

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 992/DEL/2024 [A.Y. 2012-13]

Shri Sanjeev Garg
C/o Vipin Jain & Associates,
Flate No. 915, 5th Floor,
Indra Prakash Building, 21,
Barakhamba Road, New Delhi

Vs.

The A.C.I.T
Circle -2(2)(1)
Ghaziabad

PAN - ACBPG 9472 H

(Applicant)

(Respondent)

Assessee By : Shri Vipin Jain, FCA
Shri Aslam, CA

Department By : Shri Manish Gupta, Sr. DR

Date of Hearing : 11.08.2025
Date of Pronouncement : 07.11.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

This appeal by the assessee is preferred against the order of NFAC,
New Delhi dated 24.01.2024 for A.Y 2012-13.

2. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

3. The assessee has taken the following grounds of appeal:

1. *That proceedings carried out u/s 147 read with sec 148 of the I Tax Act, 1961, are bad in law, as the Ld Assessing Officer had no "Reasons to believe" that any income chargeable to tax had escaped assessment.*

That the Ld Assessing Officer did not provide the assessee with a copy of the "Reasons to believe" and copy of the approval obtained u/s 151 of the Act, and did not provide the assessee any opportunity to file "Objections" and consequently no order disposing "objections" was passed.

That the proceedings carried out u/s 147/148 without complying with the guidelines of the Hon'ble Supreme Court laid down in "G K N Drive shaft (India) Ltd", vitiate the proceedings, rendering them bad in law, liable to be quashed.

2. *That proceedings u/s 147/148 initiated after more than four years from the end of the assessment year to which the proceedings relate, without showing that there was failure on the part of the assessee in making a true and complete disclosure of all material facts in the return filed, render the proceedings bad in law, liable to be quashed.*

3. *That the Ld Assessing Officer has erred on facts and in law in computing the income of the assessee chargeable to tax at Rs. 80,68,487 as against return filed declaring income at Rs.33,18,623 after making addition/disallowance aggregating Rs 47,49,864 to the income declared on erroneous and illegal grounds, untenable in law.*

4. *That no notice u/s 143(2) was issued by the Ld AO, a statutory requirement for the Ld AO to assume jurisdiction to carry out the reassessment proceedings, rendering the proceedings bad in law, without jurisdiction and liable to be quashed.*

5. *That the Ld Assessing Officer has erred in not allowing deduction of Rs. 8,87,225, on account of "indexed cost of improvement", a statutory deduction to be allowed in computing the "Capital gain" chargeable to tax under section 45 of the I Tax Act, 1961.*

6. *That the Ld Assessing Officer has erred in not allowing deduction of Rs. 38,62,639 u/s 54 of the I Tax Act, 1961,, a statutory deduction to be*

allowed in computing the amount of "Capital gain" chargeable to tax under section 45 of the I Tax Act, 1961.

7. That the assessee craves leave to be permitted to modify all or any of the above grounds, delete, add any fresh ground of appeal, before or during the appeal proceedings.

4. Facts on record show that the assessee filed his return of income on 31.07.2012 declaring an income of Rs. 32,98,620/-. The case of the assessee was selected on the basis of AIR information available with the department i.e. sale of immovable property valued at Rs. 30 lakhs or more during the F.Y. 2011-12 relevant A.Y 2012-13.

5. The assessee has raised the fundamental objections on assumption of jurisdiction u/s 148 on the following grounds:

i) Assessing Officer while recording reasons, recorded that no return of income was filed. Accordingly, assessment framed u/s 147/143(3) of the Act is invalid as the facts were wrongly recorded and relied on Gujrat High Court decision in the case of *Mumaz Hazi Mohhmad Menon 408 ITR 268(Guj) and Dr Ajit Gupta 383 ITR 361 (Del)*.

ii) Secondly, the assessee challenged the grant of approval u/s 151 by specified Authority as without

reading the contents of the reasons and without application of mind.

iii) the Assessing Officer while recording his reasons, did not comply with the proviso 1 of section 147 regarding escapement of income by reason of failure to disclose truly and fully all material facts and relied on *CIT V Batra Bhatta Co (Del) and Apex Remedies P Ltd* (Guj).

iv) The Ld ACIT Circle 2(2)(1) Ghaziabad carried out reassessment proceedings without serving any notice u/s 143(2) of the IT Act 1961 on the assessee which is mandatory and not a curable defect u/s 292BB of the Act.

6. The ld. counsel for the assessee, on merits, further submitted that the assessee and his two brothers Shri Deepak Garg and Shri Vishal Chand Garg had jointly inherited residential property No R-2/192, Raj Nagar, Ghaziabad in FY 1978-79. The property was sold on 27.04.2011. The assessee and his two brothers computed their 1/3rd share each in the LTCG on sale of the property and included the same in their tax returns filed for the year. The assessee computed his

1/3rd share of LTCG on sale of the property at Rs. 15,47,900/-

as under:

(a) Gross sale value of the property		Rs. 2,19,60,000
(b) Less indexed cost of the property		Rs. 28,41,700
(c) Gross capital gain	(a)-(b)	Rs. 1,91,18,300
(d) Less indexed cost of improvement (-)		Rs. 26,61,600
(e) Less transfer expenses (-)		Rs. 2,25,000
(f) Capital gain chargeable to tax(c-d-e)		Rs. 1,62,31,700
(g) One third share of the assessee		Rs. 54,10,570
(h) Exemption claimed by the assessee u/s 54		Rs. 38,62,639
(i) Amount chargeable to tax included in the income in the return filed	(g-h)	Rs. 15,47,931
(j) Amount rounded off to		Rs 15,47,900

6.1. Assessee further claimed deduction u/s 54 and thereafter reflected LTCG on sale of the property in the return filed for AY 2012-13 as under:

Asset in the case of others where proviso under section 112(1) is not exercised

a	Full value of consideration	2a	73,20,000
b	Deductions under section 48		
	i Cost of acquisition after indexation	bi	9,47,236
	ii Cost of improvement after indexation	bii	8,87,225
	iii Expenditure on transfer	biii	75,000
	iv Total (bibii +biii)	biv	9,09,461
c	Balance (2a - biv)	2c	54,10,539
d	Deduction under sections 54/54B /54D/54EC/54F 54G/54GA	2d	38,62,639
E	Net balance (2c-2d)	2e	15,47,900

7. The ld. counsel for the assessee relied upon the following

case laws:

- (i) CIT Vs.Laxman Das Khandelwal [Supreme Court]
- ii) ACIT Vs.Hotel Bluemoon 321 ITR 362
- iii) SA Syncon Infrastructure Services ITA No. 2040/DEL/2010
- iv) PCIT Vs. M/s Consortium Nussli Comfort Net [Delhi HC]
- v) PCIT Vs. Paramount Biotech Industries [Delhi High Court]
- vi) M/s Travancore Diagnostics [P] Ltd [Kerala High Court]
- vii) Shaily Junueja Vs ACIT [Delhi High Court]
- vii) CIT Vs. Batra Bhatta Co. [Delhi High Court]

8. Per contra, the ld. DR relied on the orders of the authorities below and contended that the reasons are prima facie belief that income has escaped which has been complied by the Assessing Officer and therefore, reasons recorded cannot be faulted.

9. Having heard the rival submissions, we find it pertinent to reproduce the reasons for reopening the assessment u/s 147 of the Act by the Assessing Officer which read as under:

"In this case PAN AIR information has been received from the Sub Registrar Office-II, Ghaziabad. The assessee had filed his return of Income for A.Y. 2012-13 at the total income of Rs. 33,18,620/-.

2. Brief details of information collected/received by the A.O:

A PAN based AIR information was received from the Sub Registrar Office-II, Ghaziabad that the assessee has sold property for the sale consideration of Rs.

2,19,60,000/- during the F.Y. 2011-12 relevant to A.Y.2012-13.

3. Analysis of information received:

In this case the assessee had filed his return of Income for A.Y. 2012-13 at the total income of Rs. 33,18,620/, but during the year under consideration the assessee had sold property for the sale consideration of Rs. 2,19,60,000/- and it needed to be verified whether the transaction had been incorporated with the income declared by the assessee.

4. Enquiries made by the A.O. as sequel to information received:

After receiving the information, notice u/s 133(6) of the Income Tax Act, 1961 was issued on 17.09.2018 to the assessee calling for information regarding filing of return of income for A.Y.2012-13, whether the assessee has disclosed capital gain from selling of property and paid taxes as due or incorporated the capital gain while computing income for A.Y.2012-13.

5. Findings of the A.O:

The assessee has filed reply in response to the notices issued u/s 133(6) of the I.T. Act, 1961 vide letter dated 13.11.2018. The assessee has submitted that during the year under consideration he has sold a property for Rs. 2,16,00,000/-. The assessee furnished computation of LTCG wherein he had claimed exemption u/s 54 of the IT Act 1961 for Rs. 38,62,639/- and paid taxes on LTCG of

Rs. 15,47,900/. But he failed to furnish the requisite documents regarding the cost of acquisition, cost of improvement and Exemption claimed u/s 54. The claim of the assessee regarding the Cost of Acquisition, cost of improvement and Exemption claimed u/s 54 are needs to be ascertained.

6. Basis of forming reason to believe and details of escapement of income

Property sold is situated within the notified area of Ghaziabad district and falls under the definition of capital within the meaning of sec. 2(14) of the IT Act 1961. As per provisions of Sec 45 the profits and gain arisen and the transfer of this capital asset is chargeable to tax under the head "Capital Gain". The assessee furnished computation of LTCG wherein he had claimed exemption u/s 54 of the IT Act 1961 for Rs. 38,62,639/- and paid taxes LTCG of Rs. 15,47,900/-. But he failed to furnish the requisite documents regarding the cost of acquisition, cost of Improvement and Exemption claimed u/s 54. Thus, the capital gain arisen out of sale of aforesaid property remains unexplained and undisclosed. Therefore, I have reasons to believe that the capital gain arising from sale consideration of Rs. 2,19,60,000/- in respect of transfer of aforesaid property, which was chargeable to tax for A.Y. 2012-13 has escaped assessment, within the meaning of sec. 147 of I.T. Act, 1961

7. Applicability of the provisions of section 147/151 of the Income Tax Act, 1961 to the facts of the case:

In this case, the assessee has filed return of income for A.Y. 2012-13, but no scrutiny assessment was made u/s 143(3) of the IT Act 1961 for AY 2012-13. The only requirement to initiate proceedings u/s 147 of the Income Tax Act, 1961 is reason to believe which has been recorded above vide Para No. 6.

It is pertinent to mention here that in this case no return of income has been furnished by the assessee although the total income of the assessee exceeded the maximum amount which is not chargeable to tax as discussed in para no. 6 above and the assessee was assessable under the Act. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issued notice u/s 148 of the Income Tax Act may kindly be accorded as per the provisions of section 151 of the Act."

10. We find that the assessee has filed his return of income on 31.07.2012 which was processed u/s 143(1). We now take

up each of the grievance of the assessee one by one. First is that the AO while recording reasons, recorded that no return of income was filed. From the perusal of the 'reasons' recorded, we find that the AO has recorded thrice the fact of assessee filing the RoI for AY 2012-13 at a total income of Rs 33,18,620/- at para 1, 3 and para 7 of the Reasons. The AO has also mentioned in para 7 that no scrutiny u/s 143(3) was made for AY 2012-13. It is also seen that at para 7 the AO has mentioned that no return is filed by the assessee. In the context of facts narrated in the 'reasons' recorded as narrated above, it appears to be typographical/inadvertent error.

10.1 The second challenge is to the mechanical grant of approval by the PCIT. We find that the PCIT, while granting approval, has recorded the following:

"In view of the reason recorded by the AO, I am satisfied that this is a fit case for issue of notice u/s 148.

Signed Seema Raj, PCIT, Ghaziabad dt. 26.03.2019.

We are of the considered view that such recording of satisfaction is sufficient to show that there is an application of mind for granting the approval. We are fortified by the decision of jurisdictional High Court in the case of *Experion*

Developers Pvt Ltd., Vs Acit vide W.P.(C) 11302/2019 13.02.2020

where the hon'ble Delhi High Court held that

"..... 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. 43. Therefore, it is clear that necessary sanction for issuance of notice under section 148, as required under section 151 had been obtained."

10.2 We are also fortified by the decision of the hon'ble Patna High Court in the case of *Venky Steels Pvt. Ltd. Vs CIT* confirmed by the hon'ble Supreme Court in Special Leave Petition (CIVIL) Diary No. 12775/2025 dated 04-04-2025. The Patna High Court distinguished the case of *Principal Commissioner of Income Tax v. N. C. Cables Ltd;* (2017) 391 ITR 11 (Del) in which case the approval was granted by a single word i.e. 'Approved'. It further distinguished the case of *Principal Commissioner of Income Tax v. Pioneer Town Planners Pvt. Ltd.;* (2024) 465 ITR 356 (Del) where approval was granted in the mere phrase 'Yes'. The Patna High Court held, similar to the Delhi High Court in *Experion Developers* (supra), as under:

"11. Obviously, that is not the case here. The Assessing Officer had recorded reasons for believing that there was income escaping assessment which reasons, were also appended to the request for approval made to the Commissioner. The Commissioner had obviously read the reasons and made a written order that he was satisfied on the basis of reasons recorded, that this was a fit case for notice issued under Section 148. Section 151 requires the Principal Commissioner to be satisfied of the reasons recorded by the Assessing Officer, that it was a fit case for issuance of such notice, where the notice was issued beyond expiry of 4 years. There is no requirement for the Commissioner to record his own reasons and it would suffice that he records the satisfaction regarding the reasons recorded by the Assessing Officer.

12. In N C. Cables (supra) the High Court of Delhi held in para 11, that: "It is not as if the Commissioner of Income-tax (Appeals) 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." (sic para 11) This is in consonance with our finding in the previous paragraph. "

In view of the discussion as above, we hold that there was no mechanical approach by the PCIT in granting approval u/s 151(2) of the Act.

10.3 The third challenge is to the non-compliance by the Assessing Officer while recording his reasons, in not complying with the proviso 1 of section 147 regarding escapement of income by reason of failure to disclose truly and fully all material facts. We find that in the instant case, the return

filed by the assessee was not scrutinized by the Revenue either u/s 143(3) or section 147. The obligation of the AO to comply with the proviso 1 of section 147 regarding escapement of income by reason of failure to disclose truly and fully all material facts, is triggered when the Return of the assessee is subjected to assessment u/s 143(3) or 147 of the Act. In the instant case the return was processed u/s 143(1) and was not scrutinized either u/s 143(3) or 147. We are therefore of the view that there is no legal lacuna in the "reasons to believe" recorded by the AO as far as the adherence to the proviso 1 to section 147 is concerned.

10.4 Another legal challenge is to the framing of reassessment order without serving any notice u/s 143(2) of the IT Act 1961 on the assessee. We find from the materials on record that a notice u/s 143(2) of the Act dated 13.09.2019 was issued to the assessee as well as served to one 'Rahul' on 18.09.2019. The assessee has contested that said person named "Rahul", is neither known to him nor authorized by him and has also filed an affidavit. The assessee contended that there was no DIN on notice u/s 143(2) and he also doubted the

“Order sheet” entries provided by the AO to the assessee at a subsequent date.

10.5 We find from the record that the assessee was issued and served the notice u/s 143(2) on 13.09.2019. The copies of “order sheet” shows that a show cause dated 13.09.2019 was also issued together with the notice u/s 143(2), in reply to which the assessee filed a response vide his letter dated 18.09.2019. As far as quoting of DIN on notice u/s 143(2) is concerned, we find that the Document Identification Number (DIN) on all communications issued by the Department became mandatory from October 1, 2019 vide the Central Board of Direct Taxes (CBDT) Circular No. 19/2019 dated August 14, 2019. As the notice u/s 143(2) dated 13.09.2019, predates the said circular, the question on validity of the notice on the ground of DIN is not sustainable. In view of this factual aspect of the case, we are of the considered view that the challenge of non-service of notice u/s 143(2) has no legs to stand. The grounds 1,2 and 4 are dismissed.

11. On merits, we find that the undisputed fact is that the assessee and his two brothers Shri Deepak Garg and Shri Vishal Chand Garg had jointly inherited residential property No R-2/192, Raj Nagar, Ghaziabad in FY 1978-79. The property was

sold on 27.04.2011. The assessee and his two brothers computed their 1/3rd share each in the LTCG on sale of the property of Rs. 54,10,570/- and included the same in their tax returns filed for the year. We find that in the case of co-owners, the 1/3rd share of LTCG of Rs 54,10,570/-, including the index cost of improvement and Expense on sales, has been accepted by the Department u/s 143(3) of the Act. In the above factual matrix, we find that the decision of the hon'ble Gujrat High Court in the case of *Surat Trade and Mercantile Limited vs Principal Commissioner of Income Tax Surat 1 & Anr* (Gujarat HC) Judgment C/SCA/9157/2024 dated 01.10.2024 is squarely applicable. The hon'ble Gujrat High Court has held that once indexed renovation expense of co-owner accepted, the assessee is not required to produce any documents to prove his share of indexed renovation expense. Accordingly, allowance should be granted even without proof. No contrary decision has been cited before us. In view of the discussion therefore, the cost of acquisition and cost of improvement for computing 1/3rd LTCG by the assessee is directed to be allowed.

12. The issue that remains is the disallowance of claim of deduction of Rs 38,62,558/- u/s 54. The fact of the case is that the assessee claimed that he did not own any other residential property and was thus eligible for deduction u/s 54. The assessee had to construct a residential property on or before 26.4.2014, in order to avail the benefit u/s 54. The assessee booked a residential plot with Yamuna Expressway Industrial Development Authority (YEIDA) in March 2009. YEIDA allotted Plot No 84, Sector 20, Pocket E measuring 1000 sq mtrs @ Rs 4,750 per sq mtr, vide allotment letter No YEA001371 dated 20.10.2009. The plot was registered on 11.05.2015 in the office of Sub- Registrar, Gautam Budh Nagar No. 9992, Book No.1, Jild No. 18071, Serial no. 15985. The assessee made payments aggregating Rs 91,44,279/- to YEIDA from 2009 till 2023 against the plot and the YEIDA delivered possession of the plot on 02.11.2023, citing farmer's unrest in Gautam Budh Nagar for the delay. The assessee could not therefore construct a residential house on the plot by 26.04.2014 and was prevented by circumstances beyond his control to comply with the requirements of section 54 of the I Tax Act, 1961.

13. The assessee relied on the decisions of ***Nutan Chopra Vs Acit, Central Circle 54 (1), Nd*** ITA No. 1402/Del/2016 Dtd: 13.12.2019 ITAT DELHI which held that the benefit of deduction u/s 54, where construction could not be started within the stipulated time because of farmers unrest against YEIDA, cannot be denied. The assessee also relied on the decision of Supreme Court in the case of ***Sh. Sanjeev Lal Etc. Versus Commissioner Of Income Tax & Another*** [2014] 365 ITR 389(SC), where fulfillment of condition of purchase of a residential house/new asset within one year prior or two years after the date on which transfer of the residential house on account of the litigation, cannot be reason for denial of exemption. The assessee also relied on the decision of ***Shri Varun Seth Versus Acit, Cir-47 (1), New Delhi*** 2019 (7) TMI 1410 - ITAT Delhi where failure to construct the new residential house within a period of three years from the date of sale due to delay in the handing over of the possession of the plot by the developer was held as no reason for denial of exemption u/s 54. The assessee further relied on the Hon'ble Supreme Court in the case of ***Sanjeev Lal Vs. CIT*** [2014] (7) TMI 99 SUPREME COURT] which has laid down the purposive

interpretation of section 54 to give a liberal approach to the assessee who clearly intended to claim benefit of section 54. The Court held that the amount utilized by the assessee in the acquisition of land should be construed as amount invested in purchase/ construction of residential house and held that the assessee is entitled for exemption under section 54 of the Act.

14. We are of the considered view that the assessee failure to construct a residential property within time prescribed u/s 54, in the above factual matrix, is on account of the delay on the part of the YEIDA in registering and delivery of possession of the plot of land to the assessee. The assessee was allotted the land in 2009 for which the assessee made the payment for the allotted plot from 2009 till 2023. The decision relied upon by the assessee is applicable in the case of the assessee. Following the judicial precedence in the above cases of ***Nutan Chopra Vs Acit, Central Circle 54 (1), Nd ; Sh. Sanjeev Lal Etc. Versus Commissioner Of Income Tax & Another ; Shri Varun Seth Versus Acit, Cir-47 (1), New Delhi 2019 (7) TMI 1410 - ITAT DELHI***, we are of the considered view that the exemption u/s 54 of the Act cannot be denied to the assessee. Grounds 3, 5 and 6 are allowed.

15. In the result, the appeal of the assessee in ITA No. 1846/DEL/2025 is partly allowed.

The order is pronounced in the open court on 07.11.2025.

Sd/-
[MADHUMITA ROY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 07th November, 2025.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order</i>	.
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the typed draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial)</i>	

11.	<i>The date on which the file goes for xerox</i>	
12.	<i>The date on which the file goes for endorsement</i>	
13.	<i>The date on which the file goes to the Superintendent for checking</i>	
14.	<i>The date on which the file goes to the Assistant Registrar for signature on the Tribunal order</i>	
15.	<i>Date on which the file goes to the dispatch section</i>	
16.	<i>Date of Dispatch of the Order</i>	