failed to avail the opportunity to explain the entire transaction. We are of the view that that there was sufficient tangible material on record which justifies the prima facie belief of

the AO regarding the escapement of taxable income. The facts noted above clearly demonstrate that the AO indeed had tangible material having a live link to the “reasons to believe” for arriving at a prima facie opinion that the income has escaped assessment.

28. The reliance on *Maniben Valji Shah* and *Bakulbhai Ramanlal Patel* are factually distinguishable. In *Maniben Valji Shah* the Bombay High Court held that “there is no question of the assessing officer having any basis to reasonably entertain the belief that any part of the income of the assessee had escaped the assessment and that such escapement was by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts.” In *Bakulbhai Ramanlal Patel* the reasons recorded by the AO itself states that various cash payments/receipts are to be investigated or verified. In such factual matrix the Court held that the AO has reason to suspect and not reason to believe.

29. The Hon’ble Delhi High Court in the case of *EXPERION DEVELOPERS PVT LTD* dated 13.02.2020 in W.P.(C) 11302/2019 has discussed a compendium of case laws on the subject and has propounded the law as follows;

19. Section 147 of the Act empowers the AO to initiate the proceedings under the said provision to assess or re-assess any income of the assessee that may have escaped assessment. The power to initiate the proceedings under the said provision is not unfettered and unrestricted and the law mandates the AO to comply with the provisions of Sections 148 to 153 of the Act. Identifying and recording of "reasons to believe" is a pre-requisite for the AO to assume jurisdiction under Section 147 of the Act, as per the scheme of the Act. For harboring a belief that there are cogent reasons to reopen the assessment, the AO is necessarily required to have some basis in the nature of tangible/reliable information in his possession. This is ensured by the language of Section 148 of the Act which obligates the AO to record the reasons on the basis whereof the proceedings under Section 147 of the Act are initiated. This is a safeguard mechanism to ensure that the discretion exercised by the AO is not fanciful or without a reasonable cause, and is not based merely on suspicion, conjectures and surmises. The recording of reasons must show application of mind to the relevant and germane facts, on the basis whereof the action initiated under Section 147 of the Act is to be adjudged. The question as to whether it is fair and just to nip reassessment proceedings at this stage, arises before us every now and then. There is aversion to reassessment, and that is predictable. No assessee would want the tax authority to reopen what has been closed. Even the Court would not countenance casual, mindless and unjustified original reopening, lest the original assessment proceedings lose their conclusiveness and certainty. Reopening of assessment is time consuming and burdensome for the assessee. Since discretionary power is vested with the AO, the assessee is entitled to challenge the reopening by way of a writ petition. This is a safety measure, to warrant that exercise of power is done with circumspect and with comprehension of facts. This is the precise reason that there is a plethora of judgments on this issue that are cited by both the parties, and we have to repeatedly navigate through the various views expressed by the court.

20. In light of the above judicial principles, the crux lies in the recorded reasons which shed light on the mind of the AO and having perused the same in the instant case, we are not persuaded with Mr. Vohra's submission that the observations of the AO are based purely on conjunctures and surmises, without reference to any tangible material. At this stage, we may refer to our decisions in *Vedanta Ltd v. Assistant Commissioner of Income Tax* in W.P. (C) 13036/2019 decided on 20.12.2019 and also in *RDS Project Ltd. in W.P. (C) 11274/2019* decided on 23.10.2019 wherein we have extensively examined the case law on this issue.

21. In the above judgments, we have noted the views of the Supreme Court in *Assistant CIT v. Rajesh Jhaveri Stock Broker Pvt. Ltd.* (2008) 14 SSC W.P.(C) 11302/2019 & W.P.(C) 11303/2019 Page 19 of 47 208, wherein it has been held that the expression "reason" in Section 147 of the Act means a "cause" or "justification". The Assessing Officer can be said to have reason to believe that income has escaped assessment if he has a cause or justification to know, or suppose, that income has escaped assessment.

22. It is also apposite to note the observations of the Supreme Court in *Sri Krishna Pvt. Ltd v. Income Tax Officer* [1996] 221 ITR 538 wherein, it was emphasized that at this stage, the test is not as to whether there has been any escapement of income, but whether there exist "reasons to believe" that the income chargeable to tax has escaped assessment.

23. There are several judgments of the Supreme Courts and of the High Courts which have extensively deliberated on the construction of the expression "reason to believe" [Ref: *G.S. Engineering & Construction Corporation v Deputy Director Of Income-tax (International Taxation), Circle -1(2)* [2013] 38 taxmann.com 29 (Delhi)]. The scope of judicial review under Article 226 of the Constitution of India has also now been well recognized. In a nutshell, the Courts have applied the test of reasonableness holding that the recorded reasons to believe must suggest and disclose that the belief is that of an honest and reasonable

person, based on reasonable grounds. The discretion vested under the scheme of the Act has also prompted Courts to put a cautionary note in several judgments that while exercising judicial review, although the Court can examine whether the "reasons to believe" satisfy the conditions, however, the declaration or sufficiency of the "reasons to believe" cannot be investigated.

29. Coming to the issue of mechanical application of mind by the PCIT while granting approval u/ 151(2), we note that the PCIT recorded her approval as under:

"In View of the reasons recorded by the A.O, I am satisfied that this is a fit case for issue of notice u/s 148."

We find that the PCIT has recorded her satisfaction after clearly applying her mind on the reasons recorded by the AO before giving approval. The approval, reproduced as above, amply demonstrate that the PCIT has examined the reasons recorded by the AO, agreed and was satisfied with the views of the AO for issuance of notice u/s 148. We therefore hold that the approval u/s 151(2) was not granted mechanically but was accorded after careful thought.

30. We find that the case of *N C Cables* relied upon by the assessee, is factually distinguishable. In that case, the Delhi High court found that the CIT had merely appended the expression “approved”. In fact, this decision supports the case of Revenue as it observed further as follows:

“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.”

In the instant case, the satisfaction is not ritualistic, brief but meaningful.

31. Similarly, the reliance placed on the case of Madhya Pradesh High Court decision in the case of *S Goyenka Lime & Chemicals Ltd*, is factually distinguishable. This case relied on the case of *Arjun Singh* (246 ITR 363(SC) where the satisfaction of CIT which merely stated “I am satisfied” was considered as mechanical without application of mind and also the fact that the satisfaction was recorded on the

ground that the satisfaction was in less than 24 hours of time. In the instant case, the PCIT has recorded, in brief detail, her satisfaction based on the objective materials in the shape of reasons recorded by the AO.

32. We are also not inclined to accept that the AO has recorded incorrect facts in reopening the case. The AO has correctly recorded the facts available to him with respect to the investment made of Rs 90,95,000/-. At this point of proceedings, the AO had no factual materials to establish that the joint holder of the property had made any investment in the said property, especially when the assessee did not cooperate in the inquiry. The case of *Tata Sons* relied upon as also the case of *Northern Exim Pvt Ltd* are again factually distinguishable. The case of *Tata Sons* relied upon was a case where the AO questioned the original assessment on the strength of the very same materials. The case of *Northern Exim Pvt Ltd* was a case where the reasons recorded by the AO were factually incorrect. In that case the return for AY 1997-98 was filed under VDIS whereas the AO recorded in its reason that no return was filed for AY 1997-98. In the instant case for impugned assessment year there is no such factual inaccuracies.

33. The Hon'ble Delhi High Court in the case of *EXPERION DEVELOPERS PVT LTD* dated 13.02.2020 (supra) supports the view that in the instant case the approval accorded by the PCIT was not mechanical as follows:

"Whilst it is the settled position in law that the sanctioning authority is required to apply his mind and the grant of approval must not be made in a mechanical manner, however, as noted by the Division Bench of the Calcutta High Court in *Prem Chand Shaw (Jaiswal) v Assistant Commissioner*, Circle-38, Kolkata [2016] 67 taxmann.com 339 (Calcutta), www.taxguru.in W.P.(C) 11302/2019 & W.P.(C) 11303/2019 Page 41 of 47 the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151(2) when the reasons on the basis on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires. The decision in *United Electrical Co. Pvt. Ltd.* (supra), as relied upon by the petitioner is distinguishable from the present case, as in the said case, there was no material on record to provide foundation for Assessing Officer's reasons to believe. Therefore, it was held that the recording of the satisfaction by the AO was unjustified and without independent application of mind. However, there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the Principal Commissioner is satisfied with the reasons recorded by the AO. Similarly, in *Virbhadra Singh v Deputy Commissioner*, Circle Shimla [2017] 88 taxmann.com 888 (Himachal Pradesh) where the competent authority was in agreement with the

reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded with proper application of mind, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 147/148 was held to be valid."

In view of the discussion as above, we are of considered view that the approval u/s 151(2) was properly granted, and there was reason to believe on the basis of prima facie tangible materials on record leading to the conclusion that the assumption of jurisdiction by the AO u/s 148 is valid and legally permissible. Accordingly, the Ground No. 1 is dismissed.

34. Now that the jurisdictional issue is adjudicated, we proceed to evaluate the case on merits which is Ground No. 2 that pertains to addition of Rs. 70,95,000/- made u/s 69 by the Assessing Officer. In appeal Ld. CIT(A) restricted the addition to Rs. 41,47,382/-.

35. The assessee is now in appeal before us and has contended that during the year under consideration assessee along with wife Mrs Meena Sharma has purchased residential property for Rs. 90,95,000/- on 16.02.2012. For purchase of residential property, assessee took housing loan of Rs. 20,00,000/- from Canara Bank, used the sale

proceeds from sale of plot of land for Rs. 7,84,000/- and Rs 11,00,000/- from sale of residential house. It was stated that unsecured loans of Rs 18,55,000/- were taken by assessee's wife Mrs Meena Sharma from friends & relatives. It was submitted that Rs 4,99,881/- received on sale of jewellery as also cash available of Rs 8,00,0000/- was also used. It is submitted that the assessee and his wife used funds out of their savings of Rs 19,58,197/- lying in SBI, Vijaya Bank, and Syndicate Bank and capital accumulated of Rs 4,57,920/-. It is stated that the Assessing Officer has treated total purchase value of residential property as unexplained investment in the hands of assessee after allowing only the credit of housing loan. It is argued by the ld AR that the property was purchased in co-ownership and the assessee and his wife have equal ownership in the residential property. It is stated that the Assessee's share comes to Rs. 45,42,500/-but the Assessing Officer treated total purchase consideration as belonging to assessee only.

37. Regarding source of payment the ld. counsel for the assessee stated that the assessee submitted all necessary facts and documents before Assessing Officer as well as Ld. CIT(A).It was submitted that during the course of appellate proceedings, the assessee has filed

application under rule 46A with documentary evidence in respect of unsecured loans taken by wife Mrs Meena Sharma. It was argued that the assessee had duly discharged onus as required by section 68 of the Act.

38. The Id. CIT(A) at Para 5 has discussed remand report received from Assessing Officer and there is no finding given in respect of unsecured loans taken by assessee's wife Mrs Meena Sharma. Further, the Assessing Officer has mentioned that sale proceeds of Rs. 37 lakhs were received in May 2012 but he ignored that out of such sale proceeds two cheque of Rs. 600000/- and Rs. 500000/- were given on 12.03.2012 and 15.03.2012 which were cleared on 01.06.2012.

39. It is submitted that in remand report the Assessing Officer has again treated total purchase consideration as unexplained investment in the hands of the assessee while assessee owns 50% ownership in the residential property purchased during the year. The CIT(A) has also not given any finding on unsecured loans taken by assessee's wife. The Id. CIT(A) has allowed the relief to assessee to the extent of Rs. 29,47,618/-i.e. addition made in the hand of assessee's wife where the

assessment order in her case was passed u/s 147/143(3) of the Act in place of correct relief amount of Rs. 35,47,500/-.

40. In view of above facts and submissions, the ld. counsel for the assessee concluded that it is clear that during the year under consideration assessee has made investment in residential property for Rs. 45,47,500/- only. Source of payment made to purchase of residential property was duly proved in the light of documents filed by the assessee before Assessing Officer as well as ld. CIT(A). Therefore, the ld. counsel for the assessee prayed to kindly delete the addition of Rs. 41,47,382/-.

41. On the other hand, the ld. DR relied upon the orders of the authorities below.

42. We have heard the rival submissions and have perused the relevant material on record. On merits we find that the residential house was purchased on 16.02.2012 in joint name along with his wife and the total purchase cost was Rs. 90,95,000/- (purchase cost Rs 85,00,000/-+stamp duty Rs 5,95,000/-). The assessee therefore is required to explain source of 50% investment in the said property.

43. Regarding source of payment made for the purchase of the property, we find from the copy of sale deed of plot and residence, bank accounts and confirmation of loan a/cs, pertaining to both the assessee and his wife Smt Meena Sharma, has been produced before us as under:

i) Payment at Rs 10,00,000/- and Rs 8,00,000/- were made from a/c no. 30656944019 of SBI which is in joint name of Mrs Meena Sharma & Gajendra Pal Sharma. In SBI a/c, on 01.07.2011 Rs 930,000/- were transferred from a/c no. 718601010009950 of Vijaya Bank and Rs 800,000/- were transferred from a/c no. 88902200025446 of Syndicate Bank. In Vijaya Bank on 11.04.2011 assessee received Rs 784000/- which is on account of sale of plot and out of available bank balance a sum of Rs. 930,000/- has been transferred to SBI account. Similarly, In Syndicate Bank a/c No. 88902200025446 assessee's wife had opening balance of Rs 356,789/- and she received unsecured loan of Rs 4,00,000/- on 23.06.2011 from Manoj Jain. Out of available bank balance, a sum of Rs 800000/- has been transferred to SBI account.

ii) Payment Rs 500000+600000+800000+900000 were made to seller from a/c no. 1149101028730 maintained with Canara bank in the name of assessee's wife Meena Sharma. In said account assessee received unsecured loans of Rs.18,55,000/- (100000+ 100000+ 100000+ 755000+ 150000+650000) and a part from unsecured loans in said account, Rs 2,25,000/- was transferred by assessee from a/c 31787921027 with SBI. The assessee wife also received Rs 499,881/- on 06.01.2012 on account of sale of jewellery. The assessee produced the Jewellery bill, bank account before us which were filed before Ld. AO. as well as before CIT(A). In respect of unsecured loans taken by Mrs Meena Sharma, assessee had filed documentary evidence before the CIT(A) only.

iii) Payment of Rs. 600000/- & Rs 500000/-, these cheques were cleared on 01.06.2012 from a/c no. 1149101028730 maintained with Canara Bank in the name of Mrs Meena Sharma. Before clearance of these cheque, in bank a/c a sum of Rs 14,00,000/- was received by Mrs Meena Sharma which is on account of sale of residential house for Rs 37,00,000/- sold by assessee & wife Meena Sharma.

iv) Payment of Rs. 20,00,000/- is on account of housing loan taken from Canara Bank. Housing loan sanction letter & statement are filed at page no. 82- 83 of the paper book. The source of this payment was accepted by both the CIT(A) as well as the AO.

v) Cash payment of Rs. 800,000/- was made to seller from cash available with assessee & wife Mrs Meena Sharma.

vi) The assessee and his wife used their savings of Rs 19,58,197/- lying in SBI, Vijaya Bank, and Syndicate Bank as noted above and their capital accumulated of Rs 4,57,920/-.

44. We find from the perusal of the documents before us that the assessee has duly explained the source of his share of the investment made in the property purchased. As far as the veracity of unsecured loan taken by the wife of the assessee and amount received on account of jewellery is concerned the same may be decided at appropriate time in appropriate case as the neither the AO nor the CIT(A) has examined/ adjudicated on this issue. We therefore direct the AO to delete the addition of Rs 41,47,382/- on account of unexplained investment made u/s 69. The ground no 2 is accordingly allowed.

45. In the result, the appeal of the assessee in ITA No. 532/DEL/2024 is partly allowed.

The order is pronounced in the open court on 03.12.2024.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 03rd DECEMBER, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	