

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 988/Del/2018
Assessment Year : 2008-09

SUNIL AGARWAL,
LAXMI NIWAS,
NEAR POST OFFICE, KANKHAL,
HARIDWAR
UTTARAKHAND
(PAN: AANPA0687L)
(Appellant)

Vs. ITO, WARD 1(3)(3), HARIDWAR

(Respondent)

Assessee by : Sh. Gautam Jain, Adv. & Sh. Piyush Kr.
Kamal, Adv.
Department by : Sh. K. Tiwari, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A), Haldwani on 16.11.2017 in relation to the assessment year 2008-09 on the following grounds:-

1. That the learned Commissioner of Income Tax (Appeals), Haldwani has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, completion of assessment u/s 147(1)(3) of the Act which were without jurisdiction and deserves to be quashed as such.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was no tangible, relevant, specific and reliable material on record on the basis of which, it could be held that, there was any reason to believe with the learned Assessing Officer that income of the appellant had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable.

1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that since there was no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147 of the Act, the notice issued u/s 148 of the Act after a period of four years from the end of assessment year in a case where original assessment has been framed u/s 143(3) of the Act was illegal and invalid.

1.3 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that approval granted was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid.

2 That the learned Commissioner of Income Tax (Appeals) has further erred-both in law and on facts in upholding an

addition of Rs. 95,25,000/- representing alleged undisclosed/unexplained investment made by the appellant and brought to tax by invoking section 69B of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition on the basis of search and seizure operation u/s 132 of the Act in the group of M/s Kanatal Resorts no 22/23/92012, whereby basis of seized laptop of Shri Deepak Mittal without appreciating that such evidence neither in law and nor on fact could have been made a basis to assume that the land purchased by Shri Ganga Ram Adwani alongwith appellant was not Rs. 15,50,000/- allegedly purchased for Rs. 2,06,00,000/- in which share of appellant comes to Rs. 1,03,00,000/- being half share in purchasing 0.3480 hectare land represented undisclosed income of the appellant.

2.2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in overlooking the documentary evidence placed on record to establish that the purchase consideration of Rs. 15,50,000/- was the actual sum invested by the appellant.

2.3 That the learned Commissioner of Income Tax (Appeals) and the learned Income Tax Officer has erred both in law and on facts in invoking the provision contained in section 292C of the Act which are wholly inapplicable to the facts of the appellant.

2.4 That the learned Commissioner of Income Tax (Appeals) while upholding the addition has overlooked documentary evidence placed on record by the appellant to show that the investment made by the assessee was duly explained out of the funds available with the appellant and therefore, addition sustained is not in accordance with law.

2.5 That finding of the learned Commissioner of Income Tax (Appeals) that, "thus, prima facie, it was evidently established that the assessee alongwith Shri Ganga Ram Adwani had paid of Rs. 95,25,000/- over and above the registered amount as undisclosed investment of the assessee which was out of his undisclosed income" is factually incorrect and hence not tenable.

2.6 That further finding of the learned Commissioner of Income Tax (Appeals) that "further the appellant has not substantiated his claim that he had asked for cross examination which was denied by the AO" is factually incorrect and contrary to record, legally misconceived and untenable.

2.7 That various adverse findings and conclusion recorded by the learned Commissioner of Income Tax (Appeals) are also factually incorrect, contrary to record, legally misconceived and untenable.

3. That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principle of natural justice and hence vitiated.

4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest under section 234 B of the Act which is not leviable on the facts and circumstances of the case of the appellant.

It is therefore, prayed that it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held addition made and upheld by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant be allowed.

2. The facts in brief are that the assessee filed his return of income electronically on 28.6.2008 declaring income of Rs. 13,14,870/-. The case of the assessee was processed under section 143(1) of the Income Tax Act,

1961 (hereinafter referred as the Act) on 19.01.2010 on returned income. After recording reason for initiation of proceedings u/s. 147 of the act, notice u/s. 148 of the Act was issued on 6.8.2009. The assessment was completed u/s. 143/(147) of the Act on 30.12.2010 at returned income. Subsequently, it came to notice that the assessee has purchased farm house land at Jwalapur, Haridwar jointly with Sh. Ganga Ram Adwani, R/o Rishikesh (being 50% share of each), for total consideration of Rs. 2.06 crore from Sh. Ashwani Kumar, S/o Sh. Shanta Prasad, R/o Nath House, haridwar as Karta of M/s Ashwani Kumar Mittal & Sons (HUF), for which excess money over and above the amount mentioned in the registered deed has been paid by the purchasers. The assessee has disclosed purchase consideration of Rs. 7,75,000/- in the computation filed alongwith the return of income for AY 2008-09 being 50% of the purchase price of the said farm house land as per registered deed dated 11.4.2007 for Rs. 15,50,000. Accordingly, proceedings under section 147 were initiated to assess the undisclosed amount of investment made in purchase of the said property. Accordingly, notice under section 148 of the Act was issued on 31.3.2015 after recording proper reasons for doing so and after taking prior approval of CIT, Dehradun. In response to this notice, the assessee vide letter dated 6.4.2015 that his return of income filed for AY 2008-09 on 28.6.2008 may kindly be treated as filed in response to notice u/s. 148 of the Act dated 31.3.2015. Notices u/s. 143(2) & 142(1) of the Act alongwith questionnaire

were issued on 17.8.2015. In response to these notices, the assessee alongwith his AR attended the assessment proceedings and furnished requisite details. During the search and seizure operation u/s. 132 of the Income Tax Act, 1961 in the group of M/s Kanatal Resorts on 22/23.9.2011, laptop of Sh. Deepak Mittal was seized. In the laptop, the account annexured as page 27 of A-2 contains that land measuring 0.5480 hectares (8 bighas) situated at Jwalapur, Haridwar known as farm house land was sold by Ashwani Kumar Mittal and Sons (HUF), which was purchased vide sale deed dated 11.4.2007, jointly by the assessee and Sh. Ganga Ram Adwani, having equal shares, for Rs. 15,50,000/-. The sale deed for entire land was made at Rs. 15,50,000/-, but in actual the above land was sold for Rs. 2,06,00,000/-. The sale deed of this land was also found and seized at the time of search and was annexured as A-11 pg. 143. Sh. Deepak Mittal and Sh. Ashwani Kumar Mittal in their statements recorded u/s. 132(4) on 23.9.2011 have stated that the farm house land situated at Jwalapur, Haridwar was sold for total consideration of Rs. 2.06 crores in AY 2008-09 including cash received from the purchasers over and above the amount mentioned in the registered deed dated 11.4.2007. from these facts, it is cleary evidence that the assessee has jointly purchased half share of land measuring 0.5480 hectares at Jwalapur, Haridwar for Rs. 2,06,00,000/-, whereas as per sale deed dated 11.4.2007, purchase amount has been shown at Rs. 15,50,000/- only. This way, half share of the

assessee comes to Rs. 1,03,00,000/- as against Rs. 7,75,000/- shown in the registered sale deed. AO observed that prima facie, it is clearly evident that the assessee has paid Rs. 95,25,000/- on and above the registered amount. On this basis, reasons to believe that an income to the extent of Rs. 92,25,000/- has escaped assessment and accordingly, notice u/s. 142(1) dated 17.8.2015 was issued, to explain that on the basis of seized documents from Sh. Deepak Mittal during the course of search and seizure operation on 22.9.2011 and as accepted by Sh. Ashwani Kumar Mittal, why the purchase of land be not taken at Rs. 2.06 crores in respect of land purchased jointly with Sh. Ganga Ram Advani and accordingly, unexplained investment be not calculated. In response thereto, the assessee filed his reply dated 02.11.2015. After considering the reply filed by the assessee, the AO observed that the proceedings u/s. 147 of the Act were initiated on the basis of transactions relating to the property purchased by the assessee from the sellers in whose premises information / documents showing underhand payments in respect of such property, was found and seized during the course of search oration at the premises of the sellers and contents of the seized documents were confronted in the statement recorded u/s. 132(4) of the seller of the said property, which has evidential value within the meanings of section 132(4A) read with section 292C of the I.T. Act, 1961. Thus, the AO observed that the arguments put forth in the written submissions dated 2.11.2015 and 10.3.2016 have no credence.

Therefore, the AO held that assessee alongwith Sh. Ganga Ram Adwani got registered a purchase deed for Rs. 15,50,000/-, which was actually purchased for Rs. 2,06,00,000/-, in which share of the assessee comes to Rs. 1,03,00,000/- being half share. Thus, AO observed that it is clear that the assessee has made undisclosed investment of Rs. 95,25,000/- as his share in purchasing 0.5480 hectare land at village Jwalapur, District Haridwar on 11.4.2007. Accordingly, undisclosed investment made by the assessee amounting to Rs. 95,25,000/- was added to the total income of the assessee under section 69B of the Income Tax Act, 1961 vide order dated 30.3.2016 passed u/s. 143(3)/147 of the I.T. Act, 1961.

3. Aggrieved with the aforesaid assessment order dated 30.3.2016, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 16.11.2017 has affirmed the action of the AO and dismissed the appeal of the assessee.

4. During the hearing, Ld. Counsel of the assessee stated that learned Commissioner of Income Tax (Appeals), Haldwani has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, completion of assessment u/s 147/143(3) of the Act which were without jurisdiction and deserves to be quashed, because there was no tangible, relevant, specific and reliable material on record on the basis of which, it could be held that, there was any reason to believe with the Assessing Officer that income of the assessee had escaped assessment and,

in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable. He draw our attention towards page no. 26-PB which is copy of reasons recorded in the first round and page no. 32-PB which is a copy of reasons recorded in the second round and stated that learned Commissioner of Income Tax (Appeals) has further failed to appreciate that since there was no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147 of the Act, the notice issued u/s 148 of the Act after a period of four years from the end of assessment year in a case where original assessment has been framed u/s 143(3) of the Act was illegal and invalid. It was further contended that learned Commissioner of Income Tax (Appeals) has also failed to appreciate that approval granted was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid. In view of above, he requested to quash the reassessment. To support his contention, Ld. Counsel of the assessee has filed two Paper Books one is containing the containing pages 1 to 136 in which records at the stage assessment as well as appellate were available and in the second paper book which is containing pages 137 to 360 having the decisions of the Hon'ble Supreme Court of India; Hon'ble High Courts and the Tribunal by which the legal issue raised by the assessee is squarely covered. The following are the case laws on which the Assessee's counsel relied.

1. Copy of judgment of Hon'ble Supreme Court of India in the case of Chhugamal Rajpal vs. SP Chalitha and others reported in 79 ITR 603 (SC).
2. Copy of judgment of Hon'ble Supreme Court of India in the case of CIT, Calcutta vs. Burlop Dealers Ltd. reported in 79 ITR 609 (SC).
3. Copy of judgment of Hon'ble Supreme Court of India in the case of ITO and others vs. Lakhmani Mewal Das reported in 103 ITR 437(SC);
4. Copy of judgment of Hon'ble Supreme Court of India in the case of Kishinchand Chellaram vs. CIT reported in 125 ITR 713.
5. Copy of judgment of Tribunal in the caes of Smt. K. Narasamma vs. ITO in 32 ITD 494 (Hyd.).
6. Copy of judgment of Hon'ble Uttranchal High Court in the case of Mcdermott International Inc. vs. ACIT and others reported in 259 ITR 138.
7. copy of judgment of Hon'ble Supreme Court in the case of CIT vs. PV Kalyansundaram reported in 294 ITR 49.

8. Copy of judgment of Tribunal in the case of ITO vs. Optec Disc. Manufacturing reported in 11 DTR 0264 (Chand).
9. Copy of Judgement of Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. vs. CIT and others reported in 308 ITR 38 (Del).
10. Copy of judgment of Hon'ble Bombay Tribunal in the case of DCIT vs. Gujarqat Ambuja Cements Ltd. reported in 57 DTR 0179.
11. Copy of judgment of Hon'ble Delhi High Court in the case of Signatures Hotels Pvt. Ltd. vs. ITO reported in 338 ITR 51;
12. Copy of judgment of Hon'ble Bombay High Court in the case of Titanor Components Ltd. vs. ACIT reported in 343 ITR 183.
13. Copy of judgment of Hon'ble Delhi High Court in the case of CIT vs. Viniyas Finance and Investment Pvt. Ltd. reported in 357 ITR 646 (Del.)

14. Copy of judgment of Hon'ble Delhi High Court in the case of CIT vs. Living Media India Ltd. reported in 359 ITR 106.
15. Copy of order of Hon'ble Delhi High court in the case of Pr. CIT vs. NC Cables Ltd. in ITA No. 335/2015.
16. Copy of judgment of Hon'ble Chhattisgarh High Court in the case of Maruti Clean Coal and Power Ltd. vs. ACIT reported 400 ITR 397.
17. Copy of judgment of Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. ACIT reported in 268 ITR 332 and
18. Copy of order of Tribunal in the case of Bhikam Singh. Vs. ACIT in ITA No. 1081/Del/2017.

5. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that Assessing Officer issued the notice u/s. 148 after due application of mind. Hhe further stated that the AO has followed due procedure before issuing the notice u/s 148 of the I.T. Act, 1961. The Assessing Officer had tangible material in the form of information received from the Investigation Wing. The Assessing Officer did not proceed to any hearsay, conjecture or surmises. He stated that following decisions may be

kindly considered with regard to reopening of case beyond 4 years u/s. 147 of the I.T. Act:

"1. *Honda Siel Power Products Ltd. v. Dy. CIT [2012] 20 taxmann.com 5 (SC)/[2012] 206 Taxman 33 (SC)(MAG.)/[2012] 340 ITR 64 (SC)/[2012] 247 CTR 316 (SC) where Hon'ble Supreme Court held that assessee having not pointed out during assessment proceedings about expenses incurred relatable to tax free income u/s 14A there was omission and failure on its part to disclose fully and truly material facts and hence reopening of assessment was justified*

2. *Honda Siel Power Products Ltd. v. Dy. CIT [2011] 10 taxmann.com 2 (Delhi)/[2011] 197 Taxman 415 (Delhi)/[2012] 340 ITR 53 (Delhi)/[2012] 247 CTR 322 (Delhi) where Hon'ble Delhi High Court held that assessee having not pointed out during assessment proceedings about expenses incurred relatable to tax free income u/s 14A there was omission and failure on its part to disclose fully and truly material facts and hence reopening of assessment was justified*

3. *New Delhi Television Ltd. Vs DCIT [2017] 84 taxmann.com 136 (Delhi)* where Hon'ble Delhi High Court held that proceedings under section 147, beyond a period of 4 years can only be initiated if the Assessing Officer has reason to believe that there has been escapement of income and this escapement is owing to the lack of true and fair disclosure by the assessee. In this regard, it is essential to understand the meaning of the phrase 'true and fair disclosure'. The Court has considered the meaning of this phrase in *Honda Siel Power Products Ltd. v. Dy. CIT [2012] 340 ITR 53/[2011] 197 Taxman 415/10 taxmann.com 2 (Delhi)* where the Court held that that the term 'failure' on the part of the assessee is not restricted to the return and the columns of the return or the tax audit report. There can be omission and failure on the part of Hie assessee to disclose material facts fairly and truly during the course of the assessment proceedings. [Para 42]

4. *CIT Vs P.V.S. Beedies (P.) Ltd. [1999] 103 Taxman 294 (SC)/[1999] 237 ITR 13 (SC)/[1999] 155 CTR 538 (SC)* where Hon'ble Supreme Court held that Audit party had merely pointed out a fact which had been overlooked

by Assessing Officer and this was not a case of information on a question of law. Reopening of case under section 147(b) on basis of factual information given by internal audit party was valid in law.

5. *CIT Vs Kiranbhai Jamnadas Sheth (HUF) [2013] 39 taxmann.com 116 (Gujarat)/[2014] 221 Taxman 19 (Gujarat)(MAG.) where Hon'ble Gujarat High Court held that Assessment without scrutiny would mandate reassessment beyond 4 years even if assessee made true disclosure.*

6. *Dishman Pharmaceuticals & Chemicals Ltd. Vs CIT [2012] 346 ITR 228 (Guj) The assessee had shown an amount as loan from company. The assessee had not disclosed that it had substantial interest in the company. Reassessment proceedings after four years to assess amount as deemed dividend was held to be valid."*

6. We have heard both the parties and carefully considered the case laws and the relevant documents available on record. We note that in this case return of income declaring income at Rs. 13,14,870/- was filed by the assessee on 26.8.2008 and which was processed on 19.1.2010 u/s. 143(1) of the Act (Page 1-5 of Paper Book). It is noted that in the 1st round of

proceedings u/s. 147 of the Act, a notice dated 6.8.2009 u/s. 148 (Pg. 6-PB) of the Act and further questionnaire dated 8.11.2010 was issued and reply thereof was furnished by the assessee on 18.11.2010. After considering the same, the AO passed the order dated 30.12.2010 u/s. 143(3)/147 of the Act. Thereafter, in the 2nd round of proceedings u/s. 147 of the Act again notice dated 13.3.2015 u/s. 148 of the Act was issued (Page. 23-PB) wherein it was stated that notice is being issued with the prior approval of the JCIT, Haridwar Range, Haridwar. We note that the AO while recording the reasons for the belief that income has escaped assessment has recorded the reasons as under:-

"Reasons for initiating proceedings u/s. 148/151 and for obtaining the approval of the Jt. /Addl. Commissioner of Income Tax/ Commissioner of Income Tax/ CBDT.

1	<i>Name and address of the assessee</i>	<i>Sh. Sunil Agarwal Sh. Balaji Complex, Ranipur More, Haridwar</i>
2	<i>Permanent Account No.</i>	<i>AANPA0687L</i>
3	<i>Status</i>	<i>Individual</i>
4	<i>District/circle/Range</i>	<i>Ward 3, Haridwar</i>
5	<i>Assessment year in respect of which it is proposed to be issued notice u/s. 148 of the Income Tax Act.</i>	<i>2008-09</i>
6.	<i>The quantum of income which has escaped assessment</i>	<i>Rs. 95,25,000/-</i>
7.	<i>Whether the clauses (a), (b) or (c) of the explanation 2 to the second proviso of section 147 are applicable.</i>	<i>Clause (b) of the explanation 2 to the second proviso of section 147 is applicable.</i>

8	<i>Whether the assessment is proposed to be made for the first time? If reply is in affirmative, please state:</i>	Yes
	<i>(a) whether any voluntary return had already been filed.</i>	Yes. Returned income Rs. 13,14,873/-.
	<i>(b) if so, the date of filing the said return.</i>	28.6.2008
9.	<i>If the answer to item 8 is in negative, please state</i>	
	<i>(a) The income originally assessed</i>	NA
	<i>(b) Whether it is a case of under assessment, assessment at too low a rate which has been made the subject of excessive relied or allowing excessive loss or depreciation</i>	NA
10	<i>Whether the provisions of section 150(1) are applying. If the rely is in the affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of section 150(2) would not stand in the way of initiating proceedings u/s. 147.</i>	No.
11.	<i>Reasons for the belief that income has escaped assessment.</i>	<i>Information received from DCIT, Central Circle, Dehradun that a search was conducted on 22.9.2011 laptop of sh. Ashwani Kumar Mittal was seized. The laptop contains details of sale of 8 bighas of land @ 25.75 lacs per bigha to Sh. Gnga Ram Adwani and Sh. Sunil Kumar Agarwal which</i>

		comes to Rs. 2.06 crore. Sunil Agarwal's share comes to Rs. 1.03 crore. Sale deed of this land was made for Rs. 15.50 lacs in which his share comes to Rs. 7.75 lacs. Rs. 95.25 lacs was paid over and above the amount shown in the sale / purchase deed made on 5.4.2007. I have therefore, reasons to believe that Rs. 95.25 lacs escaped assessment.
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Dated: 23.03.2015

Sd/-

(Dileep Kumar)

Income Tax Officer,

Ward 3, Haridwar

12.	Whether the Addl./ JCIT CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961	Yes, in view of reasons recorded by AO I am satisfied that this is a fit case for issue of notice u/s. 148.
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Dated: 24.03.2015

Sd/-

(Gaya Prasad)

*Joint Commissioner of
Income Tax, Haridwar
Range, Haridwar"*

6.1 Thereafter, in the 3rd round of proceedings u/s. 147 of the Act again notice dated 31.3.2015 u/s. 148 of the Act was issued (Page. 29-PB) wherein it was stated that notice is being issued with the prior approval of

the JCIT, Haridwar Range, Haridwar. We note that the AO while recording the reasons for the belief that income has escaped assessment has recorded the reasons as under:-

"Reasons for initiating proceedings u/s. 148/151 and for obtaining the approval of the Jt. /Addl. Commissioner of Income Tax/ Commissioner of Income Tax/ CBDT.

1	<i>Name and address of the assessee</i>	<i>Sh. Sunil Agarwal Sh. Balaji Complex, Ranipur More, Haridwar</i>
2	<i>Permanent Account No.</i>	<i>AANPA0687L</i>
3	<i>Status</i>	<i>Individual</i>
4	<i>District/circle/Range</i>	<i>Ward 3, Haridwar</i>
5	<i>Assessment year in respect of which it is proposed to be issued notice u/s. 148 of the Income Tax Act.</i>	<i>2008-09</i>
6.	<i>The quantum of income which has escaped assessment</i>	<i>Rs. 95,25,000/-</i>
7.	<i>Whether the clauses (a), (b) or (c) of the explanation 2 to the second proviso of section 147 are applicable.</i>	<i>Clause (b) of the explanation 2 to the second proviso of section 147 is applicable.</i>
8	<i>Whether the assessment is proposed to be made for the first time? If reply is in affirmative, please state:</i>	<i>No</i>
	<i>(a) whether any voluntary return had already been filed.</i>	
	<i>(b) if so, the date of filing the said return.</i>	
9.	<i>If the answer to item 8 is in negative, please state</i>	
	<i>(a) The income originally assessed</i>	<i>Rs. 13,14,870/-</i>
	<i>(b) Whether it is a case of under assessment,</i>	<i>Under assessment</i>

	<i>assessment at too low a rate which has been made the subject of excessive relief or allowing excessive loss or depreciation</i>	
10	<i>Whether the provisions of section 150(1) are applying. If the rely is in the affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of section 150(2) would not stand in the way of initiating proceedings u/s. 147.</i>	No.
11.	<i>Reasons for the belief that income has escaped assessment.</i>	<i>Information received from DCIT, Central Circle, Dehradun that a search was conducted on 22.9.2011 laptop of sh. Ashwani Kumar Mittal was seized. The laptop contains details of sale of 8 bighas of land @ 25.75 lacs per bigha to Sh. Gnga Ram Adwani and Sh. Sunil Kumar Agarwal which comes to Rs. 2.06 crore. Sunil Agarwal's share comes to Rs. 1.03 crore. Sale deed of this land was made for Rs. 15.50 lacs in which his share comes to Rs. 7.75 lacs. Rs. 95.25 lacs was paid over and above the amount shown in the sale / purchase deed made on 5.4.2007. I have therefore, reasons to believe that Rs. 95.25 lacs escaped assessment.</i>

Dated: 31.03.2015

Sd/-

(Dileep Kumar)

Income Tax Officer,

Ward 3, Haridwar

12.	Whether the Addl./ JCIT CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961	Yes, in view of reasons recorded by AO I am satisfied that this is a fit case for issue of notice u/s. 148.
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Dated: 31.03.2015

Sd/-

(Gaya Prasad)

*Joint Commissioner of
Income Tax, Haridwar
Range, Haridwar"*

13.	Whether the CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961	I am satisfied that is a fit case for initiating proceedings u/s. 147 of the I.T. Act. Yes, I am satisfied.
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Dated: 31.03.2015

Sd/-

*Commissioner of Income Tax,
Dehradun"*

6.1 After perusing the aforesaid reasons recorded, we find that there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147 of the Act, the notice issued u/s. 148 of the Act after a

period of four years from end of assessment year in case where assessment has been framed u/s. 147/143(3) of the Act is illegal and invalid. The case law relied by the Ld.DR are on distinguished facts. Our aforesaid view is fortified by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Viniyas Finance and Investment (P) Ltd. wherein the Hon'ble has held as under:-

"7. On going through the purported reasons we find that there is no mention of the respondent-assessee not having made a full and true disclosure of the material facts necessary for assessment. On the contrary the purported reasons indicate that the amounts mentioned therein had been shown in the books of accounts as receipts from the companies mentioned therein. We also note that at serial No.5 of the list of companies from which amounts have been allegedly received, the name of the assessee has been shown. This means that the assessee received the received money from itself, which can hardly be an allegation in this case.

8. For the foregoing reasons we feel that the Tribunal has approached the matter in the correct perspective and has held the issuance of the notice under Section 148 dated 30.7.2007 to be bad in law and so, too, all the proceedings

pursuant thereto. There is no reason for us to interfere with the impugned order inasmuch as no substantial question of law arises for our consideration."

6.2 It is also noted that the reasons recorded are vague and non-speaking and reflect complete non-application of mind much less independent "application of mind". The action of the AO has been taken mechanically on the basis of information of DCIT, Central Circle, Dehradun and, not on independent application of mind and therefore, on this count also the proceedings are without jurisdiction. Our this view is supported by the following decisions:-

i) Pr CIT v. RMG Plyvinyl (I) Ltd. (2017) 83 taxmann.com 348 (Hon'ble Delhi High Court)

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 'known' 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 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.”

ii) 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd. v. ITO

“36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the

formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs.

6.3 It is further noted that the proceedings have been initiated on the basis of no material much less any tangible and, relevant material and as such reasons record do not constitute valid reason to believe for initiating proceedings u/s. 147 of the Act. It is further noted that the approval granted by the competent authority is a mechanical approval and action has been taken mechanically because on perusing the reasons recorded, it demonstrates that Joint CIT has written **"Yes, in view of reasons**

recorded by the AO, I am satisfied that this is fit case for issue of notice u/s. 148 and similarly, the Ld. CIT, Dehradun has mentioned Yes, I am satisfied” which establishes that both the authorities have not recorded proper satisfaction / approval, before issue of notice u/s. 148 of the I.T. Act. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the DCIT, Central Circle, Dehradun. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Our aforesaid view is fortified by the following decisions:-

(A) Hon'ble Delhi High Court in the case of Pr. CIT vs. M/s NC Cables Ltd. in ITA No. 335/2015 has held as under:-

11. Section 151 of the Act clearly stipulates that the CIT(a), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a

higher ranking officer, For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

(B). Hon'ble High Court of Madhya Pradesh in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. reported in (2015) 56 taxmann.com 390 (MP) has held as under:-

"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am Satisfied". In the case of ARjun Singh vs. Asstt. DIT (2000) 246 ITR 363 (MP), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commisisoner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords

sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration."

(C.) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) in the Head Notes has held that "*Section 151, read with section 148 of Income Tax Act, 1961 – Income escaping assessment – Sanction for issue of notice (Recording of satisfaction) – High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid – Whether Special Leave Petition filed against impugned order was to be dismissed – Held, Yes (in favour of the Assessee).*"

6.4 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we are of the considered view that proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction, hence, the re-assessment is quashed. Since we have already quashed the re-assessment, the other grounds have become academic and are therefore not adjudicated and accordingly, the assessee's appeal is allowed.

7. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 24-05-2018.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 24-05-2018

SRBhatnagar

Copy forwarded to:

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

AR, ITAT, NEW DELHI.