

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 309 & 310/JP/2020

Assessment Years: 2012-13 & 2013-14

Swami Keshwanand Sikshan Sansthan, N.H.11, Bhadhadhar, Sikar-332315 (Raj)	बनाम Vs.	I.T.O. (Exemption), Ward-2, Jaipur (Rajasthan).
PAN No.: AAFTS 2816 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shafi Mohammed (Adv)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/03/2021  
उदघोषणा की तारीख / Date of Pronouncement : 13/04/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

Both these appeals have been filed by the assessee against the separate orders of the Id. CIT(A)-3, Jaipur dated 17/09/2020 and 10/09/2020 for the A.Y. 2012-13 & 2013-14 respectively.

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Since, common issues have been involved in both these appeals, therefore, we take appeal i.e. ITA No. 309/JP/2020 for the A.Y. 2012-13



as a lead case for adjudication. In this appeal, the assessee has raised following grounds of appeal:

"1. That the Ld. Commissioner of Income Tax (Appeals)-III, Jaipur is erred in :-

- (i) *sustaining the proceedings of section 147/148 as such the reasons for issue of notice u/s 148 were not supplied to the assessee.*
- (ii) *Sustaining the proceedings of section 147/148 as the Notice issued u/s 148 is without the mandatory sanction / approval of the Commissioner of the Income Tax, therefore it is without jurisdiction and proper authority of law as such is ab-initio void and the assessment completed on the basis of this notice is also ab-initio void.*
- (iii) *Sustaining the addition so made are purely illegal and against the law as the assessing officer himself rejected the books of account and for making additions relying on the same set of books of accounts.*
- (iv) *Sustaining the additions of Rs. 6,17,900/- on account of anonymous donation as the assessee explained the same during the course of assessment.*
- (v) *Sustaining the addition of Rs. 4,24,205/- on account of difference in cost of construction because the copy of valuation report was not provided to verify the alleged difference and addition made without confronting the valuation report to the assessee.*
- (vi) *Sustaining the addition of Rs. 445000/- on account of payment given for purchase of land.*
- (vii) *Sustaining the addition of Rs. 16,53,383/- on account of bogus creditors.*
- (viii) *Sustaining the Addition of Rs. 26,87,000/- on account of difference in advertisement expenses.*



(ix) *Sustaining the act of Ld. Assessing Officer about the disallowance of exemption u/s 10(23C)(iiad) as the assessee is eligible for the exemption."*

2. *That the assessee reserves the rights to add, amend/alter any of the grounds of appeal during the course of hearing of the appeal."*

4. The brief facts of the case are that the assessee is a Registered Society engaged in educational activities at Village Bhadhadhar, Distt. Sikar. The assessee had not filed its original return of income for the A.Y. 2012-13. Assessment was reopened u/s 147 of the Income Tax Act, 1961, (in short, the Act). As per information, assessee deposited Rs. 92,41,500/- with a banking company during the F.Y. 2011-12 relevant to A.Y. 2012-13, but no return of income had been filed by the assessee for A.Y. 2012-13. Therefore, the source of cash deposit Rs. 92,41,500/-remained unexplained and case was reopened under section 147 of the Act. Accordingly notice u/s 148 of the Act was issued on 25.03.2019 to the assessee after obtaining prior approval of the Pr. CIT-(E), Jaipur. In compliance to notice u/s 148 of the Act, the assessee filed its ITR for A.Y. 2012-13 on 12.06.2019 declaring income of Rs.1,28,680/-. Notice u/s 143(2) of the Act was issued to assessee on 18.07.2019 as well as notice u/s 142(1) alongwith detailed query was also issued on 18.07.2019 to the assessee. After making details enquiries, the A.O. completed



the assessment U/s 143(3) r.w.s. 147 of the Act vide order dated 21/12/2019 by assessing total income of the assessee at Rs. 2,87,97,100/-.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the entire facts and circumstances as well as submissions of both the parties given part relief to the assessee. Against the impugned order passed by the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

6. Grounds No. 1 (i) and (ii) of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in sustaining the proceedings U/s 147/148 of the Act. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before the Bench and the said is reproduced below:

*The Ld. A.O. initiated the action u/s 147 and issued notice u/s 148 on 25.03.2019. The assessee specifically requested the A.O. to supply the reasons for issue of notice u/s 148 vide letter dated 24.05.2019 which is available in the file of A.O., the copy of the same is attached herewith for ready reference of the Hon'ble Bench. It is once again requested vide letter 17.10.2019 which was served on the office of the A.O. on*



18.10.2019, the copy of the letter dated 17.10.2019 and the proof of service are also attached herewith for ready reference of the Hon'ble Bench.

From the perusal of the same the Hon'ble Bench will observe that the assessee made specific request and sought the reasons for reassessment, but the A.O. not supplied the reasons recorded for issue of notice u/s 148.

In this connection it is worthwhile to submit that it is law of land that the reasons recorded for issue of notice u/s 148 are required to be supplied suo-moto to the assessee or he demands and if the same are not supplied then entire reassessment proceedings are bad in eye of law even after completion of assessment. On this issue I would like to rely on the Judgment of Hon'ble Supreme Court delivered in case of GKN Driveshafts (India) Ltd. v/s Income Tax Officer reported in 125 Taxman 963 (SC). In this judgment the Hon'ble Court is of the view that the A.O. is bound to furnish the reasons recorded for issue of notice u/s 148, within reasonable time.

Therefore, the A.O. is under legal obligation to supply the copy of reasons recorded for issue of notice u/s 148 to the assessee. The issue about when the reasons have to be provided has been settled by the Judgment of Hon'ble Delhi High Court as well as the Judgment of Hon'ble Supreme Court.

The Ld. A.O. in his remand report admitted that the assessee has demanded the reasons for issue of notice u/s 148 vide letter dated 24.05.2019. It is further submitted by the Ld. A.O. that the assessee mentioned only one line in the letter dated 24.05.2019, therefore skipped from supply. The Ld. A.O. also submitted in his remand report that the letter dated 17.10.2019 is not served on to the Ld. A.O. The relevant



*portion of the remand report is reproduced by the Ld. CIT(A) in his order at Page 6.*

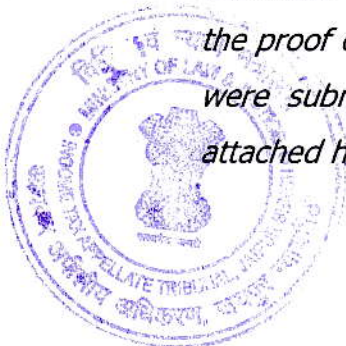
*In respect of demand of reasons letter dated 24.05.2019, Ld. CIT(A) is of the opinion that mere mentioning a line is not a sufficient demand and about the letter dated 17.10.2019 he completely relied on the submission of the Ld. A.O.*

*In this respect it is worthwhile to submit that the Ld. CIT (A) is erred in deciding this ground of the appeal of the assessee. As far as the sufficiency of demand of reasons is concerned, it submits that we could not lay our hand on any kind of specific format for demand of reasons for issue of notice u/s 148. There must be demand of reasons and the proof of the same has to be on record, this is there but not appreciated by the Ld. CIT(A) in judicious manner.*

*By the version of the Ld. A.O. it is very much clear that how casually the Ld. A.O. has taken the issues and Ld. CIT(A) also approved his act.*

*As regards the second demand letter dated 17.10.2019 is concerned the assessee again requested for supply of reasons vide another letter dated 17.10.2019 sent through courier. This letter has been served on the office of the Ld. A.O. and proof of service provided by the courier agency is also submitted to the Ld. CIT(A) but not considered / appreciated in judicious manner.*

*The Ld. A.O. in his remand report stated that the letter dated 17.10.2019 not served and also submitted the copy of Dak receipt register. In this connection it is stated that the submission of the Ld. A.O. is not correct, this letter was served on to the Ld. A.O., which is very well evident from the proof of service provided by the Courier agency, the copy of the same were submitted to the Ld. CIT(A) but not appreciated, the same are attached herewith for ready reference of the Hon'ble Bench.*



*From the perusal of the same the Hon'ble Bench will observe that the submission of the Ld. A.O. is not correct. The findings of the Ld. CIT(A) is unjustified and also not in accordance with the law as well as various judicial pronouncements. It is need less to submit that the Judgment of the Hon'ble Supreme Court and the other higher courts are having binding nature on all the subordinate authorities. But here in this case this principle is also completely disobeyed.*

*The Ld. CIT(A) not considered the evidences submitted by the assessee during the course of hearing. The assessee submitted the proof of receipt of the letter sent in the shape of the copy of receipts provided by the courier company, but the Ld. CIT(A) has completely brushed aside the evidences so submitted by the assessee and approved the act of the Ld. A.O., which is unjustified and contrary to the law.*

*Here in this case the A.O. has failed to provide the reasons despite of request of the assessee made to her twice, first just after filing of return u/s 148 and again during the course of assessment. It is needless to submit that without supply of reasons the entire assessment proceedings should be liable to be declared as illegal and bad in the eye of law. Therefore, it is humbly submitted that looking to the above mentioned judgments as well as the submission, facts and circumstances of the case, the assessment so completed by the A.O. may kindly be declared illegal and against the law and deserves to be quashed.*

*It is also worthwhile to submit that the assessment file of the assessee was inspected by the undersigned along with Shri Rahul Sharma C.A. on 26.02.2020 about 4.00 P.M. and it was found during the course of inspection that the Notice issued u/s 148 was issued without getting the prior sanction/approval of the Commissioner of Income Tax (Exemption).*



The A.O. referred the proposal to the Addl. Commissioner of Income Tax (Exemption) on 22.03.2019 for getting the sanction to issue the notice u/s 148 to 10 persons including the assessee. The Additional Commissioner vide letter dated 22.03.2019 No. 1079 submitted the proposal of the Income Tax Officer (Exemption) for sanction to issue notice u/s 148 on very same day i.e. on 22.03.2019 to the Commissioner of Income Tax (Exemption), the same was entered at S. No. 4548 dated 22.03.2019.

The Commissioner of Income Tax (Exemption) accorded the approval and informed this fact to the Additional Commissioner of Income Tax (Exemption) vide letter No. 9548 dated 26.03.2019 and received at the office of the Additional Commissioner of Income (Exemption) office on 26.03.2019 entered as S. No. 3951.

The Additional Commissioner of Income Tax (Exemption) conveyed the approval / sanction of the Commissioner of Income Tax (Exemption) to the Income Tax Officer (Exemption), Ward-2, Jaipur vide letter No. 1093 dated 26.03.2019 and the same was received to the office of the Income Tax Officer (Exemption), Ward-2, Jaipur on 27.03.2019 and the seal of office of ITO dated 27.03.2019 was there on this letter.

This fact can be easy to understand in the following table:-

Date	Issued by whom	Issued to whom	Purpose
22.03.2019 online proposal	The Income Tax Officer (Exemption), Ward-2, Jaipur	Addl. Commissioner of Income Tax (Exemption), Jaipur	For approval for issue of notice u/s 148.
22.03.2019 No.1079	Addl. Commissioner of Income Tax (Exemption), Jaipur	Commissioner of Income Tax (Exemption), Jaipur Received on 22.03.2019	For approval u/s 151 on the reasons recorded by the A.O.
26.03.2019 No. 9548	Commissioner of Income Tax (Exemption), Jaipur	Addl. Commissioner of Income Tax (Exemption), Jaipur Received on 26.03.2019	Conveying the approval





26.03.2019 No. 1093	Addl. Commissioner of Income Tax (Exemption), Jaipur	Income Tax Officer (exemption), Ward-2, Jaipur Received on 27.03.2019	Giving the approval to the A.O.
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Therefore, this is very well established that the notice u/s 148 was issued on 25.03.2019 was without the approval/sanction of Commissioner of Income Tax, which is mandatory as per the provisions of section 151 of the Income Tax Act. Here in this case the Commissioner of Income Tax (Exemption) granted the approval on 26.03.2019 and communicated the same to the ITO on 27.03.2019 through proper channel. Therefore the notice was issued on 25.03.2019 was without jurisdiction as well as without any sanction as required u/s 151. For acquiring the jurisdiction to issue notice u/s 148 the prior sanction / approval of the Commissioner of Income Tax is mandatory.

The Ld. A.O. in his remand report submitted that the approval given by the Commissioner of Income Tax (Exemption), Jaipur before the date of issue of notice. It is worthwhile to submit that for the sake of arguments it is accepted that the notice was issued after the approval of the CIT(Exemption), then what is the necessity for issue of letters by the Addl. CIT and CIT as mentioned in the above table. It is also worthwhile to submit that on the inspection of file, the letters mentioned in above table were found in file but the alleged approval given by the CIT(Exemption) on 25.03.2019 was not found in the file. But at the time of filing of the remand report Ld. A.O. has submitted this before the Ld. CIT(A) first time. This was also not provided to the assessee on demand of the copies of letters of approval of the higher authorities. Therefore, the Ld. A.O. prepared the story just to put veil on her act which is out of jurisdiction. Theses communications would reveal that not a single word suggesting or indicating that any sort of online approval/sanction was accorded by the CIT (Exemption). Had it been the case, certainly the factum of online approval would have been mentioned in these communications. One more



*fact which negativates the theory of the prior approval / sanction is that if there was any prior approval/online sanction accorded by the competent authority, then what was the occasion to issue the written communication on 26.03.2019, that too without there being any evidence revealing the prior approval/sanction by the competent authority in these written communications.*

*The documents which the Appellant received contain two documents issued along with the information received by the Appellant on 04.03.2020, which bears the signature of the Ld. A.O. , the print out submitted by the Respondent although which has not admitted but for the sake of arguments if it is looked into then it goes to show that the mandate of section 151 of the Act was not followed in letter and spirit for the reasons mentioned hereinabove and also for the reason that prior to initiation of proceedings two conditions are necessary viz. satisfaction of the PCIT/CCIT/CIT that it is a fit case for issue of such notice and sanction of the notice is on the basis of satisfaction, the so impugned computer generated print out submitted by the Ld. A.O. lacks both these conditions. By merely pointing out "Approved" cannot be termed as satisfaction as it is a mandatory word of the section 151 of the Act. In other words it can safely be understood that the whole proceedings which are said to be carried out by the Ld. A.O. are in mechanical manner without there being any application or independent application of judicious mind by the concerned authority.*

*The approval so given by the CIT (Exemption) for issue of notice u/s 148 is not in proper manner. The approval so given is purely a mechanical approval, without stating any reasoning behind that. The copy of the approval is being enclosed herewith for ready reference, from the perusal of the same, the Hon'ble Bench will observe that the higher authority not uttered a single word as reason for approval, only put one word i.e. "APPROVED".*



*Therefore, the approval so granted is not proper in any way. The requirement for issue of notice is not complied with in proper way, so the notice is required to be declared as void in absence of proper approval. Even only mention the word "Yes" or "Yes I am satisfied", is not sufficient for according the approval/sanction for issue of notice u/s 148, as held by the Hon'ble Supreme Court, other High Courts as well as Income Tax Appellate Tribunals. The authority giving the approval is required to mention the reasons for his satisfaction on the approval note. In support of my contention the reliance placed on the following Judgments:-*

- i. Chhugamal Rajpal V/s S.P. Chaliha (1971) 79 ITR Page 603 (SC)*
- ii. CIT, Jabalpur V/s S. Goyanka Lime & Chemical Ltd (2015) 1 SLPCTO 35 (SC) the Hon'ble Supreme Court dismissed the SLP filed by the department against the Judgment of Hon'ble M.P. High Court*
- iii. Raj Kishor Prasad V/s ITO (1992) 195 ITR Page 438 (All)*
- iv. Sunil Agarwal V/s ITO, Haridwar (2018) (ITAT, Delhi) ITA No. 988/Del/2018 dated 24.05.2018.*

*Therefore, in view of the above facts and submissions it is hereby humbly prayed to kindly declare the reassessment proceedings are illegal and against the law as such it is without the proper jurisdiction and authority provided under the law.*

7. On the other hand, the Id DR has relied on the orders of the authorities below and submitted that the order passed by the Id. CIT(A) is legal and speaking order and fulfills all the ingredients of Section 147/148 of the Act. The Id. DR has also relied on the following judicial pronouncements:

1. CIT Vs G.S. Tiwari & Co. (2014) 41 taxmann.com 17 (Allahabad).



2. Home Finders Housing Ltd. Vs ITO, Corporate Ward 2(3) (2018) 94 taxmann.com 84 (SC)
3. Thakorbhai Maganbhai Patel Vs ITO (2017) 78 taxmann.com 201 (SC)
4. Mathur Marketing (P) Ltd. Vs CIT (2019) 108 taxmann.com 118 (SC).
5. ITO Vs Mahadeo lal Tulsian 110 ITR 786 (Cal)
6. CIT Vs Uttam Chand Nahar (2007) 295 ITR 403 (Raj)

8. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, the assessee is a Registered Society engaged in educational activities at Village Bhadhadhar, Distt. Sikar. The A.O. issued notice u/s 148 of the Act to the assessee on 25.03.2019. The reason for issue of notice u/s 148 is high value transactions with banking company, as mentioned in the assessment order. The assessee filed its return of income declaring total income of Rs. 128680/- on 24.05.2019 in compliance to the notice u/s 148. Thereafter notices u/s 143(2) and 142(1) were issued and replied by the assessee time to time. The A. O. also invoked the provisions of



Section 145(3) of the Act and rejected the books of account of the assessee. After rejection of the books of account the A.O. made following additions and out of them some has been deleted by the Ld. CIT(A) tabulated as under :-

S. No.	Head of additions	Addition by A.O. Amount	Deleted by CIT(A) amount	Sustained by CIT(A) Amount
1.	anonymous donation shown as Corpus Donation.	6,17,900.00	-	6,17,900.00
2.	difference in cash deposited into bank account.	57,000.00	57,000.00	-
3.	difference in bus fee	6,11,893.00	5,11,893.00	1,00,000.00
4.	difference in construction value of Building	4,24,205.00	-	4,24,205.00
5.	advance given for land purchase	4,45,000.00	-	4,45,000.00
6.	bogus liabilities	16,53,383.00	-	16,53,383.00
7.	Difference in advertisement exp	26,87,000.00	-	26,87,000.00
8.	estimation of hostel receipts	1,86,72,000.00	1,86,72,000.00	-
9.	undisclosed investment in buses	35,00,000.00	35,00,000.00	-
	Total	2,86,68,381.00	2,27,40,893.00	59,27,488.00

Therefore, the total addition in the returned income of the assessee was Rs. 2,86,68,381/- and assessed on total income of Rs. 2,87,97,100/-. The Ld. CIT(A) has deleted the addition of Rs. 2,27,40,893/- and sustained Rs. 59,27,488/-.



9. From perusal of the record, we observe that, as per the assessee, during the course of assessment proceedings the assessee specifically requested to supply the reasons recorded for issue of notice u/s 148 vide letter dated 17.10.2019, this written communication was served upon the Office of the A.O. on 18.10.2019. Despite of specific request, the A.O. had not supplied the reasons recorded for issuance of notice u/s 148. The A.O. initiated the action u/s 147 and issued notice u/s 148 on 25.03.2019. The assessee several times requested the A.O. to supply the reasons for issue of notice u/s 148 of the Act but the A.O. not supplied the reasons recorded for issue of notice u/s 148. It is worthwhile to mention here that it is law of land that the reasons recorded for issue of notice u/s 148 are required to be supplied to the assessee where it demands and if the same are not supplied then entire reassessment proceedings are bad in eye of law even after completion of assessment. On this issue we draw strength from the decision of Hon'ble Supreme Court in case of **GKN Driveshafts (India) Ltd. v/s Income Tax Officer** reported in **125 Taxman 963 (SC)**. In this judgment the Hon'ble Court is of the view that the A.O. is bound to furnish the reasons recorded for issue of notice u/s 148 within reasonable time. Therefore, the A.O. is under legal obligation to supply the copy of reasons recorded for issue of notice u/s 148 to the assessee. The issue about when the reasons have to be



provided has been settled by the Judgment of Hon'ble Delhi High Court as well as the Judgment of Hon'ble Supreme Court. The Hon'ble Supreme Court in case of **Pr Commissioner of Income Tax V/s V. Ramaiah reported in 103 Taxmann.com 202 (SC)** dismissed the SLP filed by the department against the Judgment of Hon'ble High Court. The Hon'ble High Court held that supply of reasons is mandatory and without supply of reasons the reassessment proceedings are liable to be quashed. The Hon'ble High Court upheld the order of the ITAT. The relevant Para of the Judgment of Hon'ble High Court are being reproduced here under :-

*"9. In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order.*

*10. We do not find any substantial question of law arising in the matter. Therefore, the appeal of the Revenue stands dismissed. No costs."*

The Hon'ble Allahabad High Court in case of **Mithilesh Kumar Tripathi V/s Commissioner of Income Tax and others reported in 280 ITR**

**Page 16 (All)** has held and observed as under :-

*"79. In our considered opinion, if reasons are supplied along with the notice under s. 148(2) of the Act, it shall obviate unnecessary harassment to the assessee as well to the Revenue by avoiding unnecessary litigation which will save*



*courts also from being involved in unproductive litigations. Above all it shall be in consonance with the principles of natural justice, as discussed above."*

The Hon'ble Delhi High Court held in the case of **Haryana Acrylic Manufacturing Co V/s Commissioner of Income Tax reported in 308 ITR Page 38 (Delhi)**. In this judgment the Hon'ble High Court after considering the Judgment of Hon'ble Supreme Court in case of GKN Drivesaft (India) Ltd V/s Income Tax Officer reported in 259 ITR Page 19 (SC) it is held in para 24 of the Judgment, relevant portion of the same is being reproduced here under :-

*"24.....In whichever way we look at it, a notice under section 148 without the communication of the reasons therefore is meaningless in as much as the assessing officer is bound to furnish the reasons within a reasonable time. In a case, where the notice has been issued within the said period of six years, but the reasons have not been furnished within that period, in our view, proceedings pursuant thereto would be hit by the bar of limitation in as much as the issuance of notice and the communication and furnishing of reasons go hand-in-hand. . The expression 'within a reasonable period of time' as used by the Supreme court in GKN Drivesaft (India) Ltd's case (Supra) cannot be stretched to such an extent even beyond the six years stipulated in section 149. For this reason also, even assuming that we overlook all that has happened between 11.5.2004, when the*





*petitioner sought the reasons and 5.11.2007, when the said form annexed to the counter affidavit was filed in this court, the validity of the notices under section 148 issued on 29.3.2004 and any proceedings pursuant thereto cannot be upheld."*

The Coordinate Bench of Delhi Tribunal in case of **Shri Balwant Rai Wadhwa V/s ITO in ITA No. 4806/Del/2010**, in this case the Coordinate Bench of Delhi Tribunal also relied on the Judgment of the Hon'ble Delhi High in the case of Haryana Acrylic Manufacturing (Supra) and held as under :-

*"5. A plain reading of the above exposition of law at the end of Hon'ble Jurisdictional High Court make it clear that issuance of the notice and the communication and furnishing of reasons would go hand in hand. The reasons are to be supplied to the assessee before the expiry of period of 6 years. If it has not been done then validity u/s 148 could not be upheld. It is not in the income tax proceeding alone. In any proceedings say, civil or criminal, if a summon is issued to the defendant/ respondent, is not accompanied with the copy of plaint or complaint then it is to be construed that no valid service of notice has been effected upon the defendant or the respondents whichever may be the case. The notice could be served at any point of time before the expiry of 6 years, if AO has reasons to believe that income has escaped assessment but, such reasons are also to be communicated to the assessee before the expiry of the limitation otherwise*



*validity of such notice could not be sustainable. Being a subordinate authority to the Hon'ble High Court, we are bound to follow the authoritative exposition of law at the end of Hon'ble High Court. In view of the above discussion, we allow ground No.2 of the assessee wherein he has pleaded that notice u/s 148 has not been served within the period of limitation upon the assessee. The assessment is not sustainable, it is quashed."*

The Hon'ble Supreme Court in case of **GKN Driveshafts (India) Ltd V/s ITO reported in 259 ITR Page 19 (SC)**, in this Judgment the Hon'ble Court is of view that the copy of the reasons recorded has to be supplied within a reasonable time. The relevant portion of the Judgment is being reproduced here under: -

*"4 We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under s. 148 of the Income Tax Act is issued, the proper course of action for the notices is to file a return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceedings with the assessment in respect of the abovementioned five assessment year."*



10. We observe from perusal of the record that the A.O. in his remand report admitted that the assessee has demanded the reasons for issue of notice u/s 148 vide letter dated 24.05.2019, but since there was request in one line, therefore skipped from supply the same. The A.O. also submitted in his remand report that the letter dated 17.10.2019 is not served on to the A.O. The relevant portion of the remand report is reproduced by the Ld. CIT(A) in his order at Page 6. In respect of demand of reasons letter dated 24.05.2019, Ld. CIT(A) is of the opinion that mere mentioning a line is not a sufficient demand and about the letter dated 17.10.2019 he completely relied on the submission of the A.O.

11. The A.O. in his remand report stated that the letter dated 17.10.2019 was not served on him. In this connection it has been submitted by the Id AR that this letter was served on to the A.O., which is very well evident from the proof of service provided by the Courier agency, the copy of the same was also submitted by the assessee to the Ld. CIT(A) but the same was not appreciated. From the perusal of the courier record, the same as served upon the A.O., we are of the view that the findings of the Ld. CIT(A) are unjustified and also not in accordance with the law as well as various judicial pronouncements. It is need less to submit that the Judgment of the Hon'ble Supreme Court and



the other higher courts are having binding nature on all the subordinate authorities. But here in this case this principle has also been completely disobeyed. The Ld. CIT(A) had not considered the evidences submitted by the assessee during the course of hearing. The assessee submitted the proof of receipt of the letter sent in by placing on record the copy of receipts provided by the courier company, but the Ld. CIT(A) has completely brushed aside the evidences so submitted by the assessee and Id. CIT(A) also approved the act of the A.O., which is unjustified and contrary to the law.

12. We also observe that the A.O. has failed to provide the reasons despite the specific request of the assessee made to the A.O. twice, first just after filing of return u/s 148 and again during the course of assessment. It is needless to mention that without supply of reasons the entire assessment proceedings should be liable to be declared as illegal and bad in the eyes of law.

13. It has been submitted by the Id. AR that the assessment file of the assessee was inspected along with Shri Rahul Sharma C.A. on 26.02.2020 about 4.00 P.M. and it was found during the course of inspection that the Notice issued u/s 148 was issued without getting the prior sanction/approval of the Commissioner of Income Tax (Exemption). The A.O. referred the proposal to the Addl. Commissioner of Income Tax



(Exemption) on 22.03.2019 for getting the sanction to issue the notice u/s 148 to 10 persons including the assessee. The Additional Commissioner vide letter dated 22.03.2019 No. 1079 submitted the proposal of the Income Tax Officer (Exemption) for sanction to issue notice u/s 148 on very same day i.e. on 22.03.2019 to the Commissioner of Income Tax (Exemption), the same was entered at S. No. 4548 dated 22.03.2019. The Commissioner of Income Tax (Exemption) accorded the approval and informed this fact to the Additional Commissioner of Income Tax (Exemption) vide letter No. 9548 dated 26.03.2019 and received at the office of the Additional Commissioner of Income (Exemption) office on 26.03.2019 entered as S. No. 3951. The Additional Commissioner of Income Tax (Exemption) conveyed the approval / sanction of the Commissioner of Income Tax (Exemption) to the Income Tax Officer (Exemption), Ward-2, Jaipur vide letter No. 1093 dated 26.03.2019 and the same was received to the office of the Income Tax Officer (Exemption), Ward-2, Jaipur on 27.03.2019 and the seal of office of ITO dated 27.03.2019 was there on this letter. In order to understand the actual facts, the following chart containing the details was filed:-

Date	Issued by whom	Issued to whom	Purpose
22.03.2019 online proposal	The Income Tax Officer (Exemption), Ward-2, Jaipur	Addl. Commissioner of Income Tax (Exemption), Jaipur	For approval for issue of notice u/s 148.
22.03.2019 No.1079	Addl. Commissioner of Income Tax	Commissioner of Income Tax	For approval u/s 151 on the



	(Exemption), Jaipur	(Exemption), Jaipur Received on 22.03.2019	reasons recorded by the A.O.
26.03.2019 No. 9548	Commissioner of Income Tax (Exemption), Jaipur	Addl. Commissioner of Income Tax (Exemption), Jaipur Received on 26.03.2019	Conveying the approval
26.03.2019 No. 1093	Addl. Commissioner of Income Tax (Exemption), Jaipur	Income Tax Officer (exemption), Ward-2, Jaipur Received on 27.03.2019	Giving the approval to the A.O.

It was submitted that the notice u/s 148 issued on 25.03.2019 was without the approval/sanction of Commissioner of Income Tax, which is mandatory as per the provisions of section 151 of the Act. Here as per facts and documents in this case the Commissioner of Income Tax (Exemption) granted the approval on 26.03.2019 and communicated the same to the ITO on 27.03.2019 through proper channel. Therefore in this way, the notice issued on 25.03.2019 was without jurisdiction as well as without any sanction as required u/s 151. For acquiring the jurisdiction to issue notice u/s 148 the prior sanction / approval of the Commissioner of Income Tax is mandatory.

14. We observe from perusal of the record that the A.O. in his remand report submitted that the approval given by the Commissioner of Income Tax (Exemption), Jaipur before the date of issue of notice. In this respect, we have gone through the remand report dated 09/03/2020 submitted by



the JCIT(Exemption) to the CIT(Appeal) and the contents of which are as under:

*"The assessee has also argued that notice u/s 148 was issued prior to receipt of sanction of competent authority u/s 151 of the Act. In this connection it may be stated that the AO submitted proposal to the Addl.CIT(Exemption), Jaipur online on 22/03/2019 which was forwarded to the CIT(Exemption) on the same day. The CIT(Exemption) accorded sanction u/s 151 online on 25/03/2019. Only thereafter notice u/s 148 of the Act was issued online on 25/03/2019. As a matter of fact, such notices cannot be generated without online approval of competent authority. Thus the objection raised by the assessee is not correct. Date of receipt of manual approval is not relevant. Proceedings initiated u/s 148 are valid.*

*It may further be submitted that now certified copy of reasons recorded have been provided to the assessee on 04/03/2020."*

Apart from this, a copy of online approval from the portal has already been placed on record at page No. 32-33 of the paper book. After having gone through the facts of the present case and after perusal of the documents placed on record, we found that the A.O. submitted proposal to Addl.CIT(Exemption), Jaipur online on 22/03/2019 which was forwarded to the CIT(Exemption) on the very same day. The Id. CIT(Exemption) accorded necessary sanction U/s 151 online on 25/03/2019 itself as has been reflected in the copy of online portal, placed at page No. 32-33 of the paper book, coupled with the remand report submitted by the Addl.CIT(Exemption) to the CIT(Exemption) vide



letter dated 09/03/2020 which makes it clear that only after completion of required formalities and after taking sanction, notice U/s 148 of the Act was issued online on 25/03/2019. We are also conscious of the fact that notice U/s 148 of the Act cannot be generated online without approval of the competent authority and since it was an internal communication of the department which has now been supported with sufficient documentary evidences placed on record, therefore, we have no reasons to doubt with the authenticity and veracity of these documents which makes it clear that required formalities were completed and required sanction was obtained/accorded U/s 151 of the Act on 25/03/2019 before issuance of notice U/s 148 of the Act. Therefore, considering the totality of facts and circumstances of the case, we reject this particular contention raised by the assessee.

15. We have also observed from perusal of the record that the mandate of Section 151 of the Act was, however, not followed in letter and spirit for the reason that prior to initiation of proceedings U/s 148 of the Act, necessary satisfaction of PCIT/CCIT/CIT was mandatorily required to the effect that it is a fit case for issuance of such notice. In the present case, impugned computer generated print out submitted by the A.O. lacks with the mandatory condition, in our view, by merely pointing out "Approved" cannot be termed as 'satisfaction' which is a





mandatory requirement of Section 151 of the Act. In other words, it can safely be understood that the whole proceedings which are said to be carried out by the A.O., were carried out in 'mechanical manner' without there being any application or independent application of judicious mind by the concerned authorities. The approval so given by the Id. CIT (Exemption) for issuance of notice u/s 148 is not in accordance with law and the approval so given by the Id. CIT(E) was a mechanical approval without stating any reason for reaching to that conclusion. Since, the requirement for issuance of notice was not complied with, therefore, notice in the present case is required to be declared as void ab initio in absence of proper approval. We are of the considered view that only mentioning the word "Yes" or "Yes I am satisfied", is not sufficient compliance for according the approval/sanction for issuance of notice u/s 148 of the Act. The Hon'ble Supreme Court in the case of **Chhugamal Rajpal Vs S.P.Chaliha & Ors. 79 ITR 603 (SC)** had categorically held that *"No notice shall be issued under s. 148 after the expiry of four years from the end of the relevant assessment year, unless the CIT is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of such notice."* In case the CIT had mechanically accorded permission by himself not recording that he was satisfied that it was a fit case for issuance of notice then in that eventuality, the same is not a proper



approval. In case, the CIT which is noted the word "Yes" and affixed his signature thereunder then in that eventuality, it would clearly be held that important safeguards provided U/s 147 and 151 of the Act were lightly treated by the CIT.

16. While applying the principles laid down by the Hon'ble Supreme Court in the case of Chhugamal Rajpal Vs S.P. Chaliha & Ors. (supra), since in the present case also, identical situation prevails, therefore, we are also of the view that both i.e. ITO as well as CIT appear to have taken the duty imposed on them under these provisions as of little importance. Even the Hon'ble Supreme Court in the case of **CIT Vs S. Goyanka Lime & Chemical Ltd. in SLP(C) Appeals Nos 11916 of 2015 decision dated 08<sup>th</sup> July, 2015**, it was categorically held by the Hon'ble Supreme Court that *"sanction granted under s. 151 by recording requisite satisfaction in a mechanical way held invalid"*. The Hon'ble Allahabad High Court in the case **Raj Kishore Prasad Vs ITO (1990) 195 ITR 438 (All)** has held that *"basis for issuance of a notice U/s 148 is the satisfaction recorded by CIT and in case order of CIT contains no finding or direction and there is only written a word "Yes" then their Lordships have held that the sanction was accorded in a mechanical manner without applying judicious mind to the fact of the case and thus the same cannot be considered to be a proper and valid sanction."* The



Coordinate Bench of Delhi ITAT in the case of **Sunil Agarwal Vs ITO in ITA No. 988/Del/2018 order dated 24/05/2018** while relying upon the decision of the 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)."*

17. Since in the present case, the sanction was accorded by the Id. CIT in a purely mechanical manner without application of judicious mind, therefore, the sanction so accorded cannot be held to be a proper and valid sanction within the meaning of Section 151 of the Act and for this reason also, the impugned notice U/s 148 of the Act falls to the ground and proceedings for reopening of the assessee in absence of valid sanction of CIT cannot be initiated, therefore, in the background of the aforesaid discussions and respectfully following the precedents, as



aforsaid, 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. The judgments/decisions relied upon by the Id DR are also considered but the same are not found applicable in the facts of the present case. 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 partly allowed.

18. Now we take appeal being ITA No. 310/JP/2020 for the A.Y. 2013-14. In this appeal, the grounds and facts are identical to the facts and grounds of appeal for the A.Y. 2012-13. The submissions of both the parties are same, therefore, the findings given in ITA No. 309/JP/2020 for the A.Y. 2012-13 shall apply mutatis mutandis in this year also and we quash the reassessment proceedings initiated U/s 147 of the Act.

19. In result, both these appeals of the assessee are partly allowed.

Order pronounced in the open court on 13<sup>th</sup> April, 2021.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/04/2021



\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Swami Keshwanand Sikshan Sansthan, Sikar.
2. प्रत्यर्थी / The Respondent- The I.T.O (Exemption), Ward-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 309 & 310/JP/2020)



आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

आयकर अपीलीय अधिकरण

Income Tax Appellate Tribunal  
जयपुर/Jaipur