IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

ITA No.6409/Del/2025
Assessment Year 2016-17

Quetzal Buildtech Private Limited H. NO.003, Sec 41-42 Daisy Tower, Omaxe Green Valley, Suraj Kund, Road, Haryana PAN No.AAACQ3337K	**Vs.**	**ITO Ward- 2 (1) Faridabad Haryana**
Appellant		Respondent

Appellant	Sh. Anand Kumar Pandey, Advocate Sh. Archit Pandey, Advocate
Respondent	Sh. Manoj Kumar, Sr. DR

Date of Hearing	**08.01.2026**
Date of Pronouncement	**17.02.2026**

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against the order of the Ld.Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 26.08.2025 for A.Y. 2016-17. The assessee in its appeal raised following grounds :-

> *"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned re-assessment order u/s 147/144B and that too without assuming jurisdiction as per law and without complying with mandatory conditions of section 147 to 151A of Income Tax Act, 1961.*

2. That in any case and in any view of matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned re-assessment order u/s 147/144B is illegal, bad in law and against the facts and circumstances of the case.

3. That having regard to facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned reassessment order passed by Ld. AO as the statutory notice u/s 143(2) dated 16.07.2021 has been issued without complying the CBDT Instruction No. F. No. 225/157/2017/ITA-II dated 23.06.2017 in view of judgement pronounced in the case of Anita Garg vs. ITO, ITA No. 4053/Del./2024, dated 30.07.2025.

4. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.20,00,000/- on account of unsecured loan received from M/s Glacier Tradex Private Limited by treating it as alleged unexplained credit u/s 68 and taxing the same u/s 115BBE and that too by recording incorrect facts and findings and in violation of principles of natural justice.

5. That in any case and in any view of matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.20,00,000/- by treating it as alleged unexplained credit u/s 68/115BBE is illegal, bad in law and tantamount to double addition and against the facts and circumstances of the case.

6. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,000/- on account of alleged commission expenditure by treating it as alleged unexplained expenditure u/s 69C and taxing the same u/s 115BBE and that too by recording incorrect facts and findings and in violation of principles of natural justice,

7. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making double addition of 20,02,000/- while computing the total taxable income of the assessee company and that too without any basis and without appreciating the facts and circumstances of the case.

8. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B of Income Tax Act, 1961.

9. That the appellant-company craves the leave to add, modify, amend, delete any of the grounds of appeal at the time of hearing or during the course of hearing as and when required and all the grounds of appeal are without For QUETZAL BUILDTECH PRIVATE LIMITE prejudice to each other."

2. The Ld. Counsel for the assessee at the outset referring to ground No.1 and 2 of grounds of appeal challenging the reopening of assessment as illegal and bad in law, submitted that the reasons recorded for reopening of assessment which were placed at page 28 of the paper book at para -7, is that clause-(a) of Explanation 2 to section 147 is applicable to assessee i.e. non filing of return of income u/s. 139(1) of the Act. The Ld. Counsel for the assessee submits that this is factually incorrect as the assessee company duly filed its return of income u/s.139(1) and a copy of acknowledgment is placed at page-1 of the paper book wherein the return was uploaded on 05.10.2016 declaring income of Rs.91,490/-. Therefore, the Ld. Counsel submitted that the belief formed by the AO is based on incorrect facts rendering the initiation of

proceedings u/s.147 invalid and without jurisdiction, reliance was placed on the following decisions :-

> *1. Bhavmeet Singh Bhatia Vs. ACIT, Circle – 43 (1) ITA No. 6545/Del/20219 dated 21.09.2022*
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> *2. Ajendra Pal Singh Vs. ITO Ward- 1 (5) ITA No.4013/Del/2018, dated 04.09.2018*
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> *3. Sh. Jagat Singh Vs. ITO ITA No.2749/Del/2018, dated 04.09.2018*
>
> *4. Sh. Anuj Chaudhary Vs. ITO ITA No.3453/Del/2018 dated 12.01.2024*

3. The Ld. Counsel for the assessee further made the following submissions :-

> *"2. Without prejudice to the above submission made, it is important to submit here that the information on the basis of which present case was reopened, was already available with the Ld. AO at the time of framing of original assessment proceedings. The said information had been duly furnished to the Ld. AO during the course of assessment proceedings under section 143(3) for AY 2015-16 (PB 144-158). After considering all the information and documents which were sought by the Ld. AO during the original assessment proceedings, Ld. AO completed the assessment proceedings u/s 143(3) by accepting the returned income of assessee-company (PB 134-135). Therefore, the present proceeding is nothing but mere a change of opinion. Thus, assumption of jurisdiction on merely ground of change of opinion is bad in law and re-assessment order is liable to be quashed.*
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> *In this regard, reliance is placed on the below judicial decisions wherein it has been held that assumption of jurisdiction on merely ground of change of opinion is bad in law and re-assessment order is liable to be quashed,*
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> - *Commissioner of Income-tax, Delhi vs. Kelvinator of India Ltd. [2010] 187 Taxman 312 (SC).*

- *Commissioner of Income-tax-VI, New Delhi vs. Usha International Ltd. [2012] 25 taxmann.com 200 (Delhi).*

3. Without prejudice to the above submission made, it is submitted that reasons have been recorded (PB 27-28) without application of mind and merely on the basis of the purported information flagged by Investigation Wing, Faridabad. Therefore, the case was sought to be reopened merely on the basis of "borrowed satisfaction" which is bad-in-law.

In the present case, reasons recorded (PB 27-28) reveals that Ld. AO has recorded his "reasons to believe" merely based on contents of the letter received from investigation wing, Faridabad, vide office letter No. 1848 dated 26.10.2018 as he only reproduced the said information in paragraph no. 1, 2 and 3 of the reasons recorded and thereafter at Para 4, without giving any reasoning, straight away jumped to the conclusion that the loan obtained from M/s Glacier Tradex Private Limited was bogus in nature. Further, before recording of reasons to believe, the Ld. AO had not verified the original ITR filed by the assessee-company and assessment records u/s 143(3) and recorded his satisfaction, assuming that the assessee-company had not filed its original ITR for the year under consideration. Even entire information, supplied by the Investigation Wing, Faridabad, was not properly perused by the Ld. AO before recording his reasons to believe. In the statement of Mr. Nalin Gupta, director of the assessee-company, recorded during the said investigation proceedings, he categorically affirmed the genuineness of the transactions and requested the investigation officer to get the contents of his statements and evidence verified from Mr. Himanshu Verma before taking any adverse view on this matter. However, Ld. AO had not taken any steps to verify the factual position affirmed by the director of assessee-company before investigation Wing. Furthermore, the Ld. AO proceeded to record his satisfaction by just treating the contents of the letter received to be correct and that too, without giving his independent findings. This clearly shows that the recorded 'reasons to believe' are only based on borrowed satisfaction and are only "reasons to suspect" not "reason to believe".

It is apparent from the above facts that in the present case, Ld. AO has followed causal approach to reopen the case merely on the basis of "borrowed satisfaction" which is bad-in-law. Further, reliance is placed on the below judgement that if there is lack of independent application of mind, re-assessment jurisdiction so assumed is bad in law.

- *B.U. Bhandari Autolines (P) Ltd. vs. ACIT, (2023) 149 taxmann.com 219 (Bom.)*
- *Sandip Kumar Parsottam bhai Patel vs. ITO, (2022) 137 taxmann.com 373,*
- *Pr. CIT vs. Meenakshi Overseas (P) Ltd., (2017) 395 ITR 0677 (Del)*
- *Pr. CIT vs. RMG Polyvinyl (1) Ltd., (2017) 396 ITR 0005 (Del)*
- *Pr. CIT vs. G & G Pharma India Ltd., (2015) 384 ITR 0147 (Del)*
- *Signature Hotels (P) Ltd. vs. ITO & Anr., (2011) 338 ITR 0051 (Del)*

4. Without prejudice to the above submission made, it is humbly submitted that the issue of notice u/s 148 and further proceedings u/s 147 are also void and bad in law as these are in gross violation of law and procedure laid by the GKN Driveshafts (India) Ltd. vs. Income-tax Officer [2002] 125 Taxman 963 (SC), and Income Tax Officer (AO), Ward-1(5), Aligarh vs. Rishi Godani [2018] 97 taxmann.com 135 (Agra-Trib.) and therefore, in such circumstances re-assessment order passed is bad in law.

In the present case, despite of the repetitive requests of the assessee-company, Ld. AO has not provided the copy of the relevant material which suggests escapement of income, copy of information received from the investigation wing, Faridabad, copy of statement of Mr. Himanshu Verma recorded u/s 132(4), copy of approval obtained from the higher authority u/s 151 to the assessee-company.

The non-supply of the aforesaid documents, reports, and information amounts to clear violation of law which is laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. vs. Income-tax Officer (supra) and Income Tax Officer (AO), Ward-1(5), Aligarh vs. Rishi Godani (supra). Consequently, the reassessment order passed in such circumstances is invalid and bad in law.

5. Without prejudice to above submission made, it is humbly submitted that the objections against re-opening of assessment filed by the assessee-company were disposed off by Ld. AO on 28.02.2022 (PB 57-63) and the impugned re-assessment order has been passed on 25.03.2022 without leaving a period of four weeks' time.
In this regard it is submitted that the assessee-company requested Ld. AO to provide reasons recorded vide his letter dated 06.12.2021 (PB 25), however, Ld. AO provided reasons recorded on 17.01.2022 (PB 26-28). Immediately thereafter, the assessee-company raised its objection against the reasons recorded vide his letter dated 31.01.2022 (PB 29-42) which was disposed by Ld. AO vide his order dated 28.02.2022 (PB 57-63) and subsequently, the impugned re-assessment order has been passed on 25.03.2022 without leaving a period of four weeks which is bad-in-law as held in the following judicial decisions:

- *Asian Paints Ltd. vs. DCIT, (2008) 296 ITR 90, High Court of Bombay*

- *Bharat Jayantilal Patel vs. Union of India, (2015) 378 ITR 596, High Court of Bombay*

- *Aroni Commercials Ltd. vs. DCIT, (2014) 362 ITR 403, High Court of Bombay*

- *Hirachand Kanuga vs. DCIT, (2015) 68 SOT 205, ITAT Mumbai Bench*

6. Furthermore, it is submitted that approval given by the higher authority u/s 151 is not also in accordance with law and has been given without independent application of mind in as much as that if the approving authority had applied his mind, no approval would have been granted as the reasons suffer from various lacunas as mentioned above. In particular, higher authority failed to record the fact that original return u/s 139 of the Act has been filed and thus, clause (a) of Explanation 2 of section 147 was not applicable at all. Thus, the reasons were bad in law. This shows clearly that there was lack of application of mind while granting approval. Therefore, impugned approval is bad-in-law and may please be held so.

In this regard, reliance is placed on the following judicial decision:

- *Chhugamal Rajpal vs. S.P. Chaliha & Ors., 79 ITR 0603, Supreme Court of India.*

- *CIT vs. S. Goyanka Lime &; Chemical Ltd., 237 Taxman 0378 Supreme Court of India*

- *CIT vs. S. Goyanka Lime &; Chemical Ltd., 231 Taxman 0073, High Court of Madhya Pradesh.*

In view of the above, it is respectfully submitted that the action of Ld. A.O. in assuming jurisdiction u/s 147 is not in accordance with law and therefore, notice u/s 148 dated 30.03.2021 (PB 18) and the impugned re-assessment order may please be quashed."

4. On the other hand the Ld. DR strongly supported the order of the AO in reopening the assessment.

5. Heard rival submissions, perused the orders of the authorities below and the case laws relied upon. On perusal of the reasons it is noticed that the AO reopened the assessment by observing as under:-

"4. From the material available on records, prima-facie it is clear that the assessee is in receipt of bogus money/loan amounting to Rs.20,00,000/- for the year under consideration.

5. I have carefully perused the facts of the case. I have applied my mind to the material on record that is report of the Inv. Wing, Analysis of data provided by the Wing and statements of the assessee. In view of these facts I have no hesitation and have very strong reasons to believe that the assessee is a beneficiary of accommodation entry and the transactions done by him are ingenuine and liable to be added in view of provisions of section 68/69A of the Act, as may be relevant with respect to each transaction in this year.

6. It is evident from the above that there is a "Live Link" between the material available on record and the escaped Income, as mentioned above.

7. In this case the assessee the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded in this case. In view of the above, the provisions of clause (a) of Explanation 2 of section 147 are applicable to facts, of the case and the assessment year under consideration is deemed to be a case where Income chargeable to tax has escaped assessment.

8. Keeping in view the statutory provisions, legal principles, and factual matrix it is clear that M/s Quetzal buildtech Pvt. Ltd. has entered into sham transaction with M/s Glacier Tradex Pvt. Ltd. the companies which are only paper companies as accepted by Sh. Himanshu Verma (Entry Operator).

Therefore, I have reason to believe that the income to the extent of Rs.20,00,000/-, on account of ingenuine transactions as stated above, which is chargeable to tax has escaped assessment for the assessment year 2016-17 within the meaning of section 147 of the Income Tax Act, 1961. In order to assess the above income or any other income which come to my notice subsequently in the course of assessment proceedings u/s 147 of the Act. I proceed to initiate proceedings u/s 147 of the I.T. Act, 1961 in the case for A.Y. 2016-17."

6. As we could observe from above that the reason for reopening of assessment is that the assessee entered into accommodation entries as per the report of the investigation wing and the only requirement to initiate proceedings u/s.147 in the case of the assessee is reason to believe which has been recorded in his case is that the provisions of clause-(a) of Explanation 2 to section 147 are applicable to facts of the assesee's case. It is observed that

clause-(a) of Explanation 2 to section 147 of the Act speaks of non filing of return of income by the assessee u/s.139(1) of the Act. Therefore, the Assessing Officer was of the view that the assessee did not file return of income u/s. 139(1) of the Act and, therefore, the only requirement to initiate proceedings u/s.147 is reason to believe income escaped assessment. However, as a matter of fact the assessee company filed its return of income on 05.10.2016 and the scrutiny assessment was also completed u/s.143(3) of the Act and copy of which is also placed at page 134 of the paper book. Therefore, the basis for initiation of reopening proceedings are factually incorrect.

7. In the case of Sh. Anuj Chaudhary Vs. ITO, the coordinate Bench of the Tribunal in ITA No.3453/Del/2018 dated 12.01.2024 considered almost identical to the facts of the Assessee and quashed the reassessment observing as under :-

> *1. We have heard the rival submissions and perused the material available on record. The assessee is an individual. The return of income for AY 2009-10 was originally filed u/s 139 of the Act by the assessee on 22.09.2010 declaring taxable income of Rs. 3,90,294/- offering business income from the business of trading of material supplies and agricultural income. The copy of return of income together with computation of total income thereon filed on 22.09.2010 is enclosed in pages 58 to 59 of the PB. The assessment of the assessee was sought to be reopened by issuance of notice u/s 148 of the Act on 10.03.2016 after recording the following reasons:-*
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> *"In this case NON-PAN AIR information has been received that the assessee has deposited cash of Rs. 13,47,000/- in his Saving Bank account during the F.Y. 2008-09 relevant to A.Y. 2009-10. To verify the transaction, query letters were issued to the assessee to furnish particulars of his PAN,*

Income Tax Assessment, filing of ITR for A.Y. 2009-10 etc. and to explain as to how the said transaction has been disclosed/shown by assessee ITR. Further, information regarding details of transactions as well as assessee was collected from the AIR filer. Perusal of bank account statement of the assessee reveals that besides cash deposit, substantial amount has been credited in the bank account of the assessee on various dates during the financial year Despite service of query letter, reply to the said query letter had not been furnished and the assessee has failed to furnish any plausible explanation to the said transaction. Since, no plausible explanation has been furnished by the assessee and ITR of the assessee for A.Y.2009-10 is not available on record, the high value AIR transaction entered into by the assessee in F.Y. 2008-09 remained unexplained. As such, source of the cash deposited in the Saving Bank account of the assessee remains unexplained.

Therefore, on the basis of credible information in my possession, I have reasons to believe that on account of failure on the part of the assessee to furnish her return of income for the A.Y. 2009-18, the income chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

2. Reassessment was completed by the ld AO u/s 144 read section 147 of the Act on 09.12.2016 after making addition towards cash deposits in saving bank account of Rs. 13,47,000/- and unexplained investment in purchase of land of Rs. 42 lakhs. The ld CIT(A) upheld the addition made by the ld AO towards unexplained investment in property of Rs. 42 lakhs and granted partial relief of Rs. 2,32,800/- on account of cash deposit made in the saving bank account.

3. From the perusal of the reasons recorded reproduced supra, we find that the ld AO had formed a reasonable belief that income of the assessee had escaped assessment primarily on two facts:-

a) assessee's case is non-PAN case - the assessee is having PAN and is regularly assessed to income tax. The PAN of the assessee is AGEPC5576D. Assessee had used the very same PAN for filing his original return u/s 139 of the Act on 22.09.2010;

b) the income tax return for AY 2009-10 is not available on record- this is factually incorrect as assessee had already filed his income tax return on 22.09.2010 which is evident from pages 58 to 59 of the PB.

4. Based on the aforesaid two factual incorrect assumptions made by the ld AO while recording the reasons, the AO had come to conclusion that cash deposit of Rs. 13,47,000/- made in the saving bank account would constitute income escaping assessment in the hands of the assessee, warranting reopening u/s 147 of the Act. Once, it is clearly established that the very basis of assumption of jurisdiction by the ld AO for reopening the assessment was based on incorrect facts, the entire foundation of reason to believe of the ld AO goes. Once, the foundation goes, the entire reopening deserves to be quashed. This view of ours is further fortified by the decision of the coordinate bench of Mumbai Tribunal in the case of ITO Vs. M/s. Champaklal Mathurbai Mehta in ITA No. 2253/Mum/2022 and CO No. 130/Mum/2022 for AY 2011-12, wherein, the Mumbai Tribunal by placing reliance on the decision of Hon'ble Bombay High Court order dated 15.12.2021, decision of the Hon'ble Delhi High Court in the case of Deepak Wadhwa Vs. ACIT reported in 435 ITR 699 and decision of the Hon'ble Gujarat High Court in the case of Mumtaz Haji Mohamad Menon Vs. ITO reported in 408 ITR 268 had quashed the reopening proceedings. The relevant observation of the order of the Mumbai Tribunal are as under:-

> *"3.2. Aggrieved, the Revenue is in appeal before us. From the perusal of the reasons recorded reproduced supra, we find that the reopening was made on the mistaken assumption that assessee had not filed his return of income for A.Y.2011-12. Factually, the return of income was already filed by the assessee on 21/07/2011. Moreover, there was a letter dated 25/07/2015 issued by the Id. AO to the assessee for A.Y.2010-11 calling for reasons for not filing income tax return for A.Y.2010-11. This letter is enclosed in page 13 of the paper book. In response to the said letter, the assessee's representative had vide letter dated 03/08/2015 had addressed to the Id. AO stating that assessee is a senior citizen aged about 83 years old and had filed his income tax returns from A.Y.2011-12 onwards and had enclosed the copy of ITR acknowledgement thereon. This letter is enclosed in page 14 of the paper book. We find that the Id. AO had referred to the aforesaid two letters in the reasons recorded stating the same as the reason to conclude that assessee*

had not filed return of income for A.Y.2011-12. This fact is evident from the reasons recorded reproduced supra. Factually, the notice dated 25/07/2015 was issued by the Id. AO for A.Y.2010-11 calling for income tax return from the assessee. The reply letter dated 03/08/2015 from the assessee to the Id. AO clearly states that assessee is a senior citizen aged about 83 years and had filed his income tax returns from A.Y.2011-12 onwards. The Id. AO goes by the incorrect assumption of fact that assessee had not filed his income tax return for A.Y.2011-12 that subsequently in the same reasons, he acknowledges the fact that assessee had filed his return of income on 21/07/2011. From the perusal of the entire reasons recorded by the Id.AO for reopening the assessment, we have absolutely no hesitation to hold that the entire reopening had been triggered by the Id. AO based on complete incorrect assumption of fact that no return of income was filed by the assessee for the A.Y. 2011-12, wherein a financial transaction of purchase of property was made. The letter to assessee by the Id. AO calling for income tax return based on report received in the non-filers list was never issued by the Id. AO for A.Y. 2011-12 i.e. the year under consideration before us. Factually it was issued only for A.Y.2010-11 as stated supra. Hence, we hold that the reasons recorded for reopening has been made without application of mind by the Id. AO. Now the moot question that arises for our consideration is as to whether the reopening which is made based on incorrect assumption of fact and non-application of mind by the Id. AO could be held to be valid. This issue has been addressed by the Hon'ble Jurisdictional High Court in the case of Dhiren Anantrai Modi vs. Income Tax Officer in Writ Petition No.3224 of 2019 dated 15/12/2021. For the sake of convenience, the entire order is reproduced hereunder:-

"1. Petitioner is impugning notice dated 26th March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 22nd October, 2019 disposing petitioner's objections to the re-opening.

2. Petitioner has challenged notice dated 26th March, 2019 on various grounds including non

application of mind by the Assessing Officer while issuing notice.

3. We have considered the petition with documents annexed thereto, reply filed by respondent and also heard Mr. Gandhi and Mr. Pinto.

4. On bare perusal of the reasons it is quite evident that the reasons are based on totally erroneous and in correct facts and without non Purti Parab 2/4 420-WP- 3224-2019.doc application of mind. In the reasons it is stated "The assessee is an individual and the Return of Income for A.Y. 2012-13 was filed on 24th September, 2012 declaring total loss of Rs. 4,21,11,382/- and the same was processed by the C.P.C..........It is pertinent to mention here that in this case the assessee had filed return of income for the year under consideration but no assessment as stipulated under Section 2(40) of the Act was made and the return of income was only processed under Section 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment".

5. The fact is the return of income for A.Y. 2012-13 filed by petitioner on 24th September, 2012 has been assessed under Section 143(3) of the Act and the Assessment Order dated 31st March, 2015 has been passed. Therefore, the Assessing Officer has proceeded on erroneous factual basis that the return of income was only processed under Section 143(1) of the Act. That displays total non application of mind. In fact, petitioner's allegations that Respondent No.1 has sought to re-open the assessment on incorrect factual position that the return of income was only processed under Section 143(1) of the Act has not even been denied in the affidavit in reply which is filed by the same Assessing Officer. In paragraph no.2 of the affidavit in reply which is in response to paragraph no.1 and 2 of the Purti Parab 3/4 420-WP-3224-2019.doc petition, Respondent No.1 simply says that these are factual in nature and the notice under Section 148 dated 26th March, 2019 and the order disposing the objections and the notice

dated 22 nd October, 2019 are issued in pursuance of the objective of completing reassessment in accordance with the procedures laid down.

On this ground alone, the notice dated 26th March, 2019 has to be set aside.

6. Moreover, Mr. Gandhi submitted that despite repeated requests for copy of the sanction under Section 151 of the Act, the same has not been provided. The averment to that effect in the petition has not even been denied in the affidavit in reply and respondent, in the affidavit in reply has not even bothered to annex the sanction obtained which gives us a feeling that the said Mr. Ramesh C. Meena who issued notice under Section 148 of the Act containing errors of facts and who has filed affidavit in reply does not wish to produce the same. We have to, therefore draw adverse inference against respondent that if it is disclosed it may be prejudicial to the interest of Revenue.

7. One wonders whether the sanctioning authority under Section 151 of the Act also would have even applied his mind because the reasons recorded as noted above itself displays non application of mind by the Assessing Officer. Therefore, either no sanction as contemplated under Purti Parab 4/4 420-WP-3224- 2019.doc Section 151 of the Act has been obtained or the same was granted mechanically without application of mind to the facts because if only the Assessing Officer had placed the entire file before the sanctioning authority he would have pointed out the error in the reasons for re-opening.

8. In the circumstances, petition is allowed in terms of prayer clause (a) which read as under:

(a) That this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari", calling for the records of the case and, after satisfying itself as to the legality thereof, quash and set aside the Notice u/s 148 dated 26.03.2019, Ex. "H" herein, the order disposing objections dated 22.10.2019, Ex. "K" herein passed by the Respondent and also the

> *Notice/summons dated 22.10.2019, Ex. "L" herein issued by the Respondent.*
>
> *9. Petition disposed."*

3.3. Similarly, the Hon'ble Delhi High Court in the case of Deepak Wadhwa vs. ACIT reported in 435 ITR 699 had also occasion to consider the similar issue wherein it was observed as under:-

> *5.2. As far as the other aspect is concerned, in our view, since the proof put in place by the petitioner-assessee with regard to the acknowledgment of return filed for the assessment year 2011-12 has not been disputed by the Revenue, as noticed above, the challenge to the impugned notice and the impugned order will have to be sustained.*
>
> *61 Therefore, for the foregoing reasons, we are inclined to quash the impugned notice dated March 27, 2018 as also the impugned order dated September 28, 2018. It is ordered accordingly.*

3.4. Similar view was taken by the Hon'ble Gujarat High Court in the case of Mumtaz Haji Mohamad Menon vs ITO reported in 408 ITR 268 wherein it was held as under:-

> *"In this context, we have noted that the reasons proceeded on two fun- damental grounds. One, that the property in question was sold for a sum of Rs. 1,18,95,000; and two, that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and also offered his share of income of the declared sale consideration to tax as capital gains. The Assessing Officer may have dispute with respect to computation of such capital gains, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs. 1,18,95,000 as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in*

which, the sale consideration disclosed was Rs. 50 lakhs.

The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000 for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs. 1,18,95,000 therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, the Revenue simply cannot hope to salvage the impugned notice. Through the affidavit-in-reply a faint attempt has been made to entirely shift the centre of the reasons to a completely new theory, viz., the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gains. In the result, the impugned notice is quashed. The petition is disposed of."

3.5. In view of the above, we do not find any infirmity in Id. CIT(A) quashing the re-assessment proceedings. Hence, the ground raised by the Revenue challenging the validity of quashing the re-assessment is dismissed. Since the entire re-assessment is quashed, there is no need to go into other grounds raised by the assessee on merits.

3.6. The other contentions raised by the assessee in his cross objections are also left open since the re-assessment has been quashed.

4. In the result, appeal of the Revenue is dismissed and Cross objection of the assessee is dismissed as infructuous."

> *9. Respectfully following the same, we have no hesitation to quash the reassessment by holding that assumption of jurisdiction u/s 147 of the Act in the instant case is based on incorrect facts recorded thereon. Accordingly, ground Nos. 1 and 2 raised by the assessee on the legal issue are allowed. Since, relief is granted on the legal issues by quashing the reassessment, adjudication of other grounds raised by the assessee on merits would become academic in nature. No opinion is rendered thereon and they are left open.*

8. Following the said decision I hold that assumption of jurisdiction u/s.147 of the Act in the case of the assessee by the Assessing Officer is based on incorrect facts recorded therein and, therefore, the assessment framed u/s.143(3) r.w. 147 of the Act is bad in law and void ab initio and accordingly the same is hereby quashed.

9. Ground no.1 and 2 are allowed. All other legal grounds and grounds on merits need not be adjudicated at this stage since they become only academic in nature and hence they are left open.

10. In the result, the appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 17.02.2026.

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Dated: 17.02.2026
*NEHA, Sr.P.S.**

Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi