IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G"NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.7714/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

ITO, Ward-4, Aayakar Bhawan, Rohtak, Haryana	बनाम **Vs.**	Surender Dalal, Dalal Bhawan, Near Petrol Pump, Gohana Road, Rohtak, Haryana.
		PAN No.AQLPS2166C
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

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आ.अ.सं/.I.T.A No.7490/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

Surender Dalal, Dalal Bhawan, Near Petrol Pump, Gohana Road, Rohtak, Haryana.	बनाम **Vs.**	ITO, Ward-4, Aayakar Bhawan, Rohtak, Haryana
PAN No.AQLPS2166C		
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

Assessee by	**Ms. Rano Jain, Adv.**
Revenue by	**Shri Anuj Garg, Sr. DR**

सुनवाईकीतारीख/ Date of hearing:	02.11.2023
उद्घोषणाकीतारीख/Pronouncement on	30.01.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the Assessee and Revenue against the order of the Ld.CIT(Appeals)-Rohtak dated 31.07.2019 for the AY 2009-10. The assessee is in his appeal raised the following grounds:

1. *"On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*

2. *On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order despite the fact that the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

3. *On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order despite the fact that the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the reasons on the basis of which the reassessment is initiated has no live link between the material and the belief formed.*

4. *(i) On the. facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order of the A.O. despite the same having been made on the basis of reasons recorded without there being any independent application of mind on the part of the Assessing Officer.*

(ii) That the reassessment order passed by the A.O. is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded only on borrowed satisfaction.

5. *On the fact and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order despite the fact that the reopening u/s 147 of the income tax Act, 1961 is bad in law having been made without obtaining valid approval from the prescribed authority as required u/s 151 of the Income Tax Act, 1961.*

6. On the fact and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the order passed by the A.O. despite the fact that the initiation of proceedings under section 148 is bad in law as the approval given by the approving authority is too mechanical and without application of mind, in as much as the recording of reasons, approval and issue of notice under section 148 of the Act, all having been made on the same it day, which is humanly impossible.

7. (i) On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the addition to the extent of Rs. 29,00,000/-, made by A.O. on account of unexplained investment in construction of house property u/s 69 of the Income Tax Act.

(ii) That the addition has been confirmed rejecting the explanations and evidences brought on record by the assessee to prove that the expenditure was not incurred during the relevant Assessment Year.

(iii) That the addition has been confirmed arbitrarily rejecting the explanations & evidences brought on record by the assessee.

8. (i) Without prejudice to the above 65 in the alternate on the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law despite the reference to the Departmental Valuation Officer being bad in law.

(ii) That in any case the estimation made by the DVO is bad in the absence of proper procedure having been followed.

9. *(i) Without prejudice to the above & in the alternate on the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in not giving assessee the benefit of agricultural income earned by it.*

(ii) That the addition has been confirmed without making the adjustment of the loan taken by the assessee in this respect.

10. *On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in passing the order vide order Dt. 29.08.2019 in violation of CBDT Instruction No. 20/2003 Dt. 23.12.2003 which requires the CIT(A) to pass the order within 15 days of last hearing."*

2. The Revenue in its appeal challenged the order of the Ld. CIT(A) in restricting addition to Rs.29 lakhs as against Rs.02,28,08,450/- on account of unexplained investment in construction of house property.

3. Firstly, we take up the appeal of the assessee, where the assessee in his ground nos. 2 to 6 challenged the reopening of assessment u/s 148 of the Act as bad in law.

4. Ld. Counsel for the assessee referring to page 4 of the Paper Book which are the reasons recorded for issue of notice u/s 148 of the Act submitted that the assessment was proposed to reopen on the ground that no return of income has been filed by the assessee

for the year under consideration when in fact the assessee had filed return of income on 31.03.2010 declaring taxable income of Rs.1,96,190/-. Ld. Counsel submits that the assessment was reopened based on an information received from DDIT vide letter dated 21.03.2016, wherein it has been stated that assessee has invested more than 15 crores in construction of house in Rohtak. Ld. Counsel submits that these are two reasons recorded for ratio of notice u/s 148 for reopening of the assessment of the assessee. Ld. Counsel submits that there are factual inconsistencies in the reasons recorded u/s 148 in as much as it is stated in the reasons that no return has been filed which is contrary to record as the assessee in fact filed return of income. Ld. Counsel further submitted that in the reasons recorded it is stated that information was received from DDIT(Inv.) that the assessee invested more than 15 crores in construction of house property. The Ld. Counsel submits that except stating that the assessee has invested more than 15 crores nothing has been stated in the reasons to co-relate the statement. The reasons do not specify in which property the assessee has invested more than 15 crores in the reasons specified. The Ld. Counsel submits that the AO has no material evidence except report of the DDIT and the AO has initiated the proceedings

on the basis of that report and assessment was framed by referring the matter to the Valuation Cell to find out the investment made by the assessee in the property which goes to show that neither the AO has any material nor has rationale belief for issuing notice u/s 148 of the Act. The Ld. Counsel further submitted that as a matter of fact the house of the assessee was constructed during the financial year 2005-06 to 2007-08 and no investment on construction of house was made during the year under consideration i.e. 2009-10 but the Assessing Officer proceeded to reopen the assessment based on the report of DDIT and without making any further enquiries. Ld. Counsel further submitted that notice u/s 148 cannot be issued on the basis of mere suspicion or to make further investment. Placing reliance on the following decisions, Ld. Counsel submits that reassessment merely on the basis of Investigation Wing is not valid:

1. CIT vs. Kamdhenu Steel & Alloys Ltd. 248 CTR 33 (Del.);
2. CIT vs. Multiplex Trading & Industrial Co. Ltd. 63 taxmann.com 170 (Del.);

5. Ld. Counsel for the assessee also placed reliance on the following decisions in support of the above contentions: -

1. PCIT vs. RMG Polyvinyl (I) Ltd. 396 ITR 5 (Del.);

2. Hafizuddin Hazi vs. ITO, Ward-48(2), New Delhi in ITA NO.3690/Del/2016 dated 16.02.2022, ITAT Delhi;
3. Nadeem Hasan vs. ITO, Ward-46(4), New Delhi in ITA No.445/Del/2020 dated 18.05.2022 ITAT, Delhi;
4. Shri Jagat Singh vs. ITO, Ward-1(3), Ghaziabad in ITA No.2749/Del/2018 dated 04.09.2018.

6. On the other hand, the Ld. DR strongly supported the orders of the Assessing Officer in reopening the assessment. Ld. DR submits that the Assessing Officer has reopened the assessment based on the information received from DDIT, wherein it is stated that the assessee has invested more than 15 crores in construction of house in Rohtak.

7. Heard rival submissions, perused the orders of the authorities below. In this case, the assessment was reopened by issue of notice u/s 148 of the Act. The reasons for reopening the assessment are as under:

Name of the assessee	:	Shri Surinder Dalal Chairman Panchyati Raj, Gohana Road, Rohtak.
Assessment year	:	2009-10
PAN	:	-----
Dated	:	22.03.2016

Reasons for issue of notice u/s 148 of the Income-tax 1961.

This office is in possession of an information received from Dy. Director of Income-tax(Inv.) under letter F.No.DDIT/INV./RTK/TEP/28/2015-16/829 dated 21.03.2016, wherein it has been stated that Surender Singh Dalal has invested more than 15 Crore in construction of house in Rohtak. He has not responded to the inquiry letters/summons u/s 131 issued to him. No return of income has been filed by the assessee for the assessment year 2009-10. Hence, the source of investment referred to above, remained un-explained and has escaped assessment

I have therefore reason to believe that income of Rs. more then 15 Crore which is chargeable to tax has escaped assessment for the F. Y. 2008-09 relevant to the A. Y. 2009-10 and also any other income chargeable to tax which has escaped assessment and which comes to the knowledge of AO., subsequently during the course of assessment proceedings for the A. Y. 2009-10 within the meaning of section of 147 of the I T Act,1961.

Dated:22.03.2016

(Ashok Kilaniya)
Income Tax Officer,
Ward-4, Rohtak.

8. As could be seen from the reasons recorded the Assessing Officer proposed to reopen the assessment based on the information received from DDIT(Inv.) that assessee has invested more than 15 crores in construction of house property. Secondly, the assessee has not filed return of income for the AY 2009-10 based on these reasons the AO has reason to believe that the income more than 15

crores which is chargeable to tax has escaped assessment for the AY 2009-10.

9. On careful perusal of the reasons, we noticed that the statement in the reasons that assessee had not filed return of income for the AY 2009-10 is factually incorrect, as the assessee3 filed return of income on 31.10.2010 declaring taxable income of Rs.1,96,190/-. The AO is of the belief that income of more than 15 crores has escaped assessment based on an information of DDIT(Inv.) that the assessee had invested more than 15 crores in construction of house in Rohtak. In the reasons recorded the AO has not given any details as to how the income more than 15 crores has escaped assessment. Nothing in the reasons specified as to how the escapement of income has been arrived at more than 15 crores. There is no live link between the reasons recorded and the materials on record when the reasons were recorded. The only basis on which the reasons recorded by the AO was based on the DDIT(Inv.) report and the AO has not even given the details of report which is the basis for reopening of assessment to believe that there is escapement of income of more than 15 crores. Apparent from factual inconsistencies in the reasons recorded there is no live link between the materials and the belief of the AO that the income

to the extent of more than 15 crores has escaped assessment. Apparently, there is no enquiry made by the AO to find out whether the assessee has filed return of income or not and whether the report of the DDIT(Inv.) which is stated to be the basis for reopening of assessment that the income had escaped more than 15 crores. In the course of assessment proceedings, it appears that nothing was put to assessee to explain the escaped income of 15 crores but the matter of valuation of the property constructed was referred to Valuation Officer who ultimately valued the property at Rs.58,93,050/-. All these goes to show that absolutely there is no application of mind by the AO before recording reasons to believe that the income of the assessee had escaped assessment more than 15 crores for the assessment year under consideration.

10. The Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (I) Ltd. (supra) held that the information received from the Investigation Wing cannot be said to be tangible material *per se* without a further enquiry being undertaken by the AO and the AO deprived himself of that opportunity by proceeding on the erroneous premise that assessee had not filed a return when in fact it had. The Hon'ble High Court while holding so observed as under:

"5. As it transpired subsequently there were at least two glaring errors in the above reasons. The first error was that the AO proceeded on the basis that "no return of income is available in the AST database of Income-tax Department. Therefore, it is clear that the assessee has not filed return of income for the A.Y. 2004-05 and consequently has not offered any income for taxation." In the assessment order dated 30th December, 2011 passed consequent upon the reopening of the assessment, the very first line states that "the Assessee had filed return declaring income of Rs.4,38,958/- on 31/10/2004 which was processed under Section 143(1) of the Act on 04.01.2005."

6. The second glaring error in the reasons was that the total of the accommodation entries was set out as Rs.1.56 crore. In the same assessment order dated 30th December 2011 in para 2.3 it is stated as under:

> *"2.3 It is pertinent to mention here that in the reasons recorded there was some clerical error as certain single transactions were appearing in multiple and this resulted in working of the escaped income to the extent of Rs.1,56,00,000/-. However, the same has now been considered and stands corrected for the purposes of completion of proceedings."*

7. In para 3.1 of the above assessment order, the AO has set out the information received from the Investigation Wing regarding the alleged bogus accommodation entries pertaining to 16 entities which sum in the aggregate works out to Rs.78 lakhs.

8. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the Revenue, relied on the decisions in Income-Tax Officer v. Selected Dalurband Coal Co. Pvt. Ltd. (1996) 217 ITR 597 and ITO v. Purushottam Das Bangur (1997) 224 ITR 362 to urge that at the stage of reopening of the assessment, the AO is not expected to undertake any detailed inquiry; it was sufficient if on the basis of the information received he was prima facie satisfied that a

case was made out for reopening the assessment as income had escaped assessment.

9. However, in neither of the above cases are the facts similar to those in the present case. The two glaring errors in the reasons in the present case are, in fact, unusual. What the AO might have done if he was aware, even at the stage of consideration of reopening of the assessment that a return had in fact been filed by the Assessee and that the extent of the accommodation entries was to the tune of Rs.78 lakhs and not 7 Rs.1.56 crores would be a matter of pure speculation at this stage. He may or may not have come to the same conclusion. But that is not the point. The question is of application of mind by the AO to the material available with him before deciding to reopen the assessment under Section 147 of the Act.

10. In this context the following observations of this Court in CIT v. Suren international (2013) 357 ITR 24 (Del) are relevant:

> *"....In the first instance, we do not find the reasons as recorded by the Assessing Officer to, be reasons in law, at all. A bare perusal of the table of alleged accommodation entries included in the reasons as recorded, discloses that the same entries have been repeated six times. This is clearly indicative of the callous manner in which the reasons for initiating reassessment proceedings are recorded and we are unable to countenance that any belief based on such statements can ever be arrived at. The reasons have been recorded without any application of mind and thus no belief that income has escaped assessment can be stated to have been formed based on such reasons as recorded.''*

11. There can be no manner of doubt that in the instant there was a failure of application of mind by the AO to the facts. In fact he proceeded on two wrong premises - one regarding alleged non-filing of the return and the other regarding the extent of the so-called accommodation entries.

12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known1 accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law.

16. No substantial question of law arises from the impugned order of the ITAT."

11. In the case of Hafizuddin Hazi vs. ITO (supra) the Delhi Tribunal following the decision of the Hon'ble Delhi High Court in the case of PCIT vs. RMG Polyvinyl (I) Ltd. (supra) and the decision of the Hon'ble Gujarat High Court in the case of Vijay Harishchandra Patel (2018) (12-TMI-865) held as under:

> *"19. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied by Id. Counsel for the assessee. We find, the assessee, in the instant case, had filed the original return of income on 31.10.2006 declaring the total income at Rs.10,87,058/- which was processed accordingly. We find, the AO reopened the assessment on the ground that the assessee has purchased residential property amounting to Rs.31,50,000/- and the same is not verifiable from the return of income filed for the AY 2006-07 and the assessee has not furnished the return of income. The reasons of such reopening have already been reproduced in the preceding paragraph. From the above, it is clear that the reopening was made on the ground that the assessee has not filed the return of income and, therefore, the income to the extent of Rs.31,50,000/- has escaped assessment. Since the assessee has already filed the return of income, a fact brought on record by the AO himself in the body of the assessment order itself, therefore, the very reason for which the case of the assessee was reopened is factually incorrect.*
>
> *20. It has been held in various decisions that when the AO reopened the case of the assessee on the premise that the return was not filed as per the database of the Department although it was already filed, then, such reassessment proceedings are not in accordance with the law and have to be quashed. For this proposition, we rely on the decision of the Hon'ble*

Delhi High Court in the case of PCIT vs. RMG Polyvinyal (I) Ltd. (supra), and the decision of the Hon'ble Gujarat High Court in the case of Vijay Haishchandra Patel vs. ITO (supra) relied on by the Id. Counsel for the assessee. The various other decisions relied on by the Id. Counsel on this issue also support his case to the proposition that when reopening was based on the premise that the assessee has not filed his return of income as per database of the Department, but, the assessee has actually filed the return of income, then, such reopening is not in accordance with the law and has to be quashed since such reopening was based on wrong facts. We, therefore, quash the reassessment proceedings initiated by the AO and subsequent proceedings are accordingly quashed. Since the assessee succeeds on this legal ground, the various other grounds challenging the reopening of the assessment as well as addition on merit become academic in nature and, therefore, are not being adjudicated."

12. The ratio of this decision applies to the facts of the assessee's case. In the case of Shri Jagat Singh vs. ITO (supra) the coordinate bench of the Tribunal held as under: -

"7.1. In this reasons, A.O. has not mentioned PAN of the assessee and noted that as per AIR information, the assessee has sold immovable property for a sale consideration of Rs.65,84,000/- on 02.11.2007. The assessee filed copy of the sale deed at page-34 of the paper book which shows that assessee had sold the property for a total consideration of Rs.20 lakhs only. However, the circle rate of the land have been mentioned at Rs.45,84,000/-. The A.O. in the reasons has, however, mentioned incorrect amount of consideration at Rs.65,84,000/- which is the total of the actual sale consideration and the value as per Circle rate. Further, the A.O. in the reasons has mentioned that assessee has not filed income tax return and capital gain on the property has not been shown. The

assessee however, filed original return of income on 22.10.2008 mentioning PAN also for assessment year under appeal. Therefore, A.O. again incorrectly reported in the reasons that assessee has not filed return of income. The assessee further explained that property is situated at 13 KM away from Kot Gram Nagar Palika Parishad, Dadri which is supported by Certificate issued by Tehsildar, Dadri. The A.O. however, did not bring any evidence on record to show that property falls within 8 km from the Municipal limit of Dadri Nagar Palika Parishad. Thus the A.O. recorded non- existing and incorrect reasons in the reasons for reopening of the assessment. Further, the A.O. noted in the reasons that inquiry letter were issued to the assessee against which no reply have been filed. The A.O. did not explain as to under which provision of law, he has issued the letter to the assessee to seek explanation of assessee on 17.09.2014 when no return for assessment year under appeal was legally pending for assessment before A.O. It, therefore, appears that the A.O. merely in absence of any reply from the assessee and on assumption of incorrect facts, formed his opinion that income chargeable to tax has escaped assessment. The A.O. did not verify the AIR information before taking any action against the assessee because the assessee did not sold the property for a total sale consideration of Rs.65,84,000/- as noted in the reasons. It is the case of non-application of mind by the A.O. to the AIR information and that the A.O. recorded incorrect facts in the reasons for reopening of the assessment. Since the A.O. did not apply his independent mind to the AIR information received which was also incorrect, therefore, the very basic requirement for reopening of the assessment is not satisfied. In the instant case, the crucial link between the information made available to the A.O. and the formation of belief was absent. The reasons to believe recorded were incorrect and mere conclusion of the A.O. based on incorrect and non-existing facts. There were no basis to record reasons for reopening of the assessment. The reasons recorded failed to demonstrate the link between the tangible material and the

formation of the reason to believe that income chargeable to tax has escaped assessment. The A.O. had not independently considered and verified the AIR information which formed the basis for the reasons to believe that income chargeable to tax has escaped assessment. Therefore, on this reason alone, the reopening of the assessment is illegal and bad in law. We rely upon the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. GANDG Pharma India Ltd., 384 ITR 147 and Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., 395 ITR 677. The A.O. had based his belief on the fact that assessee had not filed any return, due to which, there were escapement of income on account of sale of immovable property. The assessee, however, filed original return within time and produced the Certificate from Tehsildar to show that it was not a capital asset liable for capital gain. The A.O. instead of dropping the re-assessment proceedings, rejected the claim of assessee without bringing any material on record. The grounds for re-assessment thus, are incorrect and non-existing and would not survive or to justify the initiation of re-assessment proceedings. The very foundation on which reopening of the assessment was based are thus unsustainable. Therefore, on the reasons recorded, the A.O. could not have formed the belief that income had escaped assessment, inasmuch as such belief had been formed on a factually incorrect premise.

7.2 The Hon'ble Delhi High court in the case of Pr. CIT vs. RMG Polyvinyl (I) Ltd., (2017) 396 ITR 5 (Del.) held as under:

> *"The assessee filed its return for the assessment year 2008-09 and assessment was made under section 143(1) of the Income-tax Act, 1961. The Assessing Officer issued a notice for reassessment based on information received from the Investigation Wing that the assessee was the beneficiary of certain accommodation entries, which were given in the garb of share application money or expenses or gifts or purchase of shares during the period relevant to the assessment year*

2004-05. He recorded that the assessee had not filed a return for the assessment year 2004-05, as there was no return available in the database of the Department, and that consequently he had not offered any income for taxation. On appeal:

> *"Held, dismissing the appeal, that no link between the tangible material and the formation of the reasons to believe that income had escaped assessment, could be discerned. The information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the Assessing Officer, who had deprived himself of that opportunity by proceeding on the erroneous premise that the assessee had not filed a return for the assessment year, 2004-05, when in fact it had. In his assessment order, the Assessing Officer had, instead of adding a sum of Rs.78 lakhs, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crores and the basis for such addition had not been explained. No error was committed by the Appellate Tribunal in holding that reopening of the assessment under section 147 was bad in law. No question of law arose."*

7.3. The Hon'ble Gujarat High Court in the case of Vijay Harishchandra Patel vs. ITO (2018) 4 (Guj.) (HC) held as under:

> *"Held, allowing the petition, that the very basis for reopening of the assessment was unjustified and the assumption of jurisdiction under section 147 by the Assessing Officer by issuing a notice under section 148 was without authority of law and could not be sustained. The Assessing Officer had sought to reopen the assessment to once again examine the very aspect which had been gone into by his predecessor-Assessing Officer in the first round of proceedings under section 147. When an Assessing Officer had applied his mind to an issue*

in the assessment proceedings, the successor-Assessing Officer could not have sought to reopen the proceedings on the same ground as it amounted to a mere change of opinion. In the reasons recorded, the Assessing Officer had based his belief on the fact that the assessee had not filed any return due to which there was an escapement of income on account of sale of an immovable property. The Assessing Officer, instead of dropping the assessment proceedings, by an order rejecting the objections filed by the assessee, had sought to proceed with the reassessment proceedings on afresh ground which was not found in the recorded. When the original ground for reopening the assessment did not survive, the Assessing Officer had sought to proceed further with the assessment on totally different grounds, which was impermissible. Despite the fact that the assessee had duly submitted that he had filed his return, wherein the very same issue had been examined, instead of dropping the proceedings, the Assessing Officer had sought to proceed further for reasons which were alien to the reasons recorded for reopening the assessment. Thus the very intent and purpose behind submitting the objections by an assessee and passing an order thereon, was frustrated. Considering the fact that a return had been fled disclosing the sale of the immovable property, the very foundation on which the reopening of the assessment was based, in the reasons recorded was unsustainable. Therefore, on the reasons recorded, the Assessing Officer could not have formed the belief that income had escaped assessment, inasmuch as such belief had been formed on a factually incorrect premise. The notice, dated March 31, 2017, issued under section 148, for reassessment, was to be quashed."

13. In the case of Nadeem Hasan vs. ITO (supra) it has been held as under: -

"12. On perusal of the reasons recorded it is noticed that the AO stated that assessee has deposited cash of Rs.28,83,000/- with ICICI Bank Ltd. during the relevant assessment year i.e. 2011-12. On perusal of the ITS dated 10.03.2018 which is placed at page 1 of the paper book filed by the assessee it suggests that assessee had deposited Rs.11,68,500/- in HDFC Bank Ltd. and Rs.17,14,500/- in ICICI Bank Ltd. In the reasons recorded the AO stated that entire investment of Rs.28,83,000/- is unaccounted and it is likely that there is an escapement of income of more than Rs.1 lakh. The AO also records that assessee has not filed return of income for the AY 2011-12 and, therefore, he satisfied that he has reasoned to belief that the assessee has not fully disclosed his income and income to the extent of Rs.28,83,000/- has escaped assessment, these are the only reasons recorded for reopening of assessment of the assessee. However, on perusal of the copy of acknowledgement of return of income filed by the assessee which is placed at page 8 of the paper book, it is clear that the assessee has filed his return of income on 30.07.2011 declaring income of Rs.1,53,660/- vide acknowledgement no. 3001000609. This fact was also recorded in the ITS dated 10.03.2018 which is very much available with the AO when the reasons were recorded and notice was issued u/s 148 dated 31.03.2018. Therefore, it is abundantly clear that based on wrong assumption of facts the AO believed that the income of the assessee had escaped assessment. Firstly as per AIR information AO was of the view that there is a deposit of Rs.28,83,000/- in ICICI bank which is factually wrong since there were deposits in two bank accounts one is ICICI and the other is HDFC Bank. Secondly, the assessee even though filed return of income the AO records that no return was filed by the assessee and, therefore, income had escaped assessment. It is also observed that the reasons recorded are undated and, therefore, it is doubtful as to whether these reasons recorded were before issue of the notice u/s 148 or thereafter. The AO in the reasons also records that he has demonstrated the live link between the materials available on ITD System and the reasons for belief that income had

escaped assessment. However, the facts as recorded above suggest that there is no live link between the material available and the reasons for belief that income had escaped assessment. From perusal of the reasons recorded for reopening of assessment it is noticed that the reasons recorded only based on AIR Information and nothing else. The AO has not verified the facts, not examined the bank statements and formed belief that income had escaped assessment prior to issue of notice u/s 148 of the Act. There is complete non-application of mind by the AO.

13. As per the provisions of section 147 in order to form belief that income has escaped assessment the AO ought to have formed an opinion on the basis of the material possessed by him exhibiting the facts that income has escaped assessment. A perusal of the reasons recorded for reopening of assessment in this case would indicate that the basis of reasons recorded is AIR Information stating cash deposits of Rs.28,83,000/- as an unexplained investment and also that the assessee did not file any return of income for the year under consideration. It is pertinent to mention that the AO has not analyzed the information in right perspective and sought to reopen by conceiving a wrong fact that the assessee did not file return of income and, as such, the bank deposit represents unexplained investment. The mere information from annual information returns which is made as the basis for reopening without describing the contents of information i.e. when was the statement received, the bank account details and most importantly copy of bank account which is made as the basis of reopening was never gone through by the AO while recording the reasons. This is very much clear: from the reassessment order that the AO recorded a finding that during the course of assessment proceedings information u/s 133(6) of the Act were called from HDFC Bank Ltd. and ICICI Bank and there was no compliance made by both the banks till date. Therefore, the AO never had with him any copy of bank statement before recording of reasons for reopening of assessment and issue of notice u/s 148. Therefore,

without going to the contents of the entries in the bank accounts merely deposits cannot be treated as income escaping assessment.

14. On going through the reasons recorded by the AO, I find that there is no nexus between the prima facie inferences arrived in the reasons recorded and the information. The information was restricted to cash deposit in bank account but there was no material much less tangible, cogent, credible and relevant material to form a reason to believe that cash deposits represented income of the assessee. The reasons recorded in the present case at best can be treated to be reasons to suspect which is not sufficient for reopening the assessment u/s 148 of the Act. The requirement of application of mind is missing in the present ease on the face of it in the reasons recorded.

15. In the case of PCIT vs. Meenakshi Overseas Pvt. Ltd. (supra) it has been held that if there was no independent applicable of mind by AO to tangible material and reasons, failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment and, therefore, reassessment was not justified.

16. The Delhi High Court in the case of Northern Exim Pvt. Ltd. vs. DCIT (supra) held that if reasons recorded for issue of notice u/s 148 are factually incorrect that cannot therefore, form the basis for the belief that income had escaped assessment. Similar view has been taken by the Hon'ble Gujarat High Court in the case of Sagar Enterprises vs. ACIT (supra).

17. In the case of PCIT vs. G.G. Pharma India Ltd. [384 ITR 147] the Hon'ble High Court held that reopening only on the basis of information received that the assessee has introduced unaccounted money in the form of accommodation entries without showing in what manner the AO applied independent mind to the information renders the reopening void. In the case on hand also the AO simply relied on the AIR Information and not made any verification of facts and independent

application of mind to the materials available on record to come to conclusion that there is an escapement of income in assessee's case."

14. The ratio of the above decisions applies to the facts of the assessee's case. In the case on hand the AO is not disputing that the assessee filed return of income. If this is the fact, there is certainly a factual inconsistency in reopening the assessment that the assessee has not filed any return of income. Secondly, in the reasons stated the AO believed that the income escaped assessment only based on the report of the DDIT(Inv.) that the income had escaped more than 15 crores. However, we observe that what is the basis for 15 crores is not specified in the reasons. This is only a bald statement that the income of the assessee has escaped assessment for more than 15 crores without spelling out any details which is said to have been given in the DDIT report. Therefore, the reasons recorded in the present case at best can be treated to be a reason to suspect which is not sufficient for reopening the assessment u/s 148 of the Act. The requirement of application of mind is missing the present case, there is no independent application of mind by the AO to tangible materials and reasons and the AO failed to demonstrate live link between tangible material

and formation of reason to believe that income had escaped assessment.

15. In view of the above, we hold that the reassessment made in the section 143(3) read with section 147 of the Act is bad in law and the re-assessment order is quashed. As we have quashed the reassessment on the preliminary legal ground of jurisdiction, various other grounds raised by the assessee on merits are not decided as they become only academic at this stage. Ground nos. 1 to 5 are allowed.

16. In the result, appeal of the Assessee is partly allowed as indicated above and the Revenue appeal is dismissed as infructuous.

Order pronounced in the open court on 30/01/2024

Sd/-	**Sd/-**
(G.S. PANNU)	**(C.N. PRASAD)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 30/01/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi