IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'SMC' BENCH, ALLAHABAD
(HEARD BY DB)

BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA No.140/Alld/2023
A.Y. 2002-03

Surendra Kumar Mishra, 794A/1, Sohabatiyabagh, Allahabad-211006, U.P.	vs.	Assistant Commissioner of Income Tax, Circle-2, Allahabad
PAN:AIBPM4858R		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Bansal, Advocate
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	14.11.2024
Date of pronouncement:	10.02.2025

O R D E R

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the ld. CIT(A), under section 250 r.w.s. 254 of the Income Tax Act, 1961 on 26.10.2023. The grounds of appeal preferred by the assessee are as under:-

> *"1. BECAUSE the CIT(A) has erred in law as well as on facts in dismissing the 'additional ground' relating to non-issuance of notice under section 143(2) of the Act, raised before the appellate authority during the course of first round of litigation, which has been remanded back by the Hon'ble ITAT in terms of order dated 09.11.2012, by observing that the return filed by the appellant in terms of letter dated 10.11.2008 as not a valid return in compliance to notice dated 11.02.2008 issued under section 148 of the Act, as the said letter was filed by the appellant after the time limit of 30 days provided to do so in terms of notice dated 11.02.208 issued under section 148 of the Act.*
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> *2. BECAUSE the CIT(A) has erred in law as well as on facts in observing that the appellant could not have demand for issuance of notice under section 143(2) of the*

Act as the 'return' filed by the appellant in terms of letter dated 10.11.2008 is not a proper return.

3. BECAUSE furnishing of letter requesting to treat the return filed originally as return in compliance to notice under section 148 is a valid return and the CIT(A) has erred in law in observing that the same in not compliance of notice issued under section 148 of the Act.

4. BECAUSRE the CIT(A) has grievously erred in law as well as on facts in observing that the judgment passed by Hon'ble Allahabad High Court in the case CIT vs. Rajiv Sharma reported in 336 ITR 678 on the issue relating to non-issuance of notice under section 143(2) after filing of return, not applicable in the case of the appellant as in the present case no additional time limit was given to the appellant to file his return after the issuance of notice dated 11.02.2008, as the Id. Assessing Officer himself had issued notice under section 142(1) of the Act, after the issuance of notice under section 148, requiring the appellant to prepare true and correct return and file the same before him.

5. BECAUSE in view of the admitted facts on record that the appellant had filed return in compliance to notice dated 11.02.2008 issued under section 148 of the Act, vide letter dated 10.11.2008 and no notice under section 143(2) of the Act, CIT(A) has erred in law in not following the binding precedence of the various judicial pronouncement of the Hon'ble Supreme Court and various high courts (including the jurisdiction high court) wherein the entire proceedings have been quashed being void-ab-initio in the absence of notice under section 143(2) having been issued by the Assessing Officer after filing of the return in compliance to 148 notice.

6. BECAUSE the entire re-assessment proceedings are vitiated and void-ab-initio the CIT(A) has erred in not following the binding precedence and further erred in not quashing the assessment order dated 26.12.2008 passed by ld. Assessing Officer under section 148 of the Act.

7. BECAUSE the assessment order captioned as order under section 148 dated 26.12.2008 cannot be said to have been made as per the provisions laid down in the Act and the entire "variation" between the "returned income" and "assessed income" stands wholly vitiated.

WITHOUT PREJUDICE TO THE AFORESAID

8. BECAUSE the CIT(A) has erred in confirming the addition towards free hold charges which has been added by the Id. Assessing Officer, merely relying upon the observation made by the CIT(A) in the first round of litigation vide appellate order dated 29.03.2012 on the ground of alleged failure of genuineness of transaction in

the name of Sri Rajat Kumar Mitra as the appellant was having title of the property and he got converted into freehold so he cannot disown the transaction.

9. BECAUSE source of investment in making payment of 'freehold charges amounting to Rs.10,06,644/- stood fully explained and the "Authorities" below have erred in law and on facts in holding the same to be representing the "undisclosed income" of the appellant and in subjecting the same to assessment in his hand, by evoking the provisions of section 69C of the Act.

10. BECAUSE the CIT(A) should have deleted the addition of Rs.10,06,644/-made by the Id. Assessing Officer towards alleged investment in making payment of 'free hold changes' in the assessment order dated 26.12.2008, as the addition itself is erroneous keeping with the principle laid down by the Hon'ble apex court in the case of CIT Vs Smt. PK. Noorjahan reported in (1999) 237 ITR 570, after the observations made by the Id. Assessing Officer himself to the effect that the appellant did not have any source of income (other than salary income).

11. BECAUSE without prejudice to the contentions raised in grounds No. 8 & 10 above, payment of 'free hold charges' should have been considered as 'cost of improvement of the 'Capital asset' and the same should have entered into the computation of 'Capital Gain' under section 48 of the Act.

12. BECAUSE the authorities below have erred in law and on facts in not allowing full deduction of expenses claimed (other than freehold charges) at Rs.15,73,360/- and in restricting the same to Rs.14,16,024/- (being 90% of the claimed amount).

13. BECAUSE adhoc disallowance to the extent of 10% of the expenses claimed at 15,79,300/- is wholly erroneous as being inconsistent with the facts of the case and applicable thereto.

14. BECAUSE 'surplus' arising out of 'transfer' of 'Capital asset', without prejudice to the contention raised in grounds no. 8 to 13 above, should have been subjected to assessment as 'long term capital gain', instead of 'short terms capital gain' as has been made/upheld by the 'Authorities below'.

15. BECAUSE the order appealed against, is contrary to facts, law and principles of natural justice."

2. The facts of the case are that the assessee filed a return of income for the assessment year 2002-03 on 13.07.2003, declaring a total income of Rs.1,68,000/-. Subsequently, it came to the knowledge of the Department that the assessee, after getting a leasehold property converted to freehold in his own name, sold it to some persons and earned capital gain. Accordingly, a notice under section 148 was issued

on 11.02.2008. The assessee did not file a return in response to this notice, but on 10.11.2008 stated that the return filed by him on 13.07.2003, may be treated as having been filed under section 148.

3. Discovering that the assessee had paid free hold charges of Rs.10,06,644/-, the ld. AO asked the assessee to explain the same. In response, it was submitted that the assessee was acting on a power of attorney and the said amount had been paid by Shri. Rajat Kumar Mitra (referred to as Rajat Kamal Mitra in the first round of assessments and appeals), the lease holder of the land and he produced a confirmation from Shri. Rajat Kamal Mitra, on a piece of plain paper with a revenue stamp, in which the said Shri. Rajat Kamal Mitra stated that a sum of Rs. 10,06,644/- was paid by him, in cash to the assessee and this confirmation also authorized the assessee to sell the land, after settling all the disputes. The said confirmation also stated that after the sale of the land, the assessee had constructed a temple to Lord Shiva on the said land and transferred the balance of sale proceeds amounting to Rs 450,000/- to him (Shri. Rajat Kamal Mitra). The ld. AO found the transaction to be highly suspicious, as no gain was seen to be accruing to the assessee during it and therefore, he asked the assessee to produce Shri. Rajat Kamal Mitra. First, the assessee replied that Shri. Rajat Kamal Mitra had shifted to Kolkata and he did not have his current postal address. Then he replied that Shri. Rajat Kamal Mitra had passed away. The ld. AO then made enquiries with the Additional District Magistrate (Nazul), Allahabad to enquire whether during the financial year 2000-01 and 2001-02, on payment of free hold charges, the title of the land was transferred to the lessee or to the nominated person. He also enquired about the buyer and seller of the land. In turn, he was informed that the title for freehold was made in name of the nominated person (i.e. the assessee) and the seller of the land was the Additional District Magistrate. In such a situation, the ld. AO concluded that Shri. Surendra

Kumar Mishra (i.e. the assessee) was himself the beneficiary of this transaction and therefore, he added back a sum of Rs. Rs. 10,06,644/- paid as free hold charges, to the income of the assessee under section 69C, since the assessee had only declared income from salary in his return dated 13.07.2003 and the receipt from Shri. Rajat Kamal Mitra was unproved. The ld. AO also noticed that, subsequent to conversion of the land to free hold, the assessee sold the land in the F.Y. 2001-02. The Ld AO wanted to verify the books, but none were produced by the assessee, saying that the same were not maintained. The assessee stuck to his stand that the property in question belonged to Shri. Rajat Kamal Mitra, who had entrusted him with the task of selling his land under power of attorney and the profits of Rs.4,50,000/- from such transaction had been transferred by him to Shri. Rajat Kamal Mitra. The ld. AO asked the assessee to produce a fresh confirmation from Shri. Rajat Kamal Mitra to this effect, but the same was not produced. The ld. AO noted that the total sale consideration was Rs.30,30,000/- and a major part of these were through cheques while rest was in cash. The assessee had shown expenses of Rs.25,80,000/- against the receipt, of which Rs.14,25,000/- was stated to be paid by way of compensation and Rs.1,48,356/- towards development of property. The Ao wanted to examine the books in this regard, but was told that they were not maintained .Neither was a copy of his bank account produced before the ld. AO for verification of the receipt and disbursal. In the absence of any corroborative evidence regarding these expenses being produced before him, the ld. AO disallowed 10% of the expenses paid for compensation and 10% of amount paid towards the development of property. Thus, he made an addition of Rs.1,57,000/- on this count. He also did not accept the plea that Rs.4,50,000/- had been transferred to Shri. Rajat Kamal Mitra and added this amount back in the hands of the assessee, as short term capital gain. Thus, the total

short term capital gain was worked out by him at Rs.16,13,676/- after restricting the expenses claimed.

4. Aggrieved by this said order, the assessee went in appeal to the ld. CIT(A). Before the ld. CIT(A), the assessee submitted *inter alia* that since the jurisdiction notice under section 143(2) had not been served on the assessee in accordance with provisions contained in section 282 of the Act, the assessment order dated 26.12.2008 was null and void. This legal ground was referred to the ld. AO for his comments and the ld. AO replied back, that the assessee was required to furnish a return of income within 30 days of service of notice under section 148 i.e. 28.02.2008. The assessee did not furnish the return of income under section 148 during the stipulated period. Thereafter, notice under section 142(1) was issued to the assessee requiring him to produce information and documents necessary for completing the assessment. The assessee sought adjournment on 10.09.2008, which was granted to him up till 16.09.2008, on the condition that he would furnish a return of income under section 148 for the assessment years 2001-02 and 2002-03 by 16.09.2008. On 16.09.2008, the assessee furnished copies of acknowledgments of income tax returns for the assessment years 2001-02 and 2002-03 in compliance to the notice issued under section 142(1) dated 25.08.2008. Subsequently, on 10.11.2008, the assessee furnished a letter, that the return filed by him for the assessment year 2002-03, may be treated as the return filed by him in response to notice under section 148. The ld. AO replied, that because the assessee did not file a return of income in compliance to notice under section 148, dated 11.02.2008, then there was no need to issue a notice under section 143(2) to the assessee before completing the assessment. On consideration of the matter, the ld. CIT(A) held that the assessee had not furnished a return in response to notice under section 148. However, vide his letter dated 10.11.2008, he had requested that the original return

filed by him, may be treated as having been filed under section 148. The ld. CIT(A) observed that the assessment order was silent on the issue of notice under section 143(2) and it did not appear that the assessee had raised any objections at that stage to the failure to issue notice under section 143(2). He, therefore, concluded that the assessee had cooperated in the assessment proceedings and in view of the same he held, that the case of the assessee was covered under the provisions of section 292BB of the Income, Tax Act which had been inserted by the Finance Act, 2008, w.e.f. 1.04.2008. He distinguished the case of the assessee from that of CIT vs. Rajiv Sharma 336 ITR 678 (Allahabad), pointing out that that pertained to a period when section 292BB was not there on the statute. The ld. CIT(A) observed that the assessee had clearly not filed the return within the time allowed in the notice under section 148 and therefore, he declined to admit the additional ground of appeal raised by the assessee. On the merits of the issue, he decided the matter against the assessee. He observed that the ld. AO had dealt with this case in totality, the assessee had failed to produce Shri. Rajat Kamal Mitra to verify the facts stated by him and he had failed to produce the bank account or prove the transfer of any funds to Shri. Rajat Kamal Mitra, subsequent to the sale. Therefore, the ld. AO had rightly assessed the income from the said transaction in the hands of the assessee. With regard to expenses claimed by the assessee, the ld. CIT(A) observed that the onus was upon the title holder to explain the income and expenditure, and since the assessee was the title holder and he had been shirking his responsibilities to satisfactorily explain the matter on account of his story that Shri. Rajat Kamal Mitra was the owner, the addition had rightly been made by the ld. AO.

5. The appellant then carried the matter to the ITAT Allahabad Bench in ITA No.304/Alld/2012. The Hon'ble Bench vide their orders dated 9.11.2012, held that the ld. CIT(A) had failed to note that the provisions of 292BB has been inserted in

the Income Tax Act by the Finance Act, 2008 w.e.f. 1.04.2008. The ITAT Delhi Special Bench, in the case of Kuber Tobacco Products (P) Ltd. vs. DCIT 117 ITD 273 had held that section 292BB inserted by the Finance Act, 2008 had no retrospective effect and was to be construed prospectively. Therefore, the above provisions would not be applicable to the assessment year under appeal i.e. AY 2002-03. They noted that the ld. CIT(A) had not disputed the orders of the Hon'ble Allahabad High Court in the case of CIT vs. Rajiv Sharma (supra), but had not followed them on account of 292BB. They further observed that the Hon'ble Allahabad High Court in the case of CIT vs. Mukesh Kumar Agarwal 345 ITR 29 had considered the issue of section 292BB and held that it would have no effect on the judgment of the Hon'ble Supreme Court in the case of Hotel Blue Moon [2010] 321 ITR 362 (SC). The Hon'ble Bench held that the ld. CIT(A's) could therefore not be sustained. Examining the finding of the ld. CIT(A), that the return under section 148 had not been filed within time, the ld. Bench observed that the ld. AO acted upon the reply of the assessee dated 10.11.2008 and considered the earlier return of income filed by the assessee on 13.07.2003 declaring income of Rs.1,68,000/- for the purposes of computing the income of the assessee and had taken the income disclosed in the earlier year in the computation of re-assessment and thereafter completed the re-assessment proceedings. Therefore, it observed that this was suggestive of the fact that the ld. AO had acted upon the return of income filed by the assessee belatedly on 10.11.2008. Hence, since the legal issue had not been addressed by the ld. CIT(A), the ld Bench remanded the matter back to the ld. CTI(A), with a direction to admit the additional grounds and to decide the same in accordance with law after giving reasonable and sufficient opportunity of being heard ,in the light of the judgments of the Hon'ble jurisdictional Allahabad High Court.

6. The case was again taken up for hearing by the ld. CIT(A), NFAC. The assessee filed a written submission in which he relied upon the decisions of the Hon'ble Allahabad High Court in the case of Rajiv Sharma (supra) and Mukesh Kumar Agarwal (supra). In a nutshell, he submitted that all the judgments, including the judgment of the Hon'ble Supreme Court, had ruled that for the completion of assessment, notice under section 143(2) must be issued after the filing of return. However, the ld. CIT(A) held that in the present case, the ld. AO had not committed any mistake, because a notice under section 143(2) was not required to be issued unless there was a valid return filed in a prescribed form and in the prescribed manner. He observed that in this case, the notice under section 148 was issued on 11.02.2008 and served on 22.02.2008. The return was required to be furnished within 30 days. Therefore, time was allowed up till 30th March, 2008. But the return, in response to notice under section 148 was not filed within the stipulated period. Since, no return was filed in response to the notice under section 148, there was no cause of action under section 143(2). He submitted that in his opinion, a proper return should have been filed in response to the notice under section 148, and mere information that the return filed earlier on 13th July, 2003, may be treated as a return in response to notice under section 148 was not compliance of notice under section 148. He observed that a notice under section 143(2) could not be issued against a return dated 13.07.2003 and therefore, no notice was required to be issued in the said matter. The ld. CIT(A) observed further that the facts in the judgment of the CIT vs. Rajiv Sharma (supra) were different from the present case, because in that case, the ld. AO had written to the assessee giving the assessee a last opportunity to file a return upto 8.01.2002, while in this case, the last opportunity was 30 days from the issue of notice under section 148. Since the ld. AO gave no such opportunity, the assessee could not claim the benefit of extended time and seek

shelter under the judgment of CIT vs. Rajiv Sharma (supra). He further observed that in case there was no return leading to issue of notice under section 143(2), the assessment could be completed under section 147 / 144 after issue of notice under section 142(1) only. He therefore held that the concerns of the Hon'ble ITAT regarding the completion of the order on 26.12.2008 when assessee filed reply on 10.11.2008, were addressed. Moving on to look into the issue on merits, the ld. CIT(A) held that it was clear from the order of the ld. AO that the investment in the name of Shri. Rajat Kamal Mitra was facade. The assessee could not prove that the investment was made by Shri. Rajat Kamal Mitra. He, therefore, confirmed the addition of undisclosed investment under section 69C on free hold charges amounting to Rs. 10,06,644/- as he was in agreement with the predecessor CIT(A) that since the assessee had the title of the property, he could not disown the transaction. With regard to the determination of short-term capital gain of Rs.16,13,976/-, he held that since the investment in the free hold property was that of the assessee, the sale proceeds of this property accrued to him. The assessee could not prove the transfer of Rs.4, 50, 000/- to Shri Rajat Kamal Mitra. He could not prove the identity, creditworthiness or genuineness of the transaction stated to take place with Shri. Rajat Kamal Mitra. With regard to disallowance out of expenditure, the ld. CIT(A) pointed out that the assessee had not provided any corroborative evidence and therefore, the ld. AO had disallowed 10% of the expenditure. He held that since the disallowance was reasonable in the circumstances, the assessee did not deserve to hold any grudge against the said disallowance. The ld. CIT(A) submitted that the assessee would neither produce his bank statements or evidence of the so called expenditure. Since, the assessee could not discharge his onus, therefore, the disallowance of expenditure was justified. The ld. CIT(A) also drew reference to the fact that he had himself issued an enquiry

letter to the assessee seeking information on various points, but the assessee had declined to furnish the same, saying that the counsel associated with the original assessment was no longer in contact with them and therefore, they were not able to trace the necessary documents. In the circumstances, he held that the stand taken by the ld. AO deserves to be upheld and he dismissed the appeal of the assessee.

7. Aggrieved with this dismissal of his appeal, the assessee has come before us. Shri. Ashish Bansal, Advocate (hereinafter referred to as the 'ld. AR') who argued the case of the assessee, submitted that the ld. CIT(A) had erred by dismissing the appeal and observing that the return filed by the assessee in terms of a letter dated 10.11.2008 was not a valid return in compliance to the notice dated 11.02.2008, because the furnishing of the letter requesting to treat the return filed originally as a return in compliance to notice under section 148, was a valid return and the ld. CIT(A) erred in observing that the same was not in compliance with the notice. It was further pointed out that the Hon'ble Allahabad High Court had observed in the case of CIT vs. Rajiv Sharma (supra) that the issue of notice under section 143(2) was mandatory after the filing of the return and in the present case, the ld. AO had himself issued a notice under section 142(1) of the Act, after the issue of notice under section 148, requiring the assessee to prepare a true and correct return and file the same before him. Thus, the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Rajiv Sharma (supra) was squarely applicable to the facts of the assessee's case. He also placed reliance on the decision in the case of CIT vs. Salarpur Cold Storage in Income Tax Appeal No. 24 of 2014 (Allahabad).It was submitted that in view of the admitted fact on record, that the assessee had filed a return in compliance to notice dated 11.02.2008 vide its letter dated 10.11.2008 and no notice under section 143(2) of the Act had been issued, the ld. CIT(A) should have followed the binding precedents of various judicial pronouncement of the

Hon'ble Supreme Court and the Hon'ble High Courts on the subject and quashed the proceedings as *void ab initio* in the absence of notice under section 143(2) having been issued. It was, therefore, submitted that the entire re-assessment proceedings were vitiated in the eyes of law and deserve to be quashed on this account. It was further submitted that the ld. CIT(A's) view that because the assessee had the title to the property, he could not disown the transaction was an erroneous view, because the source of investment in making the payment of, 'free hold charges' stood fully explained by the confirmation of Shri. Rajat Kamal Mitra and therefore, the same should not have been held to be undisclosed income in the hands of the assessee. Reliance was placed on the case of CIT vs. Smt. P.K. Noor Jahan (1999) 237 ITR 570 for this proposition. Furthermore, it was submitted that the payment of free hold charges should have been considered as, 'cost of improvement' of the, 'capital asset' and the same should have been taken into account in that manner in the computation of capital gains. Furthermore, the assessee should have been allowed the full deduction of expenses at Rs.15,73,360/- (other than free hold charges) instead of restricting them by 10%. It was submitted that this restriction by 10% was wholly erroneous and inconsistent with the facts of the case. Furthermore, it was submitted that the surplus arising out of transfer of capital asset should have been subjected to assessment as, 'long term capital gain' instead of, 'short term capital gain' as had been made / upheld by the authorities below. Needless to say, these arguments were made without prejudice to the assessee's earlier contention, that the investment and income was not that of the assessee but that of Shri. Rajat Kamal Mitra.

8. On the other hand, Shri. A.K. Singh, Sr. DR (hereinafter referred to as the 'ld. Sr. DR) arguing on behalf of the Revenue submitted that the notice under section 148 had been issued on 11.02.2008 and the period of 30 days had lapsed, long

before the letter had been filed by the assessee. He invited our attention to a letter filed by the assessee on 10.09.2008, during assessment proceedings, where additional time was allowed to the assessee to file the return in response to notice under section 148 by 16.09.2008. Ld. Sr. DR submitted that compliance was not made on this date also. Therefore, he submitted that once the time period allowed under section 139 and section 148 and even section 142(1) had lapsed, the assessee could not claim a right to file the return at any time of his choosing. Therefore, the letter dated 10.11.2008, which was clearly filed beyond the time allowed to the assessee to make compliance, could not be held to constitute a valid return in response to notice under section 148 or the extended time allowed by the ld. AO in response to his notice under section 142(1). This return was non-est and therefore, the assessee cannot seek a notice under section 143(2) as a matter of right on a return which was non-est. The ld. Sr. DR further argued that if one were to consider the purpose and intent of the notice under section 143(2), then it was that nobody should go unheard. However, in the present case, no prejudice had been caused to the assessee due to the fact, that the assessee was constantly present during the assessment proceedings. The ld. Sr. DR, in support of his arguments placed reliance on the following case laws:-

i. CIT vs. Umang Agarwal, (2014) 365 ITR 164

ii. Smt. Parvati Devi vs. CIT (1970) 75 ITR 625

iii. Bhola Dutt In re (1981) 130 ITR 468

iv. PCIT vs. Broadway Shoe Company (2018) 259 taxman 223 J & K.

9. The ld. Sr. DR also submitted that the observations of the ITAT in the first round of appeal regarding cognizance of the letter dated 10.11.2008 were not called for, because the cognizance was only taken for computational purposes and did not

validate the return as a return under section 148. The ld. Sr. DR, therefore, pleaded that there was no merit in the legal grounds cited by the assessee. Arguing on the merits of the case, the ld. Sr. DR pointed out that it was for the assessee to produce proof and verifiable evidences, to show that the story about the transaction with Shri. Rajat Kamal Mitra were true. The objective facts as they stood were that he had obtained a power of attorney from Shri. Rajat Kamal Mitra, transferred the title to his own name and thereafter, sold the property to another party. There was also evidence that it was he who had incurred the expenditure, both for payment of free hold charges and for compensation / development, therefore, these had to be assessed in his hands, unless he could produce evidence to shift the onus upon him to explain the said expenditure and investment. The ld. Sr. DR, therefore, submitted that the expenditure had rightly been disallowed in the hands of the assessee and also that the capital gains had rightly been assessed in his hands. He submitted that since the assessee had got the property converted to free hold on 15.06.2001 and sold the property between July to October 2001, therefore, it was clearly a case of short-term capital gain, unless, he could show that he had purchased the property from Shri. Rajat Kamal Mitra more than two years back. In the circumstances, the ld. Sr. DR prayed that the orders of the ld. AO and ld. CIT(A) may kindly be upheld.

10. We have duly considered the facts and circumstances of the case and the arguments advanced by the rival parties. Before we proceed to examine the case on its merits, it is important to address the legal issue as it goes to the very root of the assessment. The provisions of the Income Tax Act are quite clear that a return under section 139(1) can only be filed before the due date of filing of that return. However, if a person fails to file a return under section 139(1), then he may furnish a return under section 139(4), before the expiry of one year from the end of the relevant assessment year or before the completion of assessment whichever is earlier. The

provisions of section 142(1) read, that where a person has not made a return within the time allowed under section 139(1) or before the end of the relevant assessment year, a notice may be served upon him to furnish a return of his income and finally the provisions of section 148(1) read, that before making any assessment or re-assessment or re-computation under section 147, the ld. AO shall serve upon he assessee in notice requiring him to furnish within such period, as may be specified in the notice, a return of his income for which he is assessable under the Act during the previous year of the relevant year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act would thereafter apply as if such return were return required to be furnished under section 139(1). What emerges from the reading of these sections is that an assessee cannot file a return at any time of his choosing and claim it to be a valid return, unless it is in accordance with the timelines stipulated within these various sections. Be that as it may, the fact remains is that once a valid return is filed, even under section 148, since the said return is to be treated as a return under section 139, a notice under section 143(2) is required to be issued to the assessee so that the assessment can thereafter be completed under section 147 r.w.s. 143(3). This is what has been held by the Hon'ble Supreme Court in the case of Hotel Blue Moon (2010) 321 ITR 362 (SC) and the Hon'ble Allahabad High Court in the case of CIT vs. Rajiv Sharma 336 ITR 678 (supra). However, if the assessee did not file a return or did not file a return within the time period allowed under the law or under the extended period allowed to such assessee by way of various notices, then that return would not be a valid return in the eyes of law and the language of section 143(2) itself suggests that there may not be any obligation upon the ld. AO to issue a notice under section 143(2) before completing an assessment. The assessment could also be completed under section 147 r.w.s. 144 and such an

assessment would not be invalid. The ld. Sr. DR has invited our attention to the decision of the Hon'ble Jammu & Kashmir High Court in the case of PCIT vs. Broadway Shoe Store (supra), in which the Hon'ble High Court held, *"thus, it is evident that the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision, is that a notice under section 143(2) is mandatory, if the return as filed is not accepted and an assessment order is to be made at variance with the return filed by the assessee. The aforesaid decision would not apply to a case where no return is filed by the assessee as would be axiomatic from a plain reading of section 143(2) of the Act also."* It is also seen from the various case laws submitted by the ld. Sr. DR that the Courts have held that when returns are filed beyond time allowed under the Act or under the terms of a notice, those returns are non-est. In the case of Smt. Parvati Devi vs. CIT (1970) 75 ITR 625 (Allahabad), the Hon'ble High Court held that while the petitioner had agreed to file a voluntary return, there was no concession that the return that was being filed would be a valid return under section 139 of the Act and therefore, despite compromise, it was open for the assessee to take up a possession that the return filed by her in 1966 was barred by time. In the case of Bhola Dutt In Re (1981) 7 taxman 119 (All), the Hon'ble High Court held that estate duty proceedings that were sought to be commenced on the basis of the return filed by the accountable person, voluntarily but after the expiry of the prescribed period of five years, could not confer jurisdiction upon the Assistant Controller." In the case of CIT vs. Bhagwan Das Amersey (1963) 50 ITR 239 (Bombay), the Hon'ble High Court held that a voluntary return filed by the assessee after the expiry of four years from the end of the year in which the income was first assessable, was non-est in law and therefore, did not preclude the ITO from initiating proceedings under section 34(1)(a). Similarly, the Hon'ble High Court of Calcutta in the case of CIT vs. Meena Bati Agarwal (1971) 79 ITR 278 (AP) held that where returns were filed beyond the

period of four years from the relevant assessment year, the returns were invalid and no fresh assessment orders could be made on the basis of the Commissioner's order under section 33B. In the case of Auto and Metal Engineers vs. Union of India (1978) 111 ITR 161 (P&H), the Hon'ble High Court held that where the assessee failed to file a return even within the outside limit and a return was filed beyond that period, the ITO was justified in treating the said return to be non-est and issuing notice under section 148 to the assessee. Therefore, what emerges from all these judgments is that it is only a valid return that can be acted upon and similarly it is only a valid return, which would require the ld. AO to follow the procedure laid down under section 143 before completing an assessment under section 143(3). Otherwise, the assessment could be completed as an assessment under section 144.

11. It is, therefore, pertinent to analyze the case of the assessee with reference to these positions held by the various Courts. It is fairly clear that the assessee was issued with a notice on 11.02.2008 which was served upon him on 28.02.2008, that required him to furnish a return of income within 30 days i.e. 30.03.2008. The assessee did not file the return of income within the stipulated period. Subsequently, the ld. AO issued a notice under section 142(1) on 25.08.2008. In his order, he states that that notice was issued asking the assessee to furnish relevant information and documents necessary to complete the assessment. In its submissions before authorities earlier, the assessee has pointed out that it was for requiring the assessee to furnish a, 'true and correct return of income'. Be that as it may, the fact is that the assessee appeared on 10.09.2008 and requested for one more month to file the relevant documents. In response, the ld. AO adjourned the case up till 16.09.2008, on the condition that the return of income under section 148 for the assessment year 20001-02 and 2002-03 were filed on 16.09.2008. However, the return of income as called for in the notice under section 148 was not furnished

by 16.09.2008. There is nothing on record to show that the ld. AO gave any further time to the assessee to file a return. In the circumstances, the filing of a letter on 10.11.2008, that the returns filed under section 139 may be treated as the returns in response to the notice under section 148, cannot acquire the status of a valid return in response to notice under section 148. On examining the order of the Tribunal in ITA No. 304/Alld/2012, we observe that our ld. Brothers, while restoring the matter back to the CIT(A) for a fresh decision, have opined that, by commencing the computation of escaped income from the returned income filed on 13.07.2003, the ld. AO has taken cognizance of the letter filed on 10.11.2008 and therefore, this would amount to acting upon the return of income filed by the assessee belatedly as per his letter dated 10.11.2008. However, we are not in agreement with this understanding. In our view, the computation of escaped income under section 147, has to necessarily start either from the last returned income or the last assessed income. It cannot start from zero, where a return of income had been filed earlier. Therefore, the mere fact that the ld. AO recorded what had already been disclosed by the assessee earlier, as a starting point for computing the escaped income, does not mean that he acted upon any belated returned income and therefore, this cannot confer any legitimacy upon the letter dated 10.11.2008 as a valid return. Therefore, since there was no valid return, the ld. AO was not obliged to issue the notice under section 143(2), but was fully empowered to complete the assessment under section 144 r.w.s. 147. The judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Rajiv Sharma (supra) would not be applicable to the facts of the case because in that case, the ld. AO had given additional time to the assessee to furnish a return while in this case the letter dated 10.11.2008 was clearly beyond the period allowed to the assessee for furnishing a return. In the circumstances, we are inclined to agree with the ld. CIT(A) in his orders dated 26.10.2023 that there was no

requirement upon the ld. AO to serve a notice under section 143(2) upon the assessee prior to completion of assessment, because there was no valid return filed by the assessee in response to the notice under section 148. Therefore, the challenge to the validity of the order on this ground is dismissed. Accordingly, Ground Nos. 1 to 7 are dismissed.

12. With regard to the merits of the case, it is seen that the assessee paid free hold charges of Rs.10,06,644/- and, armed with a power of attorney, got a certain piece of land that had earlier stood in the name of Shri. Rajat Kamal Mitra, converted from leasehold to free hold in his own name. Subsequently, he sold that land to another person. The assessee has tried to explain away his liability for investment in the payment of the said free hold charges, and the resultant capital gains from the sale of the land, by producing a confirmation on a piece of plain paper, from Shri Rajat Kamal Mitra in which the said person has stated that gave the money in cash to the assessee so that the assessee could complete the formalities, sell the land and thereafter transfer the capital gains on the same, after constructing the Shiv Mandir on the said land. The ld. AO was not satisfied with the said confirmation because the creditworthiness of Shri Rajat Kamal Mitra was not proved and because the genuineness of the transaction was also not proved. He therefore, desired that the details of Mitra's address be furnished to him, which the assessee did not furnish him. Subsequently, the ld. AO desired a fresh confirmation from Shri. Mitra, which could not be obtained by the assessee on the grounds that Shri. Mitra had passed away. In the circumstances, other than a bald statement from the assessee that he was acting on behalf of Shri Rajat Kamal Mitra, who was a friend of his father, and a confirmation from Shri Mitra that was not backed by any verifiable evidence, there was no evidence presented before the ld. AO to suggest that the assessee was acting as an agent of Shri Rajat Kamal Mitra and not a person undertaking a transaction in

his own right. It is also observed that the learned AO asked the assessee to produce a copy of his bank account into which the payments for the sale of the land were made, and subsequent expenditures towards compensation and improvements were made, but the assessee did not furnish those details before the ld. AO. In the circumstances, there was no verifiable evidence to back the submissions of the assessee, that he received money from Shri Rajat Kamal Mitra for paying the free hold charges, that he incurred expenditure to the extent that he did in paying compensation and in improvement of the property and that he remitted a sum of Rs.4,50,000/- back to Shri. Rajat Kamal Mitra as the balance profit on the sale of the land. In the circumstances, the action of the ld. AO in treating the expenditure of Rs.10, 06, 644/- as unexplained and as assessing of capital gain in his hands is seen to be justified and is accordingly upheld. We do not agree that the case of the assessee is covered by the judgment of the Hon'ble Supreme Court in P. K. Noorjehan (supra). In that case the court held that the Assessing Officer had not applied his discretion properly before considering the assessee's submission as unsatisfactory. In this case we find that the assessing officer had recorded the fact of the assessee being subsequently engaged in real estate business and the reference to the assessee showing only salary income was with a view to demonstrate that the investment in freehold charges was unexplained in his hands. The Assessee has alternatively submitted that the freehold charges be allowed as a deduction for cost of improvement. To our mind that has already been considered by the assessee in arriving at the profit of Rs 450,000/. Therefore, the ground is without merit. The Assessee has also submitted that even if the capital gain is to be assessed in his hands, it should be assessed as long-term capital gains. It is seen that the ld. AO has computed the gains as short-term capital gains by noticing the gap between the date of conversion to free hold in the name of the assessee and the sale of the property by

the assessee. If the assessee wished to demonstrate that the capital gains were in fact long term, then he would have to show that the property was acquired by him at an earlier date. Since he has not done this, the decision to charge the capital gains as short-term capital gains is also upheld. We also observe that the assessee has given details of certain expenditures made by him for providing compensation to tenants (who were to be vacated) and for making improvement on the property. The ld. AO has disallowed 10% of this amount as the details were not provided. The assessee has claimed that he ought to be allowed full deduction as the matter was verifiable. However, we note that it is primarily the duty of the assessee to furnish the relevant details before the ld. AO when he makes a claim of any expenditure. In the absence of proper details along with evidences being furnished to the ld. AO, the action of the ld. AO in making a partial disallowance cannot be faulted. Accordingly, Ground Nos. 8 to 15 are also dismissed and the additions made by the ld. AO are confirmed.

13. In the result, the appeal of the assessee is dismissed.

Orders pronounced on 10.02.2025 under Rule 34(4) of the ITAT, Rules, 1963.

Sd/-	***Sd/-***
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 10/02/2025
Sh

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.