

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA (SMC) BENCH: AGRA**

**BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER**

**I.T.A No. 167/Agra/2018  
(ASSESSMENT YEAR-2007-08)**

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| Smt. Usha Agarwal,<br>95-Kaveri Kunj, Phase-II, Kamla<br>Nagar, Agra.<br>PAN No.ABTPA2565N<br><b>(Assessee)</b> | <b>Vs.</b> | ITO,-4(4),<br>Agra.<br><br><b>(Revenue)</b> |
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| <b>Assessee by</b> | <b>Shri Anurag Sinha, AR.</b>     |
| <b>Revenue by</b>  | <b>Shri Waseem Arshad, Sr.DR.</b> |

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| <b>Date of Hearing</b>       | <b>30.05.2018</b> |
| <b>Date of Pronouncement</b> | <b>19.06.2018</b> |

**ORDER**

This is assessee's appeal for A.Y. 2007-08, taking the following grounds:

- “1. *BECAUSE, upon due consideration of facts and in the overall circumstances of the case 'appellant' denies its liability to be assessed in terms of Notice dated 20.03.2013 said to be issued under section 148 of the 'Act'.*
  
2. *BECAUSE, the authorities below had omitted to consider that purported 'Reasons' are No 'Reasons' in the eyes of Law in the light of fact that no amount of escapement is quantified in the so called 'Reasons Recorded' and as*

*such re-opening is bad in law in view of the binding decision of Hon'ble Allahabad High Court in the case of Mahesh Kumar Gupta Vs CIT in Writ Tax No.1086 of 2007.*

3. *BECAUSE, the so called 'Reasons' are purely 'reasons to suspect'. Notice having been issued only for the purpose of verification, on the wrong assumption of material facts with no evidence on records before recording reasons about the facts of assesses case and as such 'reasons' do not show any application of mind on part of the 'AO' to show that any Income liable for Tax has escaped Assessment warranting recourse to Notice under section 148 of the Act.*

**WITHOUT PREJUDICE TO THE ABOVE**

4. *BECAUSE, the computation of Total Income by the 'AO' at Rs. 19,64,890/- as against Rs.7,39,730/-fairly Returned by the 'appellant' is erroneous, illegal bad on facts and in law.*
5. *BECAUSE, the 'AO' was highly unjustified as well as unfair in allowing cost of acquisition alongwith improvement as claimed by the 'appellant' evidenced by Balance Sheet(s) filed on year to year basis with the Department without any evidence to negate such claim.*

6. *BECAUSE, interest under section 234A & 234B is either not chargeable or has excessively and incorrectly been charged.”*

2. Ground Nos. 1 to 3, challenge the CIT(A)’s action of upholding the initiation of proceedings u/s 148 of the IT Act.

3. The following are the reasons recorded by the AO to form belief of escapement of income:

*“The information has been received from Jt. CIT Range-4, Agra that Smt. UshaAgarwal, 95, Kaveri Kunj, Phase-2, Kamla Nagar, Agra, sold the property on 02.12.2006 for Rs. 14,00,000/- whereas, its valuation for the purpose of stamp duty was at Rs. 17,40,000/- thus taking into the value according to section 50C of the Act, taking its purchase cost, the net capital gain does arise above the taxable limit prevailing in the year in question.”*

*From the record available in this office, the assessee has not submitted its return for the year under consideration. Since, the assessee to tax and therefore the income as a result of capital gains resulted into escarpment of assessment and to assess it, issuance of Notice u/s 148 is considered necessary as it is a case of income escaping assessment, under the provision of section 147 of the Act.*

*Therefore, I have reasons to believe that an income chargeable to Capital Gains on the amount of Rs. 17,40,000/- a value taken for stamp duty escaped assessment subject to index cost of acquisition.”*

4. As per Ground of Appeal No.3, the assessee contends that the purported reasons are no reasons in the eyes of law in the light of the fact that no amount of escapement is quantified in the so called reasons recorded, and as such, the re-opening is bad in law in view of the binding decision of the Hon’ble jurisdictional Allahabad High Court in the case of ‘Mahesh Kumar Gupta Vs. CIT’, 363 ITR 300 (All) (APB-46-50).

5. It has been contended that during the course of assessment proceedings before the AO vide letter dated 04.03.2015 (APB-51-53), it was specifically submitted before the AO that the alleged escapement of income has been presumed without having any idea about the purchase cost, or the year in which purchase was made and without which, no working of capital gain could have been arrived at by any person of ordinary prudence and reasonable intelligence and, therefore, no allegation can be made that sale of property resulted into capital gain, which capital gain, whether it was long term or short term and which represents income that had escaped assessment.

6. It has further been submitted that the Hon'ble jurisdictional Allahabad High Court, in the case of 'Mahesh Kumar Gupta Vs CIT', (supra) quashed the notice under section 148, which was issued on the basis of reasons recorded where the reopening was beyond 4 years and there was no allegation in the reasons recorded that the amount of escapement was of more than Rs.1,00,000/-; that it was duly submitted before the AO that in the facts of the present case, the rationale of the said decision fully applies; that in the case at hand, while recording the reasons, the AO had only mentioned the sale consideration as mentioned in the sale deed alongwith deemed consideration under section 50-C of the Act; that however, in the reasons recorded, nowhere the amount of escapement is quantified and it is also not mentioned that the escapement is of more than Rs.1,00,000/-; that therefore, the present case stands on a weaker footing, as in the case under consideration, besides non quantification of income, the assessee has wrongly been stated as having not filed income tax return, leading to presumption of escapement on wrong assumption of facts and total non-application of mind.

7. The Id. Counsel for the assessee states that the said objection was also raised before the AO in similar terms; and that however, the AO as is verifiable from the letter dated 05.03.2015 (APB 54-55), had chosen not to dispute the factual

weakness crept in the reasons recorded that the reasons recorded do not meet the requirement of law provided under section 149(1)(b) of the Act.

8. It has been pointed out that the ITAT, Agra Bench, in the case of 'Pataria Vs. ITO' (APB 56-73), in ITA No. 29/Agra/2015, had the occasion to deal with an identical case, where the AO, while recording the reasons, did not specify the quantum of income alleged to have escaped assessment; and that the Agra Bench, following the Judgment of 'Mahesh Kumar Gupta Vs. CIT', 363 ITR 300 (All.) (supra) and 'Amar Nath Agarwal Vs. CIT', 371 ITR 183 (All), has held the similar notice under section 148 to be null and void-ab-intio.

9. The ld. DR, on his part, has objected that no return of income was filed and therefore, the AO correctly formed his belief of escapement of income. The ld. DR also objects that no objections were raised by the assessee before the AO challenging the initiation of the reassessment proceedings and that so, she cannot do so now.

10. To these objections, the ld. Counsel for the assessee has contended that as per the reasons recorded, escapement is assumed on the basis of assumption of the fact, as stated to be based on records available in the Department, that the assessee had not filed her return of income and the assessee, according to the reasons recorded, is not assessed to income tax and therefore, the income as a result of

capital gain resulted into escapement of income and to assesses it, issuance of notice under section 148 was considered necessary by the AO. It has been further contended that the very basis leading to the issuance of the notice was shown to be wrong before the AO, as in its first communication made in compliance to the notice dated 20.03.2014, issued under section 148, the assessee intimated the AO vide letter dated 22.04.2014, that the original return stood filed on 30.03.2008 and enclosed copy of the acknowledgment of the return originally filed, in which, long term capital gain was duly shown at Rs. 6,07,538/- (APB-74). Thus the re-opening is based on incorrect assumption of facts and even the sanction obtained, if any, under section 151 of the Act stood vitiated. This specific objection, raised by the assessee vide letter dated 04.03.2015 (APB-51-53), was not rebutted by the AO in his letter dated 05.03.2015 (APB54-55). Even the notice issued under section 148 of the Act does not mention about any sanction having been obtained by the AO before issuing the notice under section 148 of the Act to the assessee and Grounds of Appeal Nos. 4 & 5 challenge the action of the AO in not allowing the cost of acquisition alongwith improvement, as claimed by the appellant evidenced by the balance sheet(s) filed on an year to year basis with the Department, purely on consideration of suspicion and surmises, without any evidence to negate the claim of the assessee based on the income tax return and accompanying balance sheet.

11. The Id. DR has also objected that no computation of income was filed with the return of income and so, there was no disclosure by the assessee, of all facts relevant to the assessment and that since the AO has, in the reasons, stated the escapement to be of more than three lacs rupees, no precise quantification is required. To this, the Id. Counsel for the assessee has responded that these objections do not emanate from the reasons recorded, that the AO has nowhere stated the figure to be that of more than three lacs rupees, and that it is the entire sale consideration which has been wrongly treated by the AO as income having escaped assessment.

12. Heard. The assessee's contention regarding her having filed the return of income is correct. The very basis leading to the issuance of the notice was shown to be wrong before the AO, as in its first communication made in compliance to the notice dated 20.03.2014 issued under section 148, the assessee intimated the AO vide letter dated 22.04.2014, that the return stood filed on 30.03.2008. The assessee also enclosed copy of the acknowledgment of the return originally filed, in which, long term capital gain stood shown at Rs. 6,07,538/-(APB-74). This specific objection raised by the appellant vide its letter dated 04.03.2015 (APB-51-53) was not rebutted by the AO in his letter dated 05.03.2015 (APB54-55). The observation of the assessee having not filed return is erroneous and against the

record. So, the Department's objection in this regard is factually incorrect. It is rejected. Then, as correctly contended, apropos the objection regarding computation of income having not been filed with the return of income, this objection nowhere arises from the reasons recorded. The reasons recorded, it is trite, are to be read as they are, they cannot be improved upon. Further, as available from the reasons, the AO has taken the entire sale consideration as income escaping assessment and there is no quantification.

13. Apropos the issue regarding the assessee having allegedly not taken any objection to the reassessment proceedings before the AO, the assessee took the following objections (APB 51-53) dated 04.03.2015 before the AO:

*“Sir,*

*In the captioned case assessment proceedings are in progress before your good-self. On the last date of hearing assessee was required to show cause as to why Long Term Capital Gain (‘LTCG’) be not computed at amount of Rs. 18,31,965/- In this connection it is respectfully submitted as under:-*

*2. That in this case proceedings came to commenced by issuance of Notice under section 148 of the Act based on reasons that “ The information has been received from Jt. CIT, Range-4, Agra that Smt Usha Agarwal,95, Kaveri Kunj, Phase-2, Kamla Nagar, Agra sold the*

*property on 02-12-2006 for Rsl.14,00,000/- whereas its valuation for the purpose of stamp duty was at Rs.17,40,000/-, thus taking into the value according to section 50-C of the Act, taking its purchase cost , the net capital gain does arise above the taxable limit prevailing in the year in question. From the record available in this office, the assessee has not submitted its return for the year under consideration, Since, the assessee is not assessed to tax and therefore the income as a result of capital gains resulted into escapement of assessment and to assess it, issuance of notice under section 148 is considered necessary as it is a case of income escaping assessment, under the provision of section 147 of the Act” (emphasis supplied)*

3. *From the perusal of the said reasons it is abundantly clear that the so called ‘Reasons’ are no ‘reasons’ in the eyes of law and the proceedings are initiated for verification based on pure suspicion and surmises. Reasons are based on incorrect assumption of facts and shows total lack of application of mind and do not meet the test of law in this regard. From the perusal of the so called "Reasons Recorded" it is revealed that no sanction has been sought from the Joint Commissioner of Income Tax, Range-4, Agra as is apparent from the reasons recorded.*

4. *Even if any sanction was obtained, on the said 'reasons' before issuing Notice under section 148 it is no sanction in the eyes of the law having been sought on the basis of wrong facts being presented before the sanctioning authority, that assessee filed no Return of Income for the year under consideration and working out alleged escapement of Income without having any slightest idea about the purchase cost or the year in which purchase was made and without which no working of capital gain could have been arrived by any person of ordinary prudence and reasonable intelligence and consequently no bonafide allegation can be made that Sale of property resulted into Capital gain which Capital Gain, whether was Long Term or Short Term and which represents Income that has escaped assessment.*

5. *Hon'ble Allahabad High Court in the case of Mahesh Kunar Gupta Vs CIT & Ors in Writ Tax No. 1086 of 2007 vide Judgement dated 17-04-2013 quashed Notice under section 148 which was issued on the basis of reasons recorded where the reopening was beyond 4 years and there was no allegation in the reasons recorded that amount of escapement is of more than Rs.1,00,000/-.*

6. *In the facts of the present case the ration of the said decision fully applies as in the case in hands only*

*Sale consideration as mentioned in the sale deed is mentioned alongwith deemed consideration under section 50-C but nowhere amount of escapement is quantified and it is also not mentioned that escapement is of more than Rs.1,00,000/- , rather the case in hands stands on a more weaker footing as in the case under scrutiny wrong facts have been mentioned leading to presumption of escapement which also vitiates the proceedings. Xerox copy of the Judgment is filed herewith.*

*7. It may also be mentioned here that the above objection since goes to the root of jurisdiction can be raised at any stage even at the stage of Hon'ble ITAT as has been held by the Hon'ble Allahabad High Court in the case of Abdul Majid Vs CIT (2005) 199 CTR (All) 364.”*

14. The AO disposed of the assessee's aforementioned objections vide order (APB 54-55) dated 03.03.2015, as follows:

*“Please refer to written submission dated 4.03.2015, which has been received at very late stage when the assessment proceedings are going to be barred by limitation, objecting income escaping assessment proceedings u/s 147 in the case cited as above for A.Y. 2007-08.*

*2. Going by the said submissions dated 4.3.2015, it is considered that the objections raised are not tenable, particularly when the information was in possession that the*

*assessee has not shown capital gains in term of provisions of section 50C of the Act, thus a case of income escaping assessment by not disclosing the full facts necessary for assessment by the assesses herself, secondly, the reasons were property recorded, as per information in possession in the spirit of provisions of section 148(2) of the Act and after having prior permission/ approval from the Range-Head , the notice was issued well in time, as envisaged under section 149 of the Act. Anyhow, the objections raised stating inter alia that the proceedings were initiated for verification based on pure suspicion and surmises are not correct in the given facts of the case, and more so, sufficiency of the reasons recorded could not be argued or questioned and more importantly, only one condition is required to be satisfied, i.e. existence of reasons to believe that income has escaped assessment, which in turn has been complied with by recording reasons in writing and communicated to the assessee on demand, therefore, the assessee's objections considering incapable of being weighed are hereby disposed of accordingly and assessee is directed to attend or comply the proceedings and the notices issued, failing which the assessment proceedings will be finalized as best judgment assessment by invoking the provisions of section 144 of the Act on the basis of material available on record. Please note that the compliance date is fixed for 12.3.2015 and on the*

*date fixed no further adjournment will be entertained because of time constraints.”*

15. Concerning the assessee’s contention that the AO did not specify the quantum of income in the reasons recorded, the assessee took the following Ground No. 2 before the Id. CIT(A):

*“2. Because the purported reasons are no reasons in the eyes of law in the light of fact that no amount of escapement is quantified in the so called reasons recorded and as such reopening is bad in law in view of the binding decision of Hon'ble Allahabad High Court in the case of Mahesh Kumar Gupta Vs. CIT in Writ Tax No. 1086 of 2007.”*

16. The Id. CIT(A), however, rejected this ground alongwith Ground Nos. 1 and 3, observing (impugned order, page 4, first sentence), as follows:

*“As regard Allahabad the decision cited by appellant in the grounds of appeal once there are number of Supreme Court decision on this issue as cited in para 5.3”*

17. In Para 5.3 of the impugned order, the Id. CIT(A) has observed as under:

*“I have gone through the assessment order and legal position in this regard. At the time of reopening as held by the Apex*

*Court in the case of Raymond Woolen Mills Ltd. Vs. Income Tax Officer and Ors. On 17 December, 1997, the assessing officer is required to form a prima facie reasonable belief that there was income that has escaped assessment. The assessing officer need not prove that there was escapement of income at that point of time. The adequacy or sufficiency of reasons could not be gone into at the time of reopening of assessment.”*

18. Section 149(1)(b) of the Act states that no notice u/s 148 shall be issued for the relevant assessment year, if four years, but not more than six years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to, or is likely to amount to, Rs.1 lac, or more for that year. Thus, the requirement of section 149(1)(b) of the Act clearly is that notice u/s 148 of the Act can only be issued if the income escaping assessment amounts to, or is likely to amount to Rs.1 lac. In the reasons recorded, as a reading thereof would show, there is no mention that income amounting to Rs.1 lac or more is believed to have escaped assessment.

19. As is well settled, the reasons recorded are to be considered ipso facto, as they are, without supplementing them, without bolstering them. “CIT Vs. Samraj Krishan Chaudhary”, 368 ITR 638 (All) handed down by the Hon’ble

Jurisdictional High Court, amongst a plethora of other decisions, is eloquent on the issue.

20. The Department before this Bench, on the other hand, would have as upheld the reasons, by offering a justification which is based on mere supposition, i.e., the AO was aware of the quantum of capital contribution, which would lead to earning of capital gain exceeding one lac rupees, sans the reasons meeting the mandate of the law.

21. In this regard, ‘Mahesh Kumar Gupta 363 ITR 300 (All.)’, as relied on by the assessee before the Authorities below, and before this Bench also, is directly on the issue. In this case, the Hon’ble Jurisdictional High Court has held as follows:

*“11. The reason assigned for reopening is that the petitioner after converting the leasehold land into freehold sold the property within three years after converting the land into freehold resulting into short term capital gain in view of the Karnataka High Court's decision referred to above. What income is said to have been escaped does not find mention therein. Even assuming for the sake of argument, the income was liable to be taxed as short term gain unless there is any material before the authority concerned that it exceeds the limit of Rs. 1 Lakh, extended period of limitation of six years will not be available to the department. The normal period of limitation is four years for giving the notice under section 148 and where*

*the escaped income is likely to amount to Rs.1 Lakh or more, the extended period of limitation of six years would be attracted. This objection of the petitioner has been rejected by the impugned order on the ground that since the permission has been granted by the Joint/Additional Commissioner, Income Tax, statutory requirement stands fulfilled vide para-3 of the order which is reproduced below:-*

*"You have also objected that it is not mentioned in the reasons of taking action U/S 148 that the escaped income is more than 100000/-. In this connection this to inform that it is mentioned in notice U/S148 itself that the notice is being issued after proper sanction of Joint/Addl. Commissioner of Income Tax. This fulfills the requirement of law, you have provided the reasons of initiating action U/S148 not computation of income. The computation of income will be provided after proper hearing & giving proper opportunities to be heard."*

12. *The stand of the department as is evident from the above quoted paragraph has no legs to stand. The Joint/Additional Commissioner, Income Tax was not aware about the fact that the income chargeable to tax which has escaped the assessment is Rs.1 Lakh or more for the relevant Assessment Year. The proviso to section 151 (1) fortifies our view which says that*

*after the expiry of four years from the end of the relevant Assessment Year no notice under section 148 shall be issued or unless the Chief Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issue of such notice. On a true and proper construction of the proviso it is imperative that the Assessing Officer in his reason should state that the escaped income is likely to be Rs.1 Lakh or more so that the Chief Commissioner or the Commissioner may record his satisfaction. The sanctioning authority must be aware that it has exercised power of extended period of limitation under 149 (1) (b) of the Act. Exception has been carved out by clause (b) to section 149(1) in respect the income chargeable to tax which has escaped assessment, amounts to Rs.1 Lakh or more. To fall within exception clause the relevant facts should have been recorded by the Assessing Authority in its order while recording the reason so that a sanctioning authority may apply its mind to the proposition while granting the sanction.*

13. *The learned counsel for the department after close of the argument has filed the following judgements for consideration of this Court:-*

1. *GKN Driveshafts (India) Ltd. Vs. ITO [2002] 259 ITR 19/125 Taxman Taxman 963 (SC)*

2. *Dr. H.S. Bawa Vs. CIT, [2012] 25 Taxmann.com 15/210 Taxman 57 (P & H).*

3. *Vikram Kothari (HUF) Vs. State of U.P., [2011] Taxmann.com 280/200 Taxmann.com 152 (Alld).*

4. *Export Credit Guarantee Corporation of India Vs. Addl. CIT [2013] 30 Taxmann.com, 211 (Bom).*

5. *Asstt.CIT Vs. Rajesh Jhavri, [2007] 291 ITR 500/161 Taxman 316 (SC).*

6. *Chief Commissioner (Admn.) (U.P.) V. Kanhaiya Lal Kapoor, [2005] 147 Taxman, 12 (All).*

7. *Pooran Mal Vs. Director of Inspection, [1974] 93 ITR 505 (SC)*

8. *Deep Chand Daga Vs. ITO [1970] 77 ITR, 661 (MP) and,*

9. *Fisher Xomox Sanmar Ltd. V. Assistant CIT, [2007] 294 ITR 620 [2008] 168 Taxman 251 (Mad.)*

14. *None of the judgments referred to above have any connection to the point in issue even remotely. They relate either to the question of non-disclosure of income or failure on the part of the assessee to disclose the income fully or truly and what amounts to "reason to believe an information". None of these points were urged before us and we failed to understand*

*the filing of the rulings by the counsel as referred to herein above.*

15. *The only point urged and pressed before us is whether in absence of anything in the reasons recorded to suggest that the income chargeable to tax which has escaped the assessment is Rs. one lakh or more having not been mentioned the reassessment notice given after four years of the close of the assessment order is valid or not.*

16. *For the reasons given above, we find sufficient force in the argument of the learned counsel for the petitioner that on the basis of the reasons recorded by the Assessing Officer, the initiation of the reassessment proceedings relevant to the Assessment Year 2000-2001 by means of the notice dated 23.3.2007 after more than four years is clearly barred by time.”*

22. Then, in ‘Amar Nath Agarwal’ 371 ITR 183 (All.), it has been held as follows:

16. *From the aforesaid, it is clear that two distinct conditions must be satisfied before the Assessing Officer can assume jurisdiction to issue a notice under Section 148 of the Act, namely, that he must have reasons to believe that the income of the assessee had escaped assessment and, that he must have reasons to believe that such escapement Was by reasons of the omission or failure on the part of the assessee to disclose fully*

*and truly all material facts necessary for his assessment. If either of these conditions are not fulfilled, the notice issued by the Assessing Officer would be without jurisdiction.*

17. *Further, from a perusal of Section 149(l)(b) of the Act, it is imperative that the Assessing Officer, in his reasons, should also state that the escaped income is likely to be Rs.1 lac or more, which is an essential ingredient for seeking the approval and satisfaction that is to be recorded by the Competent Authority under Section 151 of the Act.*

18. *Consequently, before taking any action, the Assessing Officer is required to substantiate his satisfaction in the reasons recorded by him. If the conditions mentioned are not satisfied, then the issuance of notice would be invalid.*

19. *The reasons recorded by the Assessing Officer is, that the assessee had sold the property within three years after converting lease hold land to free hold resulting into short term capital gains in view of the judgment in Dr. V. V. Mody (supra).*

20. *The aforesaid reasons, makes it clear that the assessee was required to pay short term capital gains tax instead of long term capital gains tax and, therefore, the Assessing Officer had reasons to believe that the income had escaped assessment. In the instant case, admittedly, the notice was issued after four years but before six years. In our opinion, the reasons so recorded by the Assessing Officer was not sufficient to initiate*

*proceedings under Section 148 of the Act. We find from the reasons recorded by the Assessing Officer that no such reasons has been recorded to the effect that the escaped income is likely to be Rs.1 lac or more except for the assessment year 2001-02.*

21. *In Mahesh Kumar Gupta v. CIT [2014] 363 ITR 300/[2013] 215 Taxman 114/33 taxmann.com 409 (All) a coordinate Bench of this Court held that it is imperative for the Assessing Officer to record in his that the escaped income is likely to be Rs.1 lac or more so that the Chief Commissioner or Commissioner may record his satisfaction u/s 151 of the Act. The Court further held that if the said reason has not been recorded by the Assessing Officer, the initiation of the reassessment proceedings after more than four years would be clearly barred by time.*

22. *A similar provision, namely, Section 34(1A)(ii) existed under the Income Tax Act, 1922. A full Bench of this Court in Jai Kishan Srivastava v. ITO [1960] 40 ITR 222 (All) held that non-recording of the reason by the Assessing Officer that the escaped income was likely to be Rs.1 lac or more was fatal to the issuance of the notice for reassessment.*

23. *In K.S. Rashid & Son v. ITO [1964] 52 ITR 355 (SC) a Constitutional Bench of the Supreme Court held:*

*“The second point which is very important is that in regard to the cases falling under section 34(1A), action can be taken only*

*where the income which has escaped assessment is likely to amount to Rs.1 lakh or more. In other words, it is only in regard to cases where the escaped income is of a high magnitude that the restriction of the period of limitation has been removed.”*

24. *Since no reasons were recorded that the escaped income is likely to be Rs.1 lac or more so that the Chief Commissioner or Commissioner may record his satisfaction under section 151, the initiation of reassessment proceedings after more than four years was clearly barred by time.”*

23. The ratio decidendi of both the decisions of the Hon’ble Jurisdictional High Court evidently is that in the absence of anything in the reasons recorded to suggest that the income chargeable to tax which has escaped assessment is one lac rupees or more, the notice issued u/s 148 of the Act beyond four years of the end of the relevant assessment year, is invalid.

24. Both ‘Mahesh Kumar Gupta’, (supra) and ‘Amar Nath Agarwal’, (supra) have been followed by this Bench in ‘Pataria vs. ITO’, vide order (APB 56-72) dated 28.02.2017 in ITA No. 29/Agra/2015 for A.Y. 2006-07, while deciding this issue in favour of the assessee under similar facts and circumstances.

25. The ld. CIT(A), therefore, has clearly erred in not taking into consideration, ‘Mahesh Kumar Gupta’, (supra) rendered by the Hon’ble Jurisdictional High Court. ‘Raymond Woolen Mills Ltd. vs. ITO’, rendered by the Hon’ble Supreme

Court, as referred to by the Id. CIT(A) in para 5.3 of the order under appeal, is not at all concerned with the issue at hand and, as such, it is of no help to the Department.

26. In view of the above, the grievance of the assessee, raised by way of Ground Nos. 1 to 3 is justified and it is accepted as such. Respectfully following ‘Mahesh Kumar Gupta’, (supra) and ‘Amar Nath Agarwal’ (supra), the notice (APB-7) dated 20.03.2014, issued u/s 148 of the IT Act and all proceedings pursuant thereto, culminating in the order under appeal are held to be null & void ab-initio.

27. As such, nothing further survives for adjudication, nor was anything else argued.

28. In the result, the appeal is allowed.

**Order pronounced in the open court on 19/06/2018.**

**Sd/-  
(A.D. JAIN)  
JUDICIAL MEMBER**

\*AKV\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR