SUNIL CHABLANI vs. COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)

ITAT, JAIPUR 'B' BENCH

Member(s) : Dr. S. Seethalakshmi, J.M. & Rathod Kamlesh Jayantbhai, A.M.

ITA No. 68/Jp/2024; Asst. yr. 2018-19

Date of Decision 22nd July, 2024

Source (2024) 38 NYPTTJ 1009 (Jp)

Statutes referred to :

Income-tax Act, 1961, ss. 124, 147 & 148

Case decided in favour of :

In favour of : Assessee

Reassessment—Validity—Notice under s. 148 issued by non-jurisdictional AO—AO has not controverted that the residential status of the assessee is NRI as on the date of issue of notice under s. 148—Further, the order-sheet entry dt. 16th March, 2023 shows that Faceless Assessment Unit requested NaFAC to transfer out this case from them because the case is of non-resident individual and can be assessed only at international charge—Thus, the ITO, Ward-2(2), Ajmer had no jurisdiction when the notice under s. 148 was issued on 30th March, 2022—In order to sustain the validity of reassessment, the reassessment notice is required to be issued by an AO having proper jurisdiction over the assessee to whom such notice has been issued—Revenue could not demonstrate that when the notice was issued on 30th March, 2022, ITO, Ward 2(2), Ajmer, had valid jurisdiction over the assessee—Reassessment quashed

(Para 12.2)

Conclusion :

ITO, Ward 2(2), Ajmer having not controverted the fact that the assessee was a non-resident on the date of issue of notice under s. 148, he had no jurisdiction over the assessee and, therefore, the reassessment made pursuant to the notice issued by the said AO is not valid.

Cases referred to

Abdul Azeez Haroon vs. Dy. CIT (International Taxation) (2020) 317 CTR (Mad) 610 : (2020) 194 DTR (Mad) 306

CIT vs. Smt Anjali Dua (2008) 219 CTR (Del) 183

Daujee Abhushan Bhandar (P) Ltd. vs. Union of India (2022) 325 CTR (All) 659 : (2022) 212 DTR (All) 1

Mir Zardari Qureshi vs. Asstt. CIT (2023) 151 taxmann.com 408 (Raipur)

National Thermal Power Corporation Ltd. (1999) 157 CTR (SC) 249 : (1998) 229 ITR 383 (SC)

Saroj Sangwan vs. ITO (2024) 162 taxmann.com 704 (Del)

Siemen Financial vs. Dy. CIT (2024) 154 taxmann.com 159 (Bom)

Union of India vs. Ashish Agarwal (2022) 326 CTR (SC) 473 : (2022) 213 DTR (SC) 217

Counsel appeared :

Mahendra Gargieya & Devang Gargieya, for the Assessee : Anil Dhaka, for the Revenue

ORDER

Rathod Kamlesh Jayantbhai, A.M. :

The assessee is aggrieved from the order of the assessment passed under s. 147 r/w s. 144 (hereinafter referred as learned AO) for the asst. yr. 2018-19, dt. 29th Dec., 2023 which in turn passed after the directions given by the DRP passed under s. 144C(5) of the IT Act, 1961 (in short 'the Act'), dt. 28th Nov., 2023.

2. In this appeal, the assessee has raised following grounds :

"1. The very action taken under s. 147 r/w s. 148 of the Act, dt. 30th March, 2022 is bad-in-law without jurisdiction and being void *ab initio*, the same kindly be quashed. Consequently, the impugned assessment framed under s. 147 r/w s. 144, dt. 29th Dec., 2023 also kindly be quashed.

2. The impugned assessment order passed under s. 144/147 r/w s. 144C is completely without jurisdiction inasmuch as the learned AO, Circle (International Taxation), Jaipur not holding any valid jurisdiction and therefore, the impugned notice issued under s. 148, dt. 30th March, 2022 and the consequent, impugned assessment order dt. 29th Dec., 2023 complete nullity being without jurisdiction and deserves to be quashed.

3.1 The learned DRP-1, New Delhi, has not provided any opportunity despite mandatory procedure statutorily prescribed under s. 144C(5) of the Act. Thus, the impugned order of DRP suffers from the violation of natural justice and being nullity, the same couldn't have been taken cognizance nor could have been followed by the AO.

3.2 The impugned assessment order dt. 29th Dec., 2023 therefore, is without jurisdiction and having been passed in absence of a valid draft assessment order passed by the DRP and therefore, deserves to be quashed.

4. The learned AO erred in law as well as on the facts of the case in framing the assessment under s. 144 r/w s. 147 of the Act without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order having been framed in gross breach of natural justice, kindly be quashed.

5.1 Rs. 69,90,000. The learned AO erred in law as well as on the facts of the case in considering the entire sale consideration as the long-term capital gain (LTCG) in complete disregard to the other specific binding provisions of law contained under s. 45 r/w s. 48 of the Act. The addition of the LTCG being contrary to the provisions of law and facts on the record and hence the same kindly be deleted in full.

5.2 Rs. 54,50,455. The learned AO erred in law as well as on the facts of the case in denying the benefit of the indexed cost of acquisition and cost of improvement absolutely without any valid reason and in complete ignorance of the evidences and other material available on record. The appellant therefore, be held entitled to the claim of the indexed cost of acquisition and cost of improvement of Rs. 54,50,455 and the same be directed to alleged.

6. Rs. 71,81,601. The learned AO further erred in law as well as on the facts of the case in charging interest under ss. 234A and 234B of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.

7. The appellant prays your Honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing."

2.1 In addition, the assessee also filed a prayer for raising additional grounds of appeal dt. 29th April, 2024 and 27th May, 2024. The additional grounds so raised read as under :

"8. The impugned assessment order dt. 29th Dec., 2023 is completely devoid on jurisdiction and is a nullity inasmuch as the directions issued by the DRP vide its order dt. 28th Dec., 2023 under s. 144C(5) of the Act was without bearing Document Identification Number (DIN) which is violation of the binding instructions of CBDT and thus, the impugned assessment order having been passed without there being any valid directions of the DRP-1, New Delhi, may kindly be held as *non est* and may kindly be quashed."

"9. The impugned notice under s. 148 and impugned order under s. 148A(d) of the Act, dt. 30th March, 2022 are nullity having been passed in complete violation of the binding notification dt. 29th March, 2023 issued under s. 151A r/w s. 144B of the Act, mandating for the learned AO to complete the proceeding in faceless manner only as against done manually and hence, the same deserves to be quashed."

"10. The learned AO further erred in law as well as on the facts of the case in imposing tax, surcharge, cess, etc. as per provision of s. 115BBE of the Act. The invoking of s. 115BBE is contrary to the provisions of law, on facts and without jurisdiction. The appellant totally denies its liability. The tax liability so created, kindly be deleted in full."

3. Succinctly, the fact as culled out from the record is that the assessee did not file his ITR for the asst. yr. 2018-19. There was information available with the Department that the assessee had sold an immovable property for a sale consideration of Rs. 69,90,000, as the return of income was not filed the transaction remained unverified. Accordingly, after recording the reasons for escapement of assessment, notice under s. 148 of the Act was issued to the assessee on 30th March, 2022 with prior approval taken from the Principal CIT, Udaipur. The assessee did not file his ITR for the year under consideration even after issue of notice under s. 148 of the Act.

3.1 During the assessment proceedings, statutory notices were issued to the assessee requiring him to furnish relevant documentary evidence to substantiate the transaction carried out by the assessee. Despite providing sufficient opportunity, the assessee did not furnish any documentary evidence and failed to explain and justify the said transaction. Considering these facts, the sale consideration of Rs. 69,90,000 remained unexplained and falls under the purview of unexplained money under s. 69A of the Act. Accordingly, draft assessment order under s. 144C of the Act was passed on 29th March, 2023 proposing an addition of Rs. 69,90,000.

3.2 Aggrieved by that draft assessment order dt. 29th March, 2023, the assessee has filed an objection before Hon'ble DRP-1, New Delhi challenging among other things, the addition of Rs. 69,90,000 made under s. 69A of the Act. The DRP has passed an order dt. 28th Nov., 2023 issuing directions to pass a reasoned order on the basis of submission of the assessee. The relevant finding of the learned DRP is reproduced here in below :

"Decision and directions of the DRP

3. The panel has very carefully considered the grounds of objections and written and oral arguments made on behalf of the assessee. The decision of the panel on various objections is as follows :

3.1 Ground Nos. 1 to 4 are taken together as they are connected. The assessee has challenged the proceedings initiated under s. 148 of IT Act on the issue of jurisdiction and also questioned on technicalities regarding issue of 148 notice to him. On perusal of the assessment records, it is seen that the notice under s. 148 was issued after the approval of competent authority. Further, the DRP under s. 144C(8) can confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-s. (5) for further enquiry and passing of the assessment order. Since, the assessee has filed its objection under s. 144C of the Act r/w IT (DRP) Rules, 2009 the panel has to adjudicate the matter and cannot set aside any draft assessment order. Even otherwise the panel doesn't find any infirmity on the issue of notices sent under s. 148 of the Act. The assessee's objections on the above ground are rejected. The assessee has stated that the notices have not been received by him and the service of notice therefore, is invalid. The panel states that the AO had sent the notice as available with her. The AO is further constrained by the fact that assessee has not filed its return of income despite the fact that he had purchased and sold immovable property in India and some of the transactions pertains to subject assessment year. The AO naturally sent notice to that is available as per AIR

Information/TA9/26AS database. Therefore, the panel doesn't find any infirmity on the above issue.

3.2 The AO has proposed an addition of Rs. 69,90,000 under s. 69A of the Act as assessee didn't comply to the AO's notices. The AO's proposed addition is on account of following fact as mentioned in the draft assessment order :

"During the assessment proceedings, the assessee was asked regarding the source of funds used to purchase the said immovable property and doing the abovementioned transactions vide notice under s. 142(1), dt. 2nd Jan., 2023, 16th Jan., 2023, 19th March, 2023 and show cause notice dt. 17th Feb., 2023, 25th March, 2023.

The assessee in response did not produce any documentary evidence regarding the income generated from the above sale transactions. The assessee only stated that "... we are in the process of collecting the required date in respect to the sale of property. Hence we will submit the same as soon as possible once we collect them."

The assessee also raised objections during the assessment proceedings, which were disposed of.

The assessee, despite providing sufficient opportunity, did not furnish any documentary evidence at this stage required to prove anything. The fact that there was receipt of money or conversion of notes is itself *prima facie* evidence against the assessee on which the Department can proceed in absence of good explanation."

Considering the above view held by the Courts and discussion made above, the amount of Rs. 69,90,000 is hereby added to the total income of the assessee under s. 69A of the IT Act, 1961.

(Addition : Rs. 69,90,000)

Further, penalty proceedings under s. 271AAC of the Act in respect of unexplained income is initiated.

On basis of the discussion made above the total income of the assesse is computed as under :

Income declared in ITR	
Addition : as above	
Total Income	

3.3 The assessee has filed its objection vide its letter dt. 27th April, 2023. assessee filed a computation of income which is as below :

Particular	*Amount*
Sale value July, 2017	69,90,000
Cost of Acquisition	

Purchase Cost 2008	7,00,000	
Stamp 2008	50,000	
Stamp Duty 2008	17,090	15,22,982
Indexed Cost of Improvement		
2008-09 (18,500) 137	36,730	
2009-10 (1,10,625) 148	2,03,311	
2010-33 (1,29,375) 167	2,10,719	
2011-12 (2,25,000) 184	3,32,609	
2032-13 (2,86,800) 200	3,90,048	
2013-14 (15,60,868) 220	19,29,791	
2016-17 (5,96,200) 264	6,14,267	
12017-18 (2,10,000)	2,10,000	39,27,473
Capital Gain in FY WIS-19		15,39,545
Deduction under s. 54 (Property Purchased in 28th May, 2018, Rs. 38,20,000)		15,39,545
Long-term capital gain		Nil

3.4 However, the assessee neither presented (or through Authorized Representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done in multiple years. However, in the fitness of things the DRP forwards the petition filed by the assessee to the AO, and directs the AO to pass a reasoned order on the basis of above submission of the assessee which is enclosed as an annex. 'A' to this order. Assessee's objections on the above issue is disposed as above.

4. The objections of the assessee are decided as above. The AO is directed to incorporate the findings of the panel

in respect of various objections suitably in the final order. The AO shall also place a copy of the Panel Directions as annexure to the final order."

4. In compliance to the said directions, final assessment order was passed under s. 147 r/w s. 144 on 29th Dec., 2023 determining total income at Rs. 69,90,000. As the learned DRP has directed to pass speaking order on the contentions raised by the assessee before the learned DRP, the finding of the learned AO on the issues raised before DRP are reproduced here in below :

"1. The assessee had purchased an immovable property i.e. AMC No. 547/15 Old, Shrinagar, Ajmer for a consideration of Rs. 7,00,000 in the year 2008 and claimed indexation of purchase cost including other expenses at Rs. 15,22,982, However, he has neither mentioned alleged property details in his computation nor furnished purchase documents substantiating his claim. During the assessment proceedings, he did not comply to the statutory notices issued to him. Even after providing sufficient opportunities to file reply, the assessee has not filed even a single reply rather filing objection before the AO. Further, the assessee has also claimed indexation of cost of improvement for construction made in various financial years. In support of cost of improvement the assessee has only submitted a valuation report mentioning therein year wise cost of construction. No supporting evidence of work order, contract of work, payment made related to construction work bank statement, etc. have been submitted by the assessee.

2. The assessee has claimed to have been sold the said property for a sale consideration of Rs. 69,90,000 during the financial year 2017-18. The assessee has accepted this fact in the computation submitted before, the Hon'ble DRP Thus, assessee has been engaged in this property transaction (sale of property) during the financial year 2017-18 Hon'ble DRP has also categorically mentioned in the order passed under s. 144C(5) that the assessee neither presented (or through Authorized Representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done in multiple years. During the assessment proceedings before the AO as well as proceedings before Hon'ble DRP, the assessee has only filed a purchase registered deed dt. 28th May, 2018 in support of his claim under s. 54 of the Act. No documents related to purchase of property and cost of improvement have been submitted to substantiate the claim of indexation.

Considering the above, the sale consideration of the property is Rs. 69,90,000, Further, the indexation of cost of acquisition and improvement worth Rs. 54,50,455 (15,22,982 + 39,27,473) as claimed by the assessee is disallowed due to reason that assessee has failed to submit any documentary evidence in support of his claim. Therefore, the whole consideration of Rs. 69,90,000 is considered as long-term capital gain in the hands of the assessee. Penalty proceedings under s. 270A of the Act is initiated on this issue for underreporting of income.

Further, the assessee has purchased an immovable property i.e., Flat No. A-1001, A Wing, Priyanka Blossom Apartment, Nashik on 31st May, 2018 at the consideration of Rs. 38,20,000 (stamp value) and claimed the deduction under s. 54 of the Act for this transaction. But, deduction under s. 54F for investment in residential house will not be provided if the assessee.

1. Owns more than one residential house, other than the new asset, on the date of transfer of the original asset, or

2. Purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or

3. Constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

4. The income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

In absence of any reply and documentary evidences, it cannot be ascertained that the assessee has fulfilled the above mentioned conditions and eligible for the deduction under s. 54 of the Act. Further, the assessee has not filed the ITR for claim under s. 54 of the Act. Therefore, considering the circumstances of the case, the deduction

under s. 54 cannot be allowed.

On basis of the discussion made before the total income of the assessee is computed as under :

	Income declared in ITR	*Not filed*
Addition on account of LTCG		Rs. 69,90,000
Total income		Rs. 69,90,000"

5. Aggrieved from that order of the assessment which was passed after the direction of the DRP, the assessee preferred the present appeal on the grounds as stated hereinabove. To support the various grounds so raised by the learned Authorised Representative of the assessee, he has filed the written submissions and the same are reproduced herein below :

"Brief General Facts : Notice under s. 148, dt. 30th March, 2022 (PB-II/102) was sent on dt. 13th April, 2022. The assessee had sold an immovable property of Rs. 69,90,000 and being a case of NRI, draft assessment order purposing certain valuation in the income returns. In response, the appellant filed detailed objections under s. 144C(1) of the IT Act, 1961 which were decided by the DRP vide its order passed under s. 144C(5) on dt. 28th Nov., 2023 (PB 87-101), rejecting the objections so raised, holding as under :

"3.1 The assessee has challenged the proceedings initiated under s. 148 of IT Act on the issue of jurisdiction and also questioned on technicalities regarding issue of 148 notice to him. On perusal of the assessment records, it is seen that the notice under s. 148 was issued after the approval of competent authority. Further, the DRP under s. 144C(8) can confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-s. (5) for further enquiry and passing of the assessment order. Since, the assessee has filed its objection under s. 144C of the Act r/w IT (DRP) Rules, 2009 the panel has to adjudicate the matter and cannot set aside any draft assessment order. Even otherwise the Panel doesn't find any infirmity on the issue of notices sent under s. 148 of the Act. The assessee's objections on the above ground are rejected. The assessee has stated that the notices have not been received by him and the service of notice therefore, is invalid. The panel states that the AO had sent the notice as available with her. The AO is further constrained by the fact that assessee has not filed its return of income despite the fact that he had purchased and sold immovable property in India and some of the transactions pertains to subject assessment year. The AO naturally sent notice to that is available as per AIR Information/TA9/26AS database. Therefore, the panel doesn't find any infirmity on the above issue.

3.4 However, the assessee neither presented (or through Authorized Representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement of property allegedly done in multiple years. However, in the fitness of things the DRP forwards the petition filed by the assessee to the AO, and directs the AO to pass a reasoned order on the basis of above submission of the assessee which is enclosed as an annex. 'A' to this order. Assessee's objections on the above issue is disposed as above.

4. The objections of the assessee are decided as above. The AO is directed to incorporate the findings of the panel in respect of various objections suitably in the final order. The AO shall also place a copy of the panel directions as annexure to the final order".

Consequently, assessment order under s. 147/144 r/w s. 144C was passed on 29th Dec., 2023 and addition of entire amount of sale consideration of Rs. 69.90 lacs was made. Hence this appeal

GOA 1 and 2 : Action taken under s. 147/148 is completely without jurisdiction on various grounds :

Facts : The ITO, Ward 2(2), Ajmer initiated the proceedings under s. 148A by issuing a show cause notice under s. 148A(b) (PB 68-69) and thereafter passing impugned order under s. 148A(d) (PB 79-80) and also impugned notice under s. 148 both dt. 30th March, 2022 whereas, the correct and legally valid jurisdiction remained with the international charge Circle (International Taxation), Jaipur. Accordingly, objections were raised letters dt. 27th April, 2023 (PB 3-12) and again vide another letter dt. 23rd July, 2023 (PB 71-72). The same was disposed of by the Asstt. CIT Circle (International Taxation), Jaipur vide order dt. 25th March, 2023 (PB 77-78), rejecting the same.

Submission :

1. Impugned notice under s. 148 issued without jurisdiction :

1.1 At the outset it is submitted that the impugned order under s. 148A(d), notice under s. 148 both dt. 30th March, 2022 and notices under s. 142 for asst. yr. 2018-19, are completely devoid of jurisdiction inasmuch as the ITO, Ward 2(2), Ajmer was not vested with a valid jurisdiction in terms of s. 120 r/w s. 124 of the Act. The facts are not disputed that the assessee is a non-resident Indian. He has been residing outside India since last almost more than 25 years. He came back to India only on dt. 22nd June, 2022 (copy of passport enclosed PB 18-19). Thus, in any case during the relevant financial year 2017-18 (asst. yr. 2018-19), he completely remained outside India. Accordingly, in his PAN profile also, the jurisdictional AO is shown as the International Charge i.e., Circle (International Taxation), Jaipur. Copy of the PAN profile is enclosed herewith (PB 17 and PB-II 105). Needless to say that since the jurisdiction of the assessee continues to fall with the International Charge Circle (International Taxation), Jaipur, as per PAN profile, there is no legal justification behind issuance of the subjected notices by ITO, Ward 2(2), Ajmer, who was not the competent officer having valid jurisdiction. Further, it is well settled that notice under s. 148 can be issued only by a competent AO having a valid jurisdiction over the assessee. However, in view of the admitted fact of the present case, the ITO, Ajmer was not having any valid jurisdiction and competence to issue the notice under s. 148 as also all the notices under order issued under s. 148A prior thereto, as also the subsequent notices issued pursuant to the said notice under s. 148, for want of jurisdiction, which rested with some other AO.

1.2 Objection of the AO, Circle (International Taxation), Jaipur. In response, the Officer (Anita Pillai), Circle (International Taxation), Jaipur vide her letter/order dt. 25th March, 2023 (PB 77-78) rejected these objections saying "that s. 148 talks about the AO only and not about the jurisdictional AO." She also took support from s. 124(3) that no person shall be entitled to challenge the jurisdiction if no ROI has been filed after expiry of the time allowed in a notice under s. 148.

In this connection our submissions are as under :

1.2.1 It is absolutely wrong and a complete misreading of the law under s. 148 on the face of it that the term "AO" means the AO only but not the "Jurisdictional AO" ("JAO"). If the interpretation as contended, is accepted then the "AO" may means any AO situated anywhere in the country i.e., right from Jammu and Kashmir till Kanyakumari, may be the AO to assess the income of an assessee stationed at Ajmer, which can never be the legislative intention.

1.2.2 In fact, the term AO has been defined under s. 2(7A) of the Act reproduced hereunder :

"AO means the Asstt. CIT or Dy. CIT or Asstt. Director or Dy. Director or the ITO who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-s. (1) or sub-s. (2) of s. 120 or any other provision of this Act, and the Addl. CIT or Addl. Director or Jt. CIT or Joint Director who is directed under cl. (b) of sub-s. (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an AO under this Act"

1.2.3 The very fact that the AO, Circle (International Taxation), Jaipur was vested with the jurisdiction to Act as an AO, is fully supported by the PAN profile and the jurisdictional details (PB-II 105) of the assessee which clearly shows the AO holding the charge was the International Taxation charge. In this background only, when the

assessee, after receiving the impugned notice under s. 148 sent on dt. 13th April, 2022, raised his objections vide letter dt. 23rd July, 2023 (PB 70-72) no reply came from the ITO, Ward 2(2), Ajmer but strangely the same was replied by Officer, Circle (International Taxation), Jaipur admitting, the very fact and the contention of the assessee that she might be holding the correct jurisdiction over this assessee but not the ITO, Ward 2(2), Ajmer who issued the impugned notice under s. 148.

1.3 Supporting Case Laws :

Reliance is place on the following cases :

(A) *CIT vs. Smt. Anjali Dua (2008) 219 CTR (Del) 183 : (2008) 11 DTR (Del) 93* (DC 1-2) where in it is held that :

"4. It is in this background that the Tribunal noted that the request of the assessee to transfer the jurisdiction was noted in the letter dt. 25th March, 1998, whereby the no objection of CIT, New Delhi, was conveyed to the CIT, Ludhiana. It is also noted that thereafter the assessee submitted returns for the asst. yrs. 1997-98 onwards at New Delhi. It is in these facts and circumstances that the Tribunal came to the conclusion that insofar as, the assessee was concerned, after the said transfer, it is only Revenue authorities at New Delhi who had jurisdiction over the assessee's cases and who were competent to issue a notice in terms of s. 148 of the said Act. It may also be pointed that pursuant to the issuance of impugned notice under s. 148 of the said Act on 28th March, 2003, when the notice under s. 142(1) was issued to the assessee in December, 2003, the assessee by her reply dt. 21st Jan., 2004, indicated that her AO was not located in Ludhiana, but was the ITO at New Delhi.

5. In view of the foregoing, we are of the view that the Tribunal has come to the conclusion on the basis of the facts available on the record and, we do not find any substantial question of law arising in the present case. No interference with the impugned order is called for. The appeal is dismissed."

The facts of the instant case stand on much stronger footing in as much as the PAN profile (PB-II 105) as also the jurisdictional details (PB 17) available on the portal of the ITD, itself provide the AO being the Circle (International Taxation). The Department, day in and day out, has been taking this stand that the AO shown in the PAN profile is the correct AO.

(B) *Mir Zardari Qureshi vs. Asstt. CIT (2023) 151 taxmann.com 408 (Raipur)(Trib)* (DC 3-13) held that :

"Whether since ITO, Ward-1(3), Bhilai at time of initiating proceedings and issuance of notice under s. 148, dt. 9th March, 2018 was not vested with any jurisdiction over case of assessee, assessment framed on basis of 'reasons to believe' along with notice under s. 148 dt. 9th March, 2018 issued by ITO, Ward 1(3), Bhilai, i.e., a non-jurisdictional Officer, could not be sustained and was liable to be quashed—Held, yes (Paras 16, 17 and 18) (In favour of assessee)"

(C) *Abdul Azeez Haroon vs. Dy. CIT (International Taxation) (2020) 317 CTR (Mad) 610 : (2020) 194 DTR (Mad) 306* (DC 14-17) held that :

"Reassessment—Notice under s. 148—Validity of notice issued by AO having no jurisdiction—For asst. yrs. 2012-13 to 2015-16, intimations under s. 143(1) have been issued by the central processing centre in respect of the returns filed—Assessee's case is that during the financial year relevant to asst. yr. 2009-10 he had shifted his residence from Madurai to Shimoga, Karnataka, carrying on business at Shimoga as well and the respondent, vide communication dt. 8th Jan., 2016 admits these facts, after verification of records, to the effect that the assessee, as on date and since asst. yr. 2012-13 is an assessee on the file of the ITO at Shimoga—If jurisdiction thus vested with the ITO at Shimoga, an alternate assessing authority assuming jurisdiction of the assessee's file can be only by transfer of the file—No order transferring the file of the assessee from the jurisdiction of the ITO, Shimoga to the Dy. CIT (International Taxation), Madurai, has been produced—In the facts and circumstances of the present case where the assessee is seen to have been in India only between 15th Feb., 2015 and 27th Feb., 2015 and then again from 1st May, 2015 to 11th May, 2015, as combined with the fact that the respondent AO has also taken contradictory stands as regards the proper officer to assume jurisdiction, the rigour of s. 124(3), would not be applicable to the present case—Officer could well have, simply rejected the challenge to assumption of jurisdiction

citing the provisions of s. 124(3)—But this has not been done and the provisions of s. 124(3) are invoked for the first time only in the counter affidavit—If at all such jurisdiction were to vest concurrently by way of transfer to the respondent officer as well, it was incumbent upon the officials to have followed the methodology set out in terms of s. 127 for change of jurisdiction by way of a determination by a superior officer, which has not been done—Reassessment proceedings were not therefore valid."

(D) *Saroj Sangwan vs. ITO (2024) 162 taxmann.com 704 (Del)* (DC 18-22)

1.4.1 Further, reliance placed on s. 124(3)(b) is completely misplaced in as much as the said provision presupposes a valid issuance of a notice under s. 148 issued only by a validly holding jurisdiction then only, non-filing of ROI could be a ground. However, once ITO, Ward 2(2), Ajmer, who issued the notice under s. 148 was not vested with a valid jurisdiction, the assessee was under no legal obligation to file the ROI and to waive his legal rights/surrender himself to a wrong jurisdiction which he himself is disputing. However, where the authority issuing the notice has no authority at all, there is no requirement of raising any objection within the stipulated period. Moreover, objection under s. 124 is required to be raised only when there is a dispute on the question of territorial jurisdiction of a particular officer. Thus, the objection raised by the Officer, Circle (International Taxation), Jaipur are completely baseless against the provisions of the law and deserves to be rejected. Kindly refer following case laws where such contention is directly supported :

1.4.2 Supporting case laws :

(A) *Mir Zardari Qureshi vs. Asstt. CIT (2023) 151 taxmann.com 408 (Raipur)(Trib)* (DC 3-13) held that :

"Whether time-limit for raising objection to jurisdiction of AO prescribed under sub-s. (3) of s. 124 has a relation to AO's territorial jurisdiction and same would not apply to a case where assessee contends that action of AO is without authority of law and therefore, wholly without jurisdiction—Held, yes—Whether since ITO, Ward-1(3), Bhilai at time of initiating proceedings and issuance of notice under s. 148, dt. 9th March, 2018 was not vested with any jurisdiction over case of assessee, assessment framed on basis of' reasons to believe' along with notice under s. 148, dt. 9th March, 2018 issued by ITO, Ward-1(3), Bhilai, i.e., a non-jurisdictional Officer, could not be sustained and was liable to be quashed—Held, Yes."

The Hon'ble Tribunal relied upon the decisions in the cases of *CIT vs. Ramesh D. Patel (2014) 102 DTR (Guj) 65 : (2014) 269 CTR (Guj) 285 : (2014) 42 taxmann.com 540 (Guj)* and *Bansilal B. Raisoni & Sons vs. Asstt. CIT (2019) 306 CTR (Bom) 166 : (2019) 173 DTR (Bom) 68 : (2019) 260 Taxman 281 (Bom)*. Resultantly, in absence of any notice issued under s. 148 validly, the resultant assessment order under s. 148A(d), dt. 30th March, 2022 deserves to be quashed.

2. No valid approval obtained under s. 151 and impugned notice under s. 148 is barred by limitation under s. 149 :

New law to apply :

2.1 That in the recent past, the Finance Act, 2021 was passed by the parliament. Amongst various other amendments made in the Finance Act, 2021, ss. 147, 148, 149 and 151 of the Act were substituted making the aforementioned amendments effective from 1st April, 2021. The amended/substituted scheme of reassessment provides that before issuing any notice under s. 148 of the Act, the AO is legally obliged to follow the binding statutory procedure. As held in the case of *Union of India & Ors. vs. Ashish Agarwal (2022) 326 CTR (SC) 473 : (2022) 213 DTR (SC) 217 : (2022) SCC Online SC 543*.

2.2 In the instant case since the impugned notice and order were served only on 13th April, 2022 though the same might have been signed on 30th March, 2022, hence it will be considered as issued only on 13th April, 2022 new law will apply.

Supporting case laws :

Kindly refer *Daujee Abhushan Bhandar (P) Ltd. vs. Union of India (2022) 325 CTR (All) 659 : (2022) 212 DTR (All)*

1 : (2022) 136 taxmann.com 246 (All) (DC 23-35) :

"Whether mere digitally signing a notice is not issuance of notice and point of time when a digitally signed notice in form of electronic record is entered in computer resources outside control of originator, i.e., AO, that shall be date and time of issuance of notice under s. 148 r/w s. 149—Held, yes—Assessee filed its return and assessment was completed accordingly—Subsequently, a notice under s. 148 digitally signed by AO was sent to assessee through e-mail and e-mail was received by assessee on his registered e-mail Id on 6th April, 2021—Assessee submitted that reassessment notice was issued on 6th April, 2021 whereas limitation for issuing notice under s. 148 r/w s. 149 expired on 31st March, 2021 and, thus, notice was time-barred—Said objection was rejected on ground that since notice was digitally signed by AO on 31st March, 2021, it would be deemed to have been issued within time, i.e., on 31st March, 2021—Whether since impugned notice under s. 148 was issued to assessee on 6th April, 2021 through e-mail, impugned notice under s. 148 was time-barred and consequently, it was to be quashed—Held, yes (Paras 22 to 30) (In favour of assessee)"

Recently Rajasthan High Court, Jaipur Bench has also so held in the case of *M/s Mittal Pigments (P) Ltd. vs. CIT & Ors.* in D.B. Civil Writ Petn. No. 8626 of 2023 (pr. 7 to 9) (DC 36-39)

S. No.	*New law*	*Specified authority under s. 151*
1.	Reopening made within 3 years from the end of the relevant assessment year.	Principal CIT or Principal Director of IT or CIT or Director of IT
2.	Reopening made after 3 years but before 10 years from the end of the relevant assessment year.	Principal Chief CIT or Principal Director General of IT (in their absence Chief CIT or Director General of IT)

S. No.	*Old law*	*Specified authority under s. 151*
1.	Reopening made within 4 years from the end of the relevant assessment year.	Joint CIT (Jt. CIT)
2.	Reopening made after 4 years from the end of the relevant assessment year.	Principal Chief CIT or Chief CIT or Principal CIT or CIT

The issue involved is no more *res integra* inasmuch as various High Courts have now taken this view and quashed the notices issued in violation of s. 151.

2.3.1 A recent and very detailed decision is in the case of *Siemen Financial vs. Dy. CIT (2023) 154 taxmann.com 159 (Bom)* (DC 40-73) wherein it was held as under :

"Whether thus, TOLA only sought to extend period of limitation and would not affect scope of s. 151 and sanction of

specified authority was to be obtained in accordance with law existing when sanction was to be obtained—Held, yes—Whether since in instant case AO issued reopening notice beyond period of three years and prior approval was taken from Principal CIT, AO could not rely on provisions of TOLA and approval was required to be taken as per provisions of amended s. 151 from Principal Chief CIT or Principal Director General or Chief CIT or Director General and thus, impugned order and notice were to be quashed—Held, yes (Paras 25, 26 and 41) (In favour of assessee')

2.3.2 Reliance is also placed in the case of *Anil Jaggi vs. Asstt. CIT (2018) 168 ITD 612 (Mumbai)* :

"Reassessment—Validity—Approval under s. 151(1) obtained from a wrong authority—Failure of AO to take the sanction of the appropriate authority contemplated under s. 151(1) would go to the very root of the validity of assumption of jurisdiction by the AO—Notice issued by AO under s. 148 offer taking approval of Jt. CIT, instead of Principal Chief CIT/Chief CIT or Principal CIT/CIT as prescribed by s. 151(1), the vary assumption of jurisdiction by AO was invalid, hence the notice and consequent reassessment could not be sustained"

2.3.3 Kindly refer the case of *Balkrishna Barsha Sutar vs. ITO* (Writ Petn. No. 6192 of 2024) Bombay High Court, (DC 74-76) wherein it was held under :

"3. Mr. Singh, at the outset, submitted that the sanction issue in this matter would be covered by the order dt. 6th Feb., 2024 passed by this Court in the case of *Vodafone Idea Ltd. vs. Dy. CIT*, Circle-5(2)(1), Mumbai & Ors., Mr. Gupta though in fairness states that it can be covered by *Vodafone Idea Ltd.* (supra), he raised the question of maintainability of petition because assessee did not even respond to the notice issued. But we ask ourselves a question, even if assessee has not responded would that make an invalid notice valid. The answer is 'No'.

4. The impugned order and the impugned notice both dt. 20th July, 2022 state that the authority that has accorded the sanction is the Principal CIT-27, Mumbai. The matter pertains to asst. yr. 2017-18 and since the impugned order as well as the notice are issued on 20th July, 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the Principal Chief CIT as provided under s. 151(ii) of the Act. The proviso to s. 151 of the Act has been inserted only w.e.f. 1st April, 2023 and, therefore, shall not be applicable to the matter at hand.

5. In the circumstances, as held by this Court in Siemens Financial Services (P) Ltd. vs. Dy. CIT & Ors., the sanction is invalid and consequently, the impugned order 1. Writ Petn. No. 2768 of 2022. 2. *Siemens Financial Services (P) Ltd. vs. Dy. CIT (2023) 334 CTR (Bom) 825 : (2023) 230 DTR (Bom) 225 : (2023) 457 ITR 647 (Bom)*. Gaikwad RD 3/3 426-aswp-6192-2024.doc and impugned notice both dt. 20th July, 2022 under ss. 148A(d) and 148 of the Act are hereby quashed and set aside.

6. Petition disposed. No order as to costs. All rights and contentions are kept open."

2A. Also therefore, the impugned notice under s. 148 is barred by limitation under s. 149(1)(a). Therefore, the impugned notice and order deserves to be quashed. So also the consequent assessment order.

3. No income escaped assessment :

3.1 No valid information as contemplated under s. 148 :

3.1.1 A perusal of SCN under s. 148A(b), dt. 17th March, 2022 shows the only information available, based by the AO to alleged income escaping assessment is that, during the year under consideration, the assessee sold immovable property for Rs 69.90 lacs on dt. 28th July, 2017 but no return of income has been filed for asst. yr. 2018-19. As per AO, this information suggest that the income of 69.90 lacs is chargeable to tax has escaped assessment in asst. yr. 2018-19. Again in the order under s. 148A(d), dt. 30th March, 2022, in para 5 similar opinion has been framed by the AO that income of the assessee of Rs. 69.90 lacs has escaped assessment and it was a fit case to issue notice under s. 148 of the Act. However, it is not clarified precisely that there was some taxable as per the Act income and such income escaped the assessment. Thus in the SCN under s. 148A(b), dt. 17th March, 2022 and in the order under s. 148A(d), dt. 30th March, 2022 the AO appears to have proceeded

merely on suspicion merely on getting the information simpliciter the AO has alleged income escaping assessment. The question is whether such information really suggested any income escaping assessment or not.

3.1.2 In this context, a reference to the proviso to the s. 148 is also essential which read as under :

"Provided that no notice under this section shall be issued unless there is information with the AO which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the AO has obtained approval of the specified authority prior to issue such notice "

What is evident thus is that the information with the AO must suggest that some income chargeable tax has escaped the assessment for the relevant assessment year. In other words, it is not any or every or the information simpliciter coming to the possession of AO but such information must also suggest some income chargeable tax has escaped the assessment. The information must have a material bearing on the question on escapement of income. It does not mean a purely subjective satisfaction of the AO. Such satisfaction be held in good faith and cannot merely be a pretence. The information must have a rational connection with or relevant bearing on the formation of the belief as to escapement. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the AO and the formation of belief regarding escapement of income. However, the respondent AO did not conform the settled judicial guideline resulting the impugned notice and order, a nullity.

3.1.3 On the other hand, however, a bare look upon the impugned draft assessment order under s. 144C(1), dt. 29th March, 2023 shows a serious contradiction in approach of the AO in as much as on one hand it is alleged that when the assessee was asked regarding the source of the funds used for the purchase of the immovable property (i.e., the old residential house 15/547, Ibrahim Building, Shrinagar Road, Ajmer) which was purchased by the assessee from his mother on dt. 21st Nov., 2008 for Rs. 7 lacs, it was not explained. He also alleged that the income generated from the transaction of the sale of the said residential house was not explained with the help of documentary evidences. But, then finally the AO alleged that the assessee did not produced any justification or documentary evidences regarding the above mentioned sale transaction of the immovable property, therefore, the sale consideration of Rs. 69.90 lacs remained unexplained and falls under the purview of unexplained money under s. 69A of the Act. Thus, initially the AO proposed for making an addition (apparently) from the capital gain arising from the sale of the residential house for Rs. 69.90 lacs on 28th July, 2017 but then finally in draft assessment order he sifted to the addition made under s. 69A of the Act. In the impugned assessment order he invoked s. 69A first but at the end he made addition on account of LTCG.

3.1.4 From this what emerges is that :

(i) The information based by the AO to initiate proceeding under s. 147/148 is not the information as contemplated under law. The AO blindly proceeded on the information by picking the gross figure of Rs. 69.90 lacs and considered the same to be income escaping assessment but without showing any provision of law or head of income.

(ii) On the other hand, he is also asking for the source of the said immovable property purchased long back in asst. yr. 2009-10 which already stood barred by limitation and he could not have asked for.

(iii) The AO never proposed the impugned addition under s. 69A and there is a complete misreading of the provision itself. Sec. 69A can be invoked only if the assessee is found to be owner of any money however, the same is not recorded in accounts, if any maintained, by him and assessee also fails to offer an explanation about the nature and source of such money or the explanation tendered is not found satisfactory. However, none of these conditions are satisfied in the present case in as much as the assessee did have a valid source being the receipt of the sale consideration of a residential house property for Rs. 69.90 lacs vide a registered sale deed executed on 28th July, 2017 (and i.e., the very information also in possession of the AO). Thus, the money of Rs 69.90 Lacs was not source less and the AO himself was of the view that this was a transaction of sale of immovable property hence there is no question of dissatisfaction with regard to such explanation of the source even though already available on the record.

(iv) The decision cited by the AO propounds the principle on which there is no dispute however, AO was supposed to have demonstrated that how those principles are applicable on the facts of present case, which he has completely failed.

GOA 3 and 4 : Draft Assessment Order—Nullity :

1. As per the mandate of s. 144C(1) of the Act, which starts with a *non obstante* clause, the AO is bound to have served a draft of the proposed order of assessment (for short "draft order") to the assessee giving him an opportunity to file his objection, if any, thereupon. This clearly implies that the very proposed variation has to be confronted to the assessee, inviting his objections. However, in that view of the matter, in the instant case, the AO has not given that opportunity (or the draft order) as mandated in as much as in the draft assessment order (see para 2 and p. 2, top of the assessment order), he started with the proposed variation for want of source and after referring to s. 69A and certain case laws, he made addition of Rs. 69.90 lakhs under s. 69A in that draft order, but while concluding and completing the impugned assessment order, he completely shifted the stand and now made the addition on account of LTCG as evident from the discussion made by him starting from para 4 p. 4 and ending at p. 7. Undisputedly, the variation made on account of LTCG was not a part of the draft order as stated above and this way, no opportunity was given to the assessee by way of draft order w.r.t. the proposed variation, (i.r.t. LTCG as it was only w.r.t. s. 69A only). In that view of the matter, there was no draft order as such was forwarded, clearly violating the mandate of law as held in several cases.

2. Supporting case laws :

2.1 In the case of *SHL (India) (P) Ltd. vs. Dy. CIT & Ors. (2021) 321 CTR (Bom) 655 : (2021) 204 DTR (Bom) 233* (DC 77-87), it was held :

"Following principles emerge from the discussion : (i) that the procedure prescribed under s. 144C is a mandatory procedure and not directory. (ii) failure to follow the procedure under s. 144C(1) would be a jurisdictional error and not merely procedural error or irregularity. (iii) therefore, s. 292B cannot save an order passed in breach of the provisions of s. 144C(1), the same being an incurable illegality. (Para 25)"

3. Further, where the show-cause notice issued under s. 263 of the Act did not contain the issue which was finally raised thereafter in the order under s. 263, was held as a case of non-issuance of a mandatory SCN and therefore, the order under s. 263 itself was quashed in the case of *Principal CIT vs. Shreeji Prints (P) Ltd. (2021) 130 taxmann.com 294 (SC)* held :

"SLP dismissed against impugned order passed by High Court holding that where assessee-company had received unsecured loans from two different companies and AO had made inquiries in detail and accepted genuineness of same, such view of AO being a plausible view could not be considered erroneous or prejudicial to interest of Revenue". The Gujarat High Court affirmed the Tribunal order as under :

"15. The Principal CIT had observed that Expln. 2 of s. 263 of the Act is clearly applicable and it is clear that the AO has passed the assessment order after making enquiries for verification which ought to have been made in this case. However, we find that the Principal CIT has not mentioned in the show-cause notice issued under s. 263 that he is going to invoke the Expln. 2 to s. 263 hence, invocation of Explanation in the order without confronting the assessee is not appropriate and sustainable in law."

Recently in the case of *Tata Teleservices (Maharashtra) Ltd. vs. Principal CIT (2023) 225 TTJ (Mumbai) 137 : (2023) 228 DTR (Mumbai)(Trib) 273*, following *Shree Ji Prints* (supra) it is held as under :

"11. As regards the finding of the learned Principal CIT that the AO has not verified whether MTM losses are speculative in nature under s. 43(5)(d) of the Act, we find that this allegation does not form part of the notice issued under s. 263 of the Act by the learned Principal CIT and therefore the opportunity was not granted to the assessee to rebut the same. Thus, it is contrary to the provisions of s. 263 of the Act, which specifically requires the grant of opportunity of being heard to the assessee. We find that the Hon'ble Supreme Court in *CIT vs. Amitabh Bachchan (2016) 286 CTR (SC) 113 : (2016) 135 DTR (SC) 73 : (2016) 384 ITR 200 (SC)* observed as under :

"10 ..... What is contemplated by s. 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice".

GOA-5 Invalid Computation of LTCG : Hence, impugned notice under s. 148 and the consequent assessment order deserves to be quashed.

Facts : The AO has dealt with this issue from p. 5 onward. The issue involved was that the assessee this year sold a residential house for Rs. 69,90,000 on dt. 28th July, 2017. Based on this information alone, entire gross sale consideration, was considered to be the income escaping assessment under s. 147 and has been taxed even without allowing indexed cost of acquisition, indexed cost of improvement, deduction claimed under s. 54, etc. as a rule of thumb without application of mind. Hence, this ground.

Submission :

1. By a bare look upon the impugned assessment order which is an *ex parte* order, it is evidently clear that the learned AO has not at all acted on the material available on the record nor he applied the provision of law binding upon him. Strangely, he assessed the entire gross receipts itself which is against all the canons of principle of natural justice and the specific law while computing LTCG. He even did not bother to comply with the mandatory statutory provision of s. 45 r/w s. 48 of reducing the cost/the Indexed Cost of Acquisition (COA) which is Rs 15,22,982. In addition, the assessee went on incurring expenditure on the improvement of the property and incurred such cost in different years, the Indexed COA comes to Rs 39,27,473. After reducing the indexed cost of acquisition and indexed cost of improvement from the sale consideration of Rs. 69,90,000, what remained was the LTCG of Rs. 15,39,545, against which the assessee claimed a deduction under s. 54 on account of purchase of a new residential house on dt. 28th May, 2018. A computation of capital gain along with the copy of the sale deed (PB 26-39), purchase deed (PB 40-51), the valuation report given by the registered valuer of the estimated expenses incurred on the improvement of the property (PB 64-65) as also a bill raised by the civil contractor (PB 66-67), purchase deed of new housing property (PB 52-62) were submitted to support the above contention. Thus, there was no income at all at least in relation to LTCG. Therefore, there was no valid information suggesting escapement of income as contended in the earlier part.

2. AO's allegations are more suspicions :

It is surprising that as per AO the property sold had no construction cost at all which is unbelievable. The appellant did furnish copy of the purchase deed dt. 21st Nov., 2008 (PB 40-51) for Rs. 7 lacs, the indexed cost of which came to Rs. 15,22,982 and could not have been denied. If AO says no property was purchased, there can't be any question of even sale and taxing LTCG. The cost of improvement has been rejected merely saying that no evidence was furnished but completely ignoring that the assessee did file copies of the invoices, bills raised by the civil contractor (PB 66-67). However, all evidences were submitted to DRP (PB-16). The AO himself admitted that a copy of the valuation report by the registered valuer (PB 64-65) was submitted. No site verification was got done by him but he merely proceeded on mere suspicion. The deduction claimed under s. 54 of a new residential house vide the registered purchased deed dt. 28th May, 2018 (PB 52-62) was also denied. It is a fact on record that the appellant made a claim under s. 54 which requires the net capital gain only to be invested in the purchase of a new residential house which was admittedly done by the assessee and this fact has been stated by the AO himself at p. 6 in para 2 giving details of the newly purchased property. But very strangely he switched to s. 54F and alleging non-compliance of that provision denied the deduction.

This shows a complete non-application of mind by the AO who merely proceeded with blind eyes, just to penalize the assessee since he was making an *ex parte* assessment. Repeated allegation of non-compliance does not entitle AO to penalize the assessee while making a best judgment assessment under s. 144 of the Act. He did not even consider the material available record and the mandate of the law binding upon him. Thus, the entire claim of Nil LTCG was duly and fully supported by the evidences and backed by the legal provisions. In absence of any contrary evidence brought on record or contrary decisions or judicial guidelines by the AO, the entire addition on account of LTCG of Rs 69.90 lakhs deserves to be deleted.

3. Supporting case laws :

(A) *Divya Capital One (P) Ltd. vs. Asstt. CIT (2022) 326 CTR (Del) 781 : (2022) 214 DTR (Del) 1* :

"Reassessment—Notice under s. 148—Enquiry and order under s. 148A(d)—Under the amended provisions, the term "information" in Expln. 1 to s. 148 cannot be lightly resorted to so as to reopen assessment—Merely because the Revenue classifies a fact already on record as "information" may vest it with the power to issue a notice of reassessment under s. 148A(b) but would certainly not vest it with the power to issue a reassessment notice under s. 148 post an order under s. 148A(d)—In the present case, the impugned notice dt. 17th March, 2022 as well as the order dt. 4th April, 2022 are cryptic as is evident from the fact that information culled out from assessee's own return and records—It was all the more necessary in the present case for the AO to thoroughly scrutinize the contentions and submissions advanced by the assessee before passing an order under s. 148A(d)—Assessee has a right to get adequate time in accordance with the Act to submit its reply—In the present case, the impugned order under s. 148A(d) has been passed in great haste and in gross violation of principle of natural justice as the assessee was not given reasonable time to file a reply—Mandate of s. 148A(c) has been violated as it casts a duty on the AO, by using the expression 'shall', to consider the reply of the assessee in response to notice under s. 148A(b) before making an order under s. 148A(d)—Consequently, the impugned order dt. 4th April, 2022 issued under s. 148A(d) and the notice dt. 4th April, 2022 issued under s. 148 are quashed and the matter is remanded back to the AO for a fresh determination".

(B) *Sanath Kumar Murali vs. ITO & Ors. (2023) 333 CTR (Kar) 189 : (2023) 226 DTR (Kar) 369* (DC 88-94)

"Reassessment—Notice under s. 148—Limitation under s. 149 *vis-a-vis* "Income escaping assessment"—It is clear that the notice is issued in the context of sale consideration from sale of immoveable property for an amount of Rs. 55,77,700—Reply to the show-cause notice, would reveal the details of sale consideration and the cost of acquisition would be the indexed cost of acquisition—Accordingly, in the present case, the words found in s. 149 which are 'Income chargeable to tax' must be read in terms of 'income' as arising out of the 'capital gains' as provided under s. 48 and this is the only manner of understanding the words, 'Income chargeable to tax' under s. 149(1)(b)—Income chargeable under the head of 'capital gains' shall be computed by deducting from the full value of the consideration, the indexed cost of acquisition—It cannot be stated that since the stage at which the notice is issued is at a premature stage, the entirety of consideration of Rs. 55,77,700 ought to be taken note of—Accordingly, the order dt. 21st March, 2023 passed under s. 148A(d) is set aside and the notice dt. 21st March, 2023 issued under s. 148 for the asst. yr. 2016-17 is set aside."

Hence, impugned order under s. 148, dt. 30th March, 2022 and resultant order under s. 148A(d), dt. 30th March, 2022 may be quashed. Alternatively, the entire impugned addition deserves to be deleted.

Additional GOA-10 : Invoking s. 115BBE of the Act is without jurisdiction :

Submission :

1. The AO imposed special tax under s. 115BBE with reference to the addition made of Rs. 69.90 lacs however, there is absolutely no case made out to invoke s. 115BBE. Admittedly the related income is not income from other sources but by AO's own admission it was an income from LTCG as finally assessed by him hence, s. 115BBE cannot be involved. Thus, once the AO himself did not dispute that it was income from LTCG and not from the income of other sources he could not have invoked s. 115BBE. At p. 6 of order the learned AO noted as under :

"Considering the above, the sale consideration of the property is Rs. 69,90,000. Further, the indexation of cost of acquisition and improvement worth Rs. 54,50,455 (15,22,982 + 39,27,473) as claimed by the assessee is disallowed due to reason that assessee has failed to submit any documentary evidence in support of his claim. Therefore, the whole consideration of Rs. 69,90,000 is considered as long-term capital gain in the hands of the assessee. Penalty proceedings under s. 270A of the Act is initiated on this issue for underreporting of income."

1.2 Otherwise also, admitted fact that the assessee during the subjected year sold immovable property for Rs. 69.90 lakhs. Because of such that very information, the AO initiated proceedings under s. 148A. In the body of the

assessment order he has discussed the computation if LTCG submitted by the assessee along with evidences and his reasoning of rejection of such working thus, the income arising from the transfer of the immovable property if any to be taxed can be taxed as LTCG but not the income from the other sources (these submissions are without prejudice to our basic contention that the entire addition itself was bad-in-law and without jurisdiction and for various reasons).

2. AO can't change head of income :

2.1 It is submitted that s. 115BBE specifically refers to the income which are of the nature as referred in s. 68,69,69A of the Act being the income from other sources. Therefore, subjected income has essentially to be classified under s. 14 of the Act as income from other sources and that is possible only when the income is not capable of being classified under any other head being income from salary, house property, capital gain, business or profession.

2.2 A combined reading of s. 14 with s. 56 of the Act makes is evidently clear that for the assessment of an income it must have to be classified under four heads of income as enumerated under s. 14 and if it doesn't fall under any specific head of income as per Items A to E of s. 14, such income has to be assessed under the residuary head of income i.e. Item F of s. 14. Therefore, income added under s. 68 or 69 etc. has to be given a specific head in terms of s. 14. The Hon'ble Supreme Court in case of *Karanpura Development Co. Ltd. vs. CIT (1962) 44 ITR 362 (SC)* held that these heads are in a sense exclusive to one another and income which falls within one head cannot be brought to tax under another head. Further, the Hon'ble Supreme Court in case of *Nalinikant Ambalal Mody vs. CIT (1966) 61 ITR 428 (SC)*, has held that whether an income falls under one head or another is to be decided according to the common notions of practical man because the Act does not provide any guidance in the matter. Of course, lot of judicial precedents are available to a taxpayer to arrive at a conclusion about determination of appropriate head of income.

2.3 It is further submitted that whatever, was assessed by AO was nothing but income from capital gains only and it cannot be termed as excess/undisclosed/unaccounted Income for the simple reason that the learned AO at p. 2 of order observed that the assessee has sold immovable property as per information with him for reassessment proceedings :

"On perusal of the submission made by the assessee and the information available on record, it is noted that the assessee, during the year under consideration sold immovable property of Rs. 69,90,000."

Moreover, the assessee admittedly accounted for such sales in regularly maintained books of account and also furnished appropriate documentary evidences were furnished before lower authorities. Consequently, it cannot be said that there was some excess shortage/undisclosed/unaccounted income, etc. found by learned AO.

3. Binding judicial guideline : The Hon'ble Rajasthan High Court as also Tribunals whose decision are binding upon the AO as a juridical precedence have also been consistently holding so. Kindly refer :

3.1 The Hon'ble Rajasthan High Court in case of *CIT vs. Bajargan Traders* in (IT Appeal No. 258 of 2017, dt. 12th Sept., 2017) has held that when the assessee is dealing in sale of food grains, rice and oilseeds and the excess stock which is found during survey is stock of rice, then it can be said that investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. Therefore, the investment in the excess stock is to be brought to tax under head "Business income" and not under the head income from other sources. It was held as under :

"2.10 We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814 towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814 were finally reflected as part of total purchases amounting to Rs. 33,47,19,658 in the P&L a/c and the same also found included as part of the closing stock amount to Rs. 1,94,42,569 in the P&L a/c since the said stock of rice was not sold out. In addition to the purchase and the closing

stock, the amount of Rs. 70,04,814 also found credited in the P&L a/c as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the P&L a/c. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularize its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

2.11 Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "Business income" or "income from other sources". In the present case, the assessee is dealing in sale of food grains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of *Shri Ramnarayan Birla* (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "Business income" and not under the head income from other sources. In the result, ground No. 1 of the assessee is allowed."

3.2 The Hon'ble Tribunal, Jaipur in its decision in the case of *Shri Ram Narayan Birla* in (ITA No. 482/Jp/2015, dt. 30th Sept., 2016) has held that unrecorded/excess investment or expenditure surrendered during the course of the survey has to be assessed as business income only and not under the head 'Income from other sources'. The Hon'ble Tribunal Jaipur followed the case of *Choksi Hiralal Mangal vs. Dy. CIT (2010) 131 TTJ (Ahd) 1 : (2010) 40 DTR (Ahd)(Trib) 1*.

3.3 The Hon'ble Ahmedabad Tribunal in case of *Chokshi Hiralal Maganlal vs. Dy. CIT* (ITA No. 3281/Ahd/2009, asst. yr. 2004-05, dt. 5th Aug., 2011) held that for invoking deeming provisions under s. 69, 69A, 69B and 69C of the Act there should be clearly identifiable investment or asset or expenditure (i.e. in our understanding not connected with business so as to make convenient to invoke aforesaid sections). In case source of investment or asset or expenditure is clearly identifiable and has no independent existence of its own where a case arises to claim that it cannot be separated from business then first 'what is to be taxed is the undisclosed business receipt. Only on failure of such exercise, it would be regarded as taxable under s. 69 on the premises that such excess investment or asset or expenditure is unexplained and unidentified, satisfying the mandate of the law.

3.4 In the case of *Shri Lovish Singhal vs. ITO* (ITA Nos. 142 to 146/Jodh/2018 for asst. yr. 2014-15, dt. 25th May, 2018), the Jodhpur Tribunal applying the proposition of law laid down by the Hon'ble Rajasthan High Court in the *Bajargan Traders* (supra), held that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found under s. 69 of the Act and accordingly held that there is no justification for taxing such income under s. 115BBE of the Act.

4. There apart, there are many decisions available taking such a view in favour of the assessee on dt. 22nd Sept., 2021 when the subjected assessment was framed by the AO. The above very relevant and crucial facts and the legal position was well available before the AO and there is nothing on record to show that he did not consider the same.

In view of the facts and circumstances, judicial guidelines and the statutory provisions, the addition of Rs. 66.90 lakhs could not be subjected to s. 115BBE of the Act.

Additional GOA 9 : Violation of s. 151A of the Act hence impugned notice and orders are nullity.

Submission :

1. It is submitted that the impugned order under s. 148A(d), dt. 30th March, 2022 as also the impugned notice under s. 148, dt. 30th March, 2022 are wholly without jurisdiction inasmuch as they have been issued in a complete

and gross violation of the Notification No. 18 of 2022, dt. 29th March, 2022 (PB-II 104) titled as E-Assessment of Income Escaping Assessment Scheme, 2022 issued by the Central Government in exercise of the power conferred by ss. 151A(1) and (2) of the Act which has made the reassessment in any case mandatory through the E-Assessment Scheme only but not otherwise cl. 3 of the Scheme provides the scope which includes the assessments/reassessment under s. 147 as also the issuance of notice under s. 148 of the Act, shall be through automated allocation only in accordance with Risk Management Strategy (herein after referred to as "RMS") formulated by the CBDT (herein after referred to as "CBDT") under s. 148 and in a faceless manner as provided under s. 144B of the Act.

2. For a ready reference cl. 3 is being reproduced hereunder :

"For the purpose of the Scheme,—

(a) assessment, reassessment or recomputation under s. 147 of the Act,

(b) issuance of notice under s. 148 of the Act.

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in s. 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in s. 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee."

The Central Government was empowered by s. 151A inserted by the Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 w.e.f. 1st Sept., 2020 (herein after referred to as "TOLA"). Therefore, any proceedings under s. 147 could be initiated only. Accordingly, a notification (PB-II 105) was issued on 29th March, 2022 making the Faceless Reassessment Scheme binding upon AO in faceless manner and not manually. However, in the present case SCN under s. 148A(b) has been issued on dt. 29th March, 2023 followed by the impugned order under s. 148A(d) of the Act, dt. 30th March, 2022 and impugned notice under s. 148 of the Act, dt. 30th March, 2022, all by the respondent AO manually, much later then the notification dt. 29th March, 2022 (when the E-reassessment Scheme had come into effect) yet however, the provisions of s. 151A and the statutorily prescribed Scheme have not at all been complied with hence, the impugned notice and order deserves to be quashed.

3. Supporting Case Laws :

3.1 The CBDT, in the context of faceless assessment scheme, had issued an order under s. 119 of the Act, dt. 13th Aug., 2020 (DC 95-96) which has clearly held that any assessment order which is not in conformity with faceless assessment scheme shall be treated as *non est*.

3.2 Recently in the case of *Kankanala Ravindra Reddy & Ors. vs. ITO & Ors. (2023) 334 CTR (Telangana) 646 : (2023) 230 DTR (Telangana) 169* (DC 97-107), it was held that :

"Reassessment—Notice under s. 148A—Validity *vis-a-vis* notice by jurisdictional AO and not in faceless manner as per s. 144B r/w s. 151A—A plain reading of the two notifications issued by the CBDT dt. 28th March, 2022 and 29th March, 2022, would clearly indicate that the CBDT was very clear in its mind when it framed the two schemes with respect to the proceedings to be drawn under s. 148A, that is to have it in a faceless manner—From the factual matrix, firstly the statutory provisions of ss. 144B and 151A and secondly, the subsequent direction given by the Supreme Court in the case of *Union of India & Ors. vs. Ashish Agarwal (2022) 326 CTR (SC) 473 : (2022) 213 DTR (SC) 217* what is clearly reflected is the fact that the Supreme Court has only permitted the Union of India to proceed further with the reassessment proceedings under the amended provision of law, more particularly, as amended by the Finance Act, 2021—In the present case, both the proceedings i.e., the impugned proceedings under s. 148A, as well as the consequential notices under s. 148 were issued by the local jurisdictional officer and not in the prescribed faceless manner—Order under s. 148A(d) and the notices under s. 148 are issued on 29th April, 2022, i.e., after the "Faceless Jurisdiction of the IT Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced—Impugned notices issued by local jurisdiction AO and the proceedings drawn by the Department is neither tenable, nor sustainable—All the impugned orders getting

quashed, the consequential orders passed by the Department pursuant to the notices issued under ss. 147 and 148 would also get quashed."

3.3 *Hexaware Technologies Ltd. vs. Asstt. CIT & Ors.* (Writ Petn. No. 1778 of 2023) [reported at *(2024) 338 CTR (Bom) 536 : (2024) 237 DTR (Bom) 408*—Ed.] (Para 39).

"39. With reference to the decision of the Hon'ble Calcutta High Court in *Triton Overseas (P) Ltd.* (supra), the Hon'ble Calcutta High Court has passed the order without considering the scheme dt. 29th March, 2022 as the said scheme is not referred to in the order. Therefore, the said judgment cannot be treated as a precedent or relied upon to decide the jurisdiction of the AO to issue notice under s. 148 of the Act. The Hon'ble Calcutta High Court has referred to an Office Memorandum dt. 20th Feb., 2023 being F No. 370153/7/2023 TPL which has been dealt with above. Therefore, no reliance can be placed on the said Office Memorandum to justify that the JAO has jurisdiction to issue notice under s. 148 of the Act. Further the Hon'ble Telangana High Court in the case of Kankanala Ravindra Reddy vs. ITO 14 has held that in view of the provisions of s. 151A of the Act r/w the Scheme dt. 29th March, 2022 the notices issued by the JAOs are invalid and bad in law. We are also of the same view."

Additional GOA-8 : No DIN mentioned, hence impugned orders to be quashed :

1.1 It is submitted that in order to prevent instances where certain notices, orders, summons, letters and other correspondences which have been issued manually do not have proper audit trail of their communication despite various e-governance initiatives and computerization and to maintain proper audit trail of all the communications, the CBDT vide its Binding Circular No. 19 of 2019, dt. 14th Aug., 2019 (PB-II 106-107) has made it obligatory on the part of the authorities below to essentially mention of Document Identification Number ("DIN" for short) and has directed that no communication shall be issued by any IT authorities relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval, etc. to the assessee or any other person, on or after the 1st Oct., 2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. Para 3 of the said circular provides for certain exceptional circumstances when the communication can be issued manually but must mention such fact and the date of obtaining of the written approval of the Chief CIT/Director General of IT for issue of said manual communication in the prescribed format, failing which, para 4 of the said circular states that such communication shall be treated as 'invalid' and shall be deemed to have never been issued.

1.2 In the instant case however, the undisputed and verifiable facts are that the directions issued by the DRP vide its order dt. 28th Feb., 2023 under s. 144C(5) of the Act is not an electronic communication but a manual order as is evident from the perusal of the same. Although there is a separate letter dt. 28th Nov., 2023 (PB 87) intimating DIN No. being ITBA/DRP/M144C(5)/2023-24/1058282550(1) but the fact of issuing the present directions issued under s. 144C(5), manually without a DIN and without obtaining an approval from prescribed authority in the prescribed format, (as was not mentioned/quoted in the body of the said communication) is *non est*. Similar contention when raised by the Revenue, was rejected.

2. Supporting case laws where no DIN is mentioned :

2.1 Recently in the case of *Practo Technologies (P) Ltd. vs. Dy. CIT* [IT(TP)A No. 154/Bang/2022] (DC 108-124), the Hon'ble Bangalore Bench, in the context of the directions issued under s. 144C(5), when noticed that no DIN was mentioned therein, held as under :

"21. Respectfully following the above order of the Tribunal, since the DIN was not mentioned in DRP order dt. 30th Dec., 2021 which was mandatory as per CBDT Circular No. 19 (supra) and in view of the facts noted above in regard to communications done with the assessee, we hold that the DRP directions dt. 30th Dec., 2021 is invalid in the eyes of law and shall be deemed to have never been issued as per para 4 of the CBDT circular as the order is not conformity with paras 2 and 3. Accordingly, the DRP order dt. 30th Dec., 2021 is held to be null and void *ab initio* and quashed. Thus, the additional grounds Nos. 24 and 25 raised by the assessee on the legal issue are allowed."

While holding so, the Hon'ble Tribunal has firstly admitted the additional ground of appeal in para 5 and thereafter,

followed the decision in the case of *Intrado EC India (P) Ltd. vs. Dy. CIT* [IT(TP)A No. 239/Bang/2021].

2.2 Recently Hon'ble Bombay High Court in the case of *Hexaware Technologies Ltd. vs. Asstt. CIT & Ors.* (Writ Petn. No. 1778 of 2023) [reported at *(2024) 338 CTR (Bom) 536 : (2024) 237 DTR (Bom) 408*—Ed.], was dealing with a notice issued under s. 148, without DIN and held as under :

"31 As regards issue No. 3, in the notice dt. 27th Aug., 2022 impugned in the petition, admittedly there is no DIN mentioned. It is petitioner's case that the notice is invalid and bad in law in view of the Circular No. 19 of 2019, dt. 14th Aug., 2019 issued by CBDT. A separate intimation letter also dt. 27th Aug., 2022 was issued and the said letter reads as under :

.

We agree with petitioner that this letter cannot validate the notice issued under s. 148 of the Act on 27th Aug., 2022. The reason is firstly the intimation letter refers to a DIN with respect to some notice under s. 148 of the Act, dt. 26th Aug., 2022. The impugned notice issued to petitioner is dt. 27th Aug., 2022 and not 26th Aug., 2022 for which the DIN is generated. Secondly, the procedure prescribed in Circular No. 19 of 2019, dt. 14th Aug., 2019 for non-mention of DIN in case letter/notice/order has not been complied with by respondent No. 1. It is settled that if DIN is not mentioned in the letter/notice/order, the reason for not mentioning the DIN and the approval from specified authority for issuing such letter/notice/order without DIN has to be obtained and mentioned in such letter/notice/order. In the present case, in the impugned notice dt. 27th Aug., 2022, no such reference is there. Therefore, as held in *Ashok Commercial Enterprises* (supra) and *Tata Medical Center Trust* (supra), the impugned notice is clearly invalid and bad in law. It will be useful to reproduce para 18 of *Ashok Commercial Enterprises* (supra) :

Therefore, the impugned notice dt. 27th Aug., 2022 issued under s. 148 of the Act is invalid and bad-in-law as the same has been issued without a DIN."

2.3 In the case of *Ashok Commercial Enterprises vs. Asstt. CIT (2023) 334 CTR (Bom) 757 : (2023) 229 DTR (Bom) 433 : (2023) 154 taxmann.com 144 (Bom)* (DC 125-150), a satisfaction note also has been held as a communication requiring DIN to be mentioned thereon. It was held : "(d) The said Circular also applies to the satisfaction note dt. 13th July, 2021 issued by respondent No. 1. The satisfaction note will fall within the scope of para 2 of the Circular as a communication of the specified type issued to any person. In the case of the satisfaction note no regularization dt. 13th Oct., 2021 has been issued".

2.4 Various other decisions are in the case of *Bangalore Narayan Das vs. ITO (International Taxation) (2023) 226 TTJ (Bang) 66 : (2023) 231 DTR (Bang)(Trib) 48*, *Principal CIT(Exemption) vs. Tata Medical Centre Trust (2023) 334 CTR (Cal) 942 : (2023) 230 DTR (Cal) 305*, *Ankit Jain vs. Dy. CIT (2023) 155 taxmann.com 321 (Del)* and *Deepak Kumar vs. Dy. CIT (2024) 159 taxmann.com 358 (Del).*

3. CBDT Instructions are binding : Supporting case laws :

The CBDT circular and instructions have been held to be binding on the IT authorities for which a useful reference can be made to the cases of *CIT vs. Hero Cycles (P) Ltd. (1997) 142 CTR (SC) 122 : (1997) 228 ITR 463 (SC) : (1997) 94 Taxman 271 (SC)*, wherein, it was held that circulars bind the ITO but will not bind the Court or even the assessee. In the case of *UCO Bank vs. CIT (1999) 154 CTR (SC) 88 : (1999) 237 ITR 889 (SC) : (1999) 104 Taxman 547 (SC)*, Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (p. 896) :

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, *inter alia*, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under s. 119 of the IT Act, which are binding on the authorities in the administration of the Act. Under s. 119(2)(a), however, the circulars as contemplated therein

cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in s. 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

Strong reliance is also placed in the decision of *His Late Highness Maharana Shri Bhagwat Singhji of Mewar vs. Tribunal & Ors. (1996) 133 CTR (Raj) 97: (1997) 223 ITR 192 (Raj)*.

The Rajasthan High Court in *Sudesh Teneja vs. ITO (2022) 324 CTR (Raj) 577 : (2022) 210 DTR (Raj) 105 : (2022) 442 ITR 289 (Raj)* held that (a) taxing statute must be interpreted strictly. Equity has no place in taxation. Nor while interpreting taxing statute intendment would have any place. (b) There is nothing unjust in the tax payer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly. (c) It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. (d) In the matter of interpretation of charging section of a taxation statute, strict Rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied.

Since the impugned assessment order has been passed without there being any valid directions issued by the DRP-1, New Delhi (in absence of DIN as aforesaid), has vitiated the impugned order itself as per mandate of s. 144C(5) r/w s. 143(3) hence, both these orders may kindly be held as *non est* and quashed."

6. In support of the contentions so raised in the written submission reliance was placed on the following evidence/records :

Paper Book Index

S. No.	*Particulars*	*Pg. No.*
1.	Copy of Form 35A	1-2
2.	Copies of detailed objections raised dt. 27/04/2023 against the draft assessment order under s. 144C(1)	3-12
3.	Copy of application for admission of additional Documents/Evidences dt. 27/04/2023	13-14
4.	Index of the papers filed before the DRP	15
5.	Index of additional documents filed before the DRP	16
6.	Copy of passport	17-20
7.	Copy of letter dt. 23.03.23 requesting for supplying necessary information and/or certified	21-22

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Decision compilation

9.	*SHL (India) (P) LTD. vs. Dy. CIT & Ors. (2021) 321 CTR (Bom) 655 : (2021) 204 DTR (Bom) 233*	77-87
10.	*Sanath Kumar Murali vs. ITO & Ors. (2023) 333 CTR (Kar) 189 : (2023) 226 DTR (Kar) 369*	88-94
11.	Copy of order under s. 119 of the Act, dt. 13/08/2020	95-96
12.	*Kankanala Ravindra Reddy & Ors. vs. ITO & Ors. (2023) 334 CTR (Telangana) 646 : (2023) 230 DTR (Telangana) 169*	97-107
13.	*Practo Technologies (P) Ltd vs. Dy. CIT Central Circle 1(3), Bangalore IT(TP)A No. 154/Bang/2022 (Relevant Extracts)*	108-124
14.	*Ashok Commercial Enterprise vs. Asstt. CIT (2023) 334 CTR (Bom) 757 : (2023) 229 DTR (Bom) 433*	125-150

7. The learned Authorised Representative of the assessee submitted that his prayer to consider the additional ground raised be considered based on the decision of the apex Court in the case of *National Thermal Power Corporation Ltd. (1999) 157 CTR (SC) 249 : (1998) 229 ITR 383 (SC)* as that grounds are purely being technical and no finding on facts is required to be made and therefore, he prayed to consider.

8. Considering the nature of grounds raised by the assessee being technical in nature the same are admitted.

9. The learned Authorised Representative of the assessee in support of ground Nos. 1 and 2 raised by the assessee submitted that the impugned order under s. 148(d), notice under s. 148 both dt. 30th March, 2022 and notices under s. 142 for asst. yr. 2018-19, are completely devoid of jurisdiction in as much as the ITO, Ward 2(2), Ajmer, was not vested with a valid jurisdiction in terms of s. 120 r/w s. 124 of the Act. The facts are not disputed that the assessee is a non-resident Indian. He has been residing outside India since last almost more than 25 years. He came back to India only on dt. 22nd June, 2022 (copy of passport enclosed PB 18-19). Thus, in any case during the relevant financial year 2017-18 (asst. yr. 2018-19), he completely remained outside India. Accordingly, in his PAN profile also, the jurisdictional AO is shown as the International Charge i.e., Circle (International Taxation), Jaipur. Copy of the PAN profile is placed on record in paper book pp. 17 and PB-II 105. Thus, the jurisdiction of the assessee continues to fall with the International Charge Circle (International Taxation), Jaipur, as per PAN profile, there is no legal justification behind issuance of the subjected notices by ITO, Ward 2(2), Ajmer, who was not the competent officer having valid and legal jurisdiction to reopen the case of the assessee. Thus, he vehemently submitted that notice under s. 148 can be issued only by a competent AO having a valid jurisdiction over the assessee and as ITO, Ajmer was not having any valid jurisdiction and competence to issue the notice under s. 148. The learned Authorised Representative of the assessee submitted that the contention AO of that s. 148 talks about the AO only and not about the jurisdictional AO." She also took support from s. 124(3) that no person shall be entitled to challenge the jurisdiction if no ROI has been filed after expiry of the time allowed in a notice under s. 148. Objecting to that finding the learned Authorised Representative of the assessee submitted that the term "AO"

means the AO only but not the "Jurisdictional AO" ("JAO"). If the interpretation as contended, is accepted then the "AO" may means any AO situated anywhere in the country i.e., right from Jammu & Kashmir till Kanyakumari, may be the AO to assess the income of an assessee stationed at Ajmer, which can never be the legislative intention. In support the learned Authorised Representative of the assessee relied upon the definition of the AO given in s. 2(7A) of the Act. The case of the assessee pertains to the AO, Circle (International Taxation), Jaipur was vested with the jurisdiction to Act as an AO, is fully supported by the PAN profile and the jurisdictional details (PB-II 105) of the assessee which clearly shows the AO holding the charge was the International Taxation Charge. In this background only, when the assessee, after receiving the impugned notice under s. 148 sent on dt. 13th April, 2022, raised his objections vide letter dt. 23rd July, 2023 (PB 70-72) no reply came from the ITO, Ward 2(2), Ajmer but strangely the same was replied by Officer, Circle (International Taxation), Jaipur admitting, the very fact and the contention of the assessee that she might be holding the correct jurisdiction over this assessee but not the ITO, Ward 2(2), Ajmer who issued the impugned notice under s. 148. To drive home to this contention the learned Authorised Representative of the assessee relied upon the decision of *CIT vs. Smt Anjali Dua (2008) 219 CTR (Del) 183* (DC 1-2), *Mir Zardari Qureshi vs. Asstt. CIT (2023) 151 taxmann.com 408 (Raipur)* (DC 3-13), *Abdul Azeez Haroon vs. Dy. CIT (International Taxation) (2020) 317 CTR (Mad) 610 : (2020) 194 DTR (Mad) 306* (DC 14-17) and *Saroj Sangwan vs. ITO (2024) 162 taxmann.com 704 (Del)* (DC 18-22). The learned Authorised Representative of the assessee argued that where the authority issuing the notice has no authority at all, there is no requirement of raising any objection within the stipulated period. Moreover, objection under s. 124 is required to be raised only when there is a dispute on the question of territorial jurisdiction of a particular officer. Thus, the objection raised by the Officer, Circle (International Taxation), Jaipur are completely baseless against the provisions of the law and deserves to be rejected. The learned Authorised Representative of the assessee also submitted that though the notice alleged to be of dt. 31st March, 2022 but the same was issued on 13th April, 2022 therefore, the law as applicable in the fact of the case is the new regime. As held by the apex Court in the case of *Union of India vs. Ashish Agarwal (2022) 326 CTR (SC) 473 : (2022) 213 DTR (SC) 217* the AO has to follow the procedure as prescribed in the new law. In support of this contention he relied upon the decision of *Daujee Abhushan Bhandar (P) Ltd. vs. Union of India (2022) 325 CTR (All) 659 : (2022) 212 DTR (All) 1 : (2022) 136 taxmann.com 246 (All).* The learned Authorised Representative also challenged that in this case since the notice is beyond three years the approval is to be taken of that of the learned Chief CIT and of Principal CIT and on that aspect of the case he relied upon the decision of *Siemen Financial vs. Dy. CIT (2024) 154 taxmann.com 159 (Bom)* so even on that count of the aspect of the case the notice issued under s. 148 is not a valid notice.

9.1 As regards the merits of the case the learned AO in the draft order proposed the addition under s. 69A of the Act. Whereas in the final order after the direction of the DRP he shifted that to long-term capital gain for which he has not given any show cause notice and merely based on the surmises and conjecture completed the assessment assessing the capital gain without considering the material placed on record by the assessee. As it was submitted before the DRP by the assessee that there is no tax liability that arises in the case of the assessee and once DRP accepted the evidence of the assessee the order of the AO is in gross violation of principles of nature justice and bad in law as well as on facts. There was direction of the DRP to consider the evidence filed by the assessee and there is no cross-objection of the Revenue that why the DRP has allowed those evidence to be considered that evidence needs to be considered. The learned Authorised Representative of the assessee raised various issues such there is no DIN, assessment not done in online mode as per Board circular and various technical latches and glitches in the order of the assessment for which he relied upon the written submissions filed and in support of those contention he filed a compilation of case laws relied upon.

10. The learned Departmental Representative is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the learned AO and DRP. The learned Departmental Representative stated that the assessee has taken under the sun all the grounds of approval of Principal CIT/Chief CIT, jurisdiction, addition to be made under s. 69A or capital gain, DIN attached or not, how the proceedings were conducted etc., thus, on these aspect he sought time to seek the comments of the learned AO. The learned AO submitted his report vide letter dt. 24th May, 2024 and the contention of the learned AO on the submission of the assessee is reproduced hereinbelow :

"Sub : Reports/comments in the case of Sh. Sunil Chablani (PAN : ASTPC0800H) for the asst. yr. 2018-(1977)—Regarding.

Ref. : Letter No. 119, dt. 6th May, 2024 and No. 143, dt. 14th May, 2024

Kindly refer to the above.

2. The brief facts of this case are that the assessee was non-filer for the asst. yr. 2018-19. There was information available with the Department that the assessee had sold an immovable property for a sale consideration of Rs. 69,90,000. Since, the assessee was non-filer during the year under consideration, the said transaction remained unverified. Accordingly, after recording the reasons for escapement of assessment, notice under s. 148 of the Act was issued to the assessee on 30th March, 2022 with prior approval taken from the competent authority. However, in compliance to the notice issued under s. 148 of the Act, the assessee did not file his ITR for the year under consideration. During the assessment proceedings, statutory notices were issued to the assessee requiring him to furnish relevant documentary evidence to substantiate the said transaction carried out by the assessee. Despite providing sufficient opportunity, the assessee did not furnish any documentary evidence and failed to explain and justify the said transaction. Considering these facts, the sale consideration of Rs. 69,90,000 remain unexplained and falls under the purview of unexplained money under s. 69A of the Act. Accordingly, draft assessment order under s. 144C of the Act was passed on 29th March, 2023 proposing an addition of Rs. 69,90,000.

Aggrieved by this draft assessment order dt. 29th March, 2023, the assessee has filed objection before Hon'ble DRP-1, New Delhi, challenging among other things, the addition of Rs. 69,90,000 made under s. 69A of the Act. In this matter, Hon'ble DRP has passed order dt. 28th Nov., 2023 and issued necessary directions to pass a reasoned order on the basis of submission of the assessee. In compliance to the said directions, final assessment order passed under s. 147 r/w s. 144 on 29th Dec., 2023 determining total income at Rs. 69,90,000 after making an addition of Rs. 69,90,000.

The assessee is now in appeal before Hon'ble Tribunal. The point-wise comments on objections raised by the assessee during the appellate proceedings are furnished as under—

(1) That notice under s. 148A(b) of the Act 1961 as also order under s. 148A(d) of the Act 1961 and notice under s. 148 of the Act 1961 were primarily issued by the ITO, Ward 2(2), Ajmer in exercise of valid jurisdiction. In this regard, it may be mentioned that for the asst. yr. 2018-19, assessee was a non-filer and his residential status was not known to the AO and the initial proceedings were carried out by the then AO on the basis of PAN card details available with him. In this case, information pertaining the transaction carried out by the assessee was conveyed through notice issued under s. 148A(b) of the Act, dt. 17th March, 2022, requiring the assessee to furnish supporting documents to explain the said transaction. However, after allowing opportunity to explain and furnish the requisite documents, the assessee has failed to comply with the same. He did not file any response in this regard. Accordingly, on the basis of material available on record and after exploring the information flagged on the system, this case was treated as fit case to issue notice under s. 148 of the Act. Order under s. 148A(d) of the Act was issued on 25th March, 2022 after obtaining approval from the specified authority as mentioned in s. 151 of the Act. Subsequently, notice under s. 148 of the Act was issued on 30th March, 2022 with prior approval of the Principal CIT, Udaipur. The jurisdiction of this case was transferred to the Dy. CIT, Circle (International Taxation), Jaipur charge when it came to notice to the AO that the assessee is having NRI status. This fact was disclosed when the assessee has filed his written submission during the assessment proceedings. It is the duty of assessee itself to disclose his correct facts pertaining to the transactions in question even his residential status also.

During the assessment proceedings, the assessee was having opportunity to challenge jurisdiction within time-limit. However, he failed to do so. After completing the assessment proceedings, the assessee cannot take liberty to challenge the jurisdiction of the AO. For the sake of brevity, provisions of s. 124 of the Act are reproduced as under—

124. "Jurisdiction of AOs.—(1) Where by virtue of any direction or order issued under sub-s. (1) or sub-s. (2) of s. 120, the AO has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if

the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an AO has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief CIT or Chief CIT or the Principal CIT or CIT; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief CITs or Chief CITs or Principal CIT's or CIT's, by the Principal Directors General or Directors General or Principal Chief CIT's or Chief CIT's or Principal CIT's or CIT's concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief CIT or Chief CIT or Principal CIT or CIT as the Board may, by notification in the Official Gazette, specify

(3) No person shall be entitled to call in question the jurisdiction of an AO—

(a) where he has made a return under sub-s. (1) of s. 115WD or under sub-s. (1) of s. 139, after the expiry of one month from the date on which he was served with a notice under sub-s. (1) of s. 142 or sub-s. (2) of s. 115WE or sub-s. (2) of s. 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-s. (2) of s. 115WD or sub-s. (1) of s. 142 or under sub-s. (1) of s. 115WH or under s. 148 for the making of the return or by the notice under the first proviso to s. 115WE or under the first proviso to s. 144 to show-cause why the assessment should not be completed to the best of the judgment of the AO, whichever is earlier;

(c) where an action has been taken under s. 132 or s. 132A, after the expiry of one month from the date on which he was served with a notice under sub-s. (1) of s. 153A or sub-s. (2) of s. 153C or after the completion of the assessment, whichever is earlier.

(4) Subject to the provisions of sub-s. (3), where an assessee calls in question the jurisdiction of an AO, then the AO shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-s. (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under s. 120, every AO shall have all the powers conferred by or under this Act on an AO in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-s. (1) or sub-s. (2) of s. 120."

As such, there is no lack, or error of jurisdiction or any procedural lacuna/defect in the proceedings. Thus, the ground taken by the assessee in respect of having incorrect jurisdiction is not acceptable and vehemently denied.

(2) In this matter, limitation to issue notice under s. 148 of the Act was going to be expired on 31st March, 2022. Accordingly, notice was issued to the assessee through the ITBA system on 30th March, 2022 itself. In this regard, a copy of system generated note sheet showing the chronological events of the assessment proceedings of this case are enclosed herewith. The entry dt. 30th March, 2022 appearing in the note sheet shows that notice under s. 148 of the Act was issued to the assessee on 30th March, 2022. As such, the minimum requirement to initiate the reassessment proceedings under s. 148 of the Act fulfils appropriately.

In this regard, provisions of s. 149 of the Act are as under :

Time-limit for notice.

149(1) No notice under s. 148 shall be issued for the relevant assessment year,

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under cl. (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakhs rupees or more :

From the above, it is clear that the time limit for issuance of notice under s. 148 in this case was 31st March, 2022. On perusal of s., it is clear that the notice should be issued, which was done and clear from the note sheet enclosed.

In this case, it is evident that the notice under reference was initiated on the ITBA system on 30th March, 2022 and digitally signed by the AO on 30th March, 2022 and the said notice was instantly transmitted via the ITBA system. It is pertinent to mention that once a notice under s. 148 is generated on ITBA system and digitally signed, it is instantly entered and transmitted in the ITBA system. Also, the notice is instantly transmitted to the e-filing portal of the assessee under e-proceedings. Further, real date and time are also mentioned on the bottom right corner of the notice which clearly shows that this notice was digitally signed by the issuing authority on Wednesday, 30th March, 2022 at 4:55 PM.

In this context, reliance is placed upon the decision of Hon'ble Allahabad High Court in Writ Tax No. 78 of 2022 which is squarely applicable in this case. The relevant paragraph of the judgement is as under—

29. Thus, considering the provisions of s. 282 and 282A of the Act 1961 and the provisions of s. 13 of the Act 2000 and meaning of the word "Issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or to be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in s. 282 which includes transmitting in the form of electronic record. Sec. 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e., the assessing authority that shall the date and time of issuance of notice under s. 148 r/w s. 149 of the Act, 1961."

In this matter, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e., the assessing authority is Wednesday, 30th March, 2022 at 4:55 PM and according to this judgment, Wednesday, 30th March, 2022 at 4:55 PM shall the date and time of issuance of notice under s. 148 of the Act, 1961. Thus, keeping in view the facts as discussed above, the contention raised by the assessee that this notice was served only on 13th April, 2022 and to be considered as issued only on 13th April, 2022 is vehemently denied.

(3) The claim of the assessee that the notice under s. 148 received in April, so it is time-barred because reopening of case made after 03 years, approval should have been taken from the Chief CIT or Director General is not acceptable on the ground that the notice under s. 148 of the Act was well issued to the assessee on 30th March, 2022 and fulfils all conditions as laid down in the provisions of s. 148 of the Act. It is evident that the proceedings against the assessee have been carried out in accordance with law and the procedure for reassessment has been strictly followed. As the said notice has already been issued within the prescribed time period i.e. 31st March, 2022, so that, question of approval to be taken from the Chief CIT or Director General does not arise.

(4) During the assessment proceeding, the assessee in response to notices issued did not produce any documentary evidence regarding the income generated from sale of immovable property. The assessee only stated that " .....We are in the process of collecting the required date in respect of the sale of property. Hence, we will submit the same as soon as possible once we collect them". Besides furnishing documentary evidence, the

assessee has raised objections. He totally failed to explain and justify the said transaction. Accordingly, sales consideration of Rs. 69,90,000 received by the assessee from sell of immovable property was treated as unexplained money under s. 69A in the hands of the assessee. This fact has been duly incorporated in the draft assessment order.

The Hon'ble DRP vide its order dt. 28th Nov., 2023 has issued necessary directions to the AO to pass a reasoned order on the basis of submission of the assessee which was enclosed as an Annex. "A" to this order. The said Annex. "A" is a computation of income filed by the assessee before Hon'ble DRP. This computation consists only details of sale value, indexed cost of improvement and capital gain and no such supporting documents were furnished therewith. This is the only document which was filed by the assessee in support to his claim. As per the directions issued by Hon'ble DRP as well as considering the evidences furnished by the assessee, final assessment order was passed on 29th Dec., 2023 making addition of Rs. 69,90,000 on account of long-term capital gain. Your good self will find that the AO while passing final assessment order has duly incorporated all the facts available on record and discussed each issue in detail. During the assessment proceedings, the assessee failed to substantiate the transaction with regard to receive sales consideration, accordingly, the money received by him remained unexplained and treated as unexplained money under s. 69A of the Act. However, while finalizing final assessment order, additional evidences furnished by the assessee has been duly examined. After examining the additional evidences, it is emerged that the assessee has received sales consideration but he failed to produce documentary evidence with regard to indexed cost of acquisition and improvement as claimed by him in the said computation of income. Therefore, the whole consideration of Rs. 69,90,000 was considered as long-term capital gain. Keeping in view these facts, the ground taken by the assessee is denied.

(5) The objection raised by the assessee that the directions issued by DRP is without DIN is not acceptable on the ground that the order dt. 28th Nov., 2023 issued by Hon'ble DRP is having DIN ITBA/DRP/M/144C(5)/2023-24/1058282550(1) which is clearly mentioned on the first page of the order.

(6) With regard to furnish details of payment for cost of improvement made by the assessee, it is submitted that the assessee has not furnished copy of bank statement as well as payments details in his written submission showing the source of funds used for cost of improvement in the aforesaid immovable property. It is established that the assessee was non co-operative during the assessment proceedings. The Hon'ble DRP in its order dt. 28th Nov., 2023 at para No. 3.4 has also noted as under—

"3.4 However, the assessee neither presented (or through Authorized Representative) before the DRP nor sought any adjournment. The assessee further could not substantiate the cost of improvement or property allegedly done in multiple years."

Further, there is no such information available on record, which disclose the mode of payment made by the assessee towards cost of improvement. Even, assessee did not furnish details of payment towards cost of improvement before Hon'ble DRP.

(7) The objection raised by the assessee that the impugned notice under s. 148 and impugned order under s. 148A(d) of the Act, dt. 30th March, 2022 are nullity having been passed in complete violation of the binding notification dt. 29th March, 2023 issued under s. 151A r/w s. 144B of the Act mandating for the learned AO to complete the proceeding in faceless manner only as against done manually and hence, the same deserves to be quashed. On perusal of the said objection, it emerged that the assessee has itself asserted that notice under s. 148, dt. 30th March, 2022 was issued prior to issue of the said notification dt. 29th March, 2023. As such, question of violation of this binding notification does not arise.

Accordingly, this contention deserves to be dismissed.

The learned Departmental Representative relying the contentions of the learned AO submitted that since the transaction was flagged in the system and it was fit case to issue the notice under s. 148, the same was issued and that objections were dealt with as the assessee has not filed his ITR. The assessee never filed the ITR even after the issue of notice under s. 148. As in this case the notice is within 3 years and the same was issued within three years, the approval taken was in accordance with the law as the notice was issued on 31st March, 2022. The

assessment was reopened on the valid information and the case of the assessee being of the non-filer case, the notice was issued by the ITO, Ajmer. The assessee not remained compliant with the notices of the learned AO as well as of the learned DRP. The assessee has not supported the contention with valid explanations and proof the indexation benefit cannot be given to the assessee. The assessee has not supported the cost incurred with supporting evidence. As regards the claim of the assessee under s. 54F, no such information was filed by the assessee before the learned AO. The levy of tax under s. 69A and charge of tax under s. 115BBE is consequential in nature. As regards the DIN not attached in the order of the DRP, there is a separate letter generating DIN for that order. The learned Departmental Representative also filed a detailed order sheet entry in support of the orders of the lower authority.

11. In the rejoinder the learned Authorised Representative of the assessee submitted that the issue of jurisdiction was first taken up and the assessee has challenged the issue of notice itself and therefore, merely the return is not filed the non-jurisdictional AO has no power to issue and regularize the illegal jurisdiction and thereby the assessment. The learned Authorised Representative of the assessee filed a detailed rejoinder to the submission made by the learned AO through the learned Departmental Representative and the same is reproduced herein below :

"Para-wise comments/rejoinder follows as :

1. In response to the contention that the AO had no jurisdiction, it was contended that after coming to know from the assessee only, the jurisdiction of the case was transferred to Dy. CIT, Circle (International Taxation), Jaipur and it was the duty of the assessee to disclose correct facts.

1.1 (Reply para 1) It is submitted that in fact the AO is rather trying to avoid the real challenge. It's a fact that the assessee cannot change the jurisdictional detail (PB-1 17), (PB-11-105) however the AO is silent as to precisely what is the date on which he transferred the jurisdiction or further how AO himself can transfer unless there is a notification by the competent authority transferring the jurisdiction from ITO Ward-2, Ajmer to the International Taxation but unfortunately no detail has been supplied. Also there is absolutely no comment made by them on the PAN profile which shows the jurisdictional detail as Dy. CIT (International Taxation) which is not within the control of the assessee. Exactly when international taxation is shown or was changed from ITO Ajmer to that, has not been explained by the AO. Further the assessee has duly discharged its duty while uploading the details for the passport, wherein PAN No. as required by the concerned authority (in para 2.9 p. 2 of passport application form) was duly filled in. Now it is internal affair of the two ministries/Departments, which is beyond the control of the assessee. Pertinently, the very starting point and the very base of the present impugned proceeding under s. 148A are the registered sale deed dt. 28th July, 2017 (PB 26-39) showing the sale consideration of Rs. 69.90 lakhs, referring to which only, allegation of non-disclosing of LTCG is made by the AO. Interestingly, in the first few lines of above sale deed only at internal p. 1 (PB 30), it is stated that the appellant (the seller) was residing at Dubai, UAE during that relevant point of time. Thus, it was very well known to the Department that the appellant had been residing at Dubai, therefore, the correct jurisdiction rested with the international taxation.

1.2 (Reply Para 1) Further on the aspect of s. 124(3), the learned Departmental Representative completely failed to controvert the submissions and the case laws cited in our revised WS dt. 27th May, 2024, which are once again relied upon.

2. (Reply Para 2) With regard to the contention of the issuance of the impugned notice under s. 148 after 1st April, 2022 and hence the same was barred by limitation, it is solely an internal affair of the Department as to when the notice digitally signed on 30th March, 2022 is instantly entered and transmitted in the ITBA system. Also, the notice is instantly transmitted to the e-filing portal of the assessee under e-proceedings. However, when one looks upon the e-portal at the relevant place, there appears no date and time of uploading the impugned notice under s. 148 after digitally signing. In any case, the Hon'ble Allahabad High Court in the case of *Daujee Abhushan Bhandar (P) Ltd. vs. Union of India & Ors. (2022) 325 CTR (All) 659 : (2022) 212 DTR (All) 1 : (2022) 136 taxmann.com 246 (All)* (DC 23-35) has already considered same very contention but in that case the notice, having been sent on the registered e-mail id only on 6th April, 2021, was held time barred as limitation expired on 31st March, 2021, which is also a case here. Interestingly, the Departmental Representative also cited the same very decision. Hence, the repeated contention that the digitally signed notice entered in the computer resource outside the control of the

originator on Wednesday, 30th March, 2022 at 4:55 PM cannot be accepted. Consequently, the impugned notice firstly, was barred by limitation under s. 148 and secondly, no valid approval as required from the Principal Chief CIT/Director General of IT was not obtained. Hence, it was invalid.

3. (Reply para 4) The repeated allegation of non co-operation and not furnishing of evidences is completely contrary to the facts on record. The appellant being an NRI, for last several years was not able to manage his affairs and therefore, all evidences were filed before the DRP as evident from paper of index (PB 16) and the relevant documents were even referred to by the AO itself in the assessment order pursuant to the directions of the DRP who sent all those papers vide its directions under s. 144C(5) to the AO.

4. (Reply Para 5) As regards absence of DIN on the direction under s. 144C(5), the learned Departmental Representative has ignored that subsequent mentioning of DIN is not the solution. The fact is that on that direction order, DIN was mentioned manually and told to appellant vide separate letter. Precisely, such situation has been dealt in the case of *Ashoka Commercial Enterprise vs. Asstt. CIT (2023) 334 CTR (Bom) 757 : (2023) 229 DTR (Bom) 433* in Pr 18 (DC 127).

5. (Reply para 7) The learned Departmental Representative has very clearly misread the date of the notification as 29th March, 2023 as against the correct date of 29th March, 2022 (PB 104) and impugned notice was issued next day on 30th March, 2022 without complying with the said notification. There is no other adverse comment/argument raised by the learned Departmental Representative.

6. Thus, all the contentions raised by the learned Departmental Representative in the reply are of no substance, either on legal side or on facts and therefore, the appeal of the SAC, appellant deserves to be allowed on all counts.

The above submissions have been made based on the instructions and the information provided of/by the client."

The learned Authorised Representative of the assessee submitted that ITO, Ajmer has accepted the fact that the assessee is NRI and therefore, he himself transferred the case record. In support, the learned Authorised Representative of the assessee relied upon the PAN profile filed and copy of order-sheet entries filed by the learned Departmental Representative. As regards the issue and service of notice, the same is not correct. Notice was e-mailed on 13th April, 2022. So the notice issued is beyond three years' time and the approval of the Chief CIT is also not obtained.

12. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has taken almost in all 11 grounds of appeal challenging the finding of the lower authority on facts as well as on legal grounds. In ground Nos. 1 and 2 the assessee has challenged the validity of issue of notice and connected approval together with the jurisdiction of the learned AO who issued the notice to the assessee. Since this ground Nos. 1 and 2 goes into the root of all other grounds, the bench decided to deal that ground first.

12.1 The facts related to the disputes as cullied out from the record is that the assessee for the year under consideration has not filed any IT return. The Revenue was in possession of the information that the assessee had sold an immovable property for a sale consideration of Rs. 69,90,000. Since there was no ITR filed the transaction remained unverified. Accordingly, after recording the reasons for escapement of assessment, a notice under s. 148 of the Act was issued to the assessee on 30th March, 2022 with prior approval taken from the Principal CIT, Udaipur. That notice dt. 30th March, 2022 was served to the assessee on 13th April, 2022 through email and for that the assessee filed the copy of the mail issued by ITO, Ajmer. Since the assessee has taken the issue of jurisdiction as well as service of the notice, the learned Departmental Representative was upon request given time to seek comments on the legal issue raised by the assessee. The learned AO submitted a report/comment on the case vide his letter dt. 24th May, 2024 wherein the learned AO contended that the assessee was non-filer and his residential status was not known to the AO and the initial proceedings were carried out by the then AO on the basis of PAN Card details available with him. Thus, the learned AO did not controvert the fact that the assessee is NRI as per his PAN profile filed and has simply relied upon the fact that the learned AO did not know the status of the assessee and based on that aspect, he assumed jurisdiction. The learned AO also reported that the assessee was having the opportunity to challenge the jurisdiction within time-limit. He went on further that since the assessee

failed to do so, after completing the assessment proceedings, the assessee cannot take liberty to challenge the jurisdiction. As regards the service of notice, the learned AO submitted that "In this matter, limitation to issue notice under s. 148 of the Act was going to be expired on 31st March, 2022. Accordingly, notice was issued to the assessee through the ITBA system on 30th March, 2022 itself. In this regard, a copy of a system generated note sheet showing the chronological events of the assessment proceedings of this case are enclosed herewith. The entry dt. 30th March, 2022 appearing in the note sheet shows that notice under s. 148 of the Act was issued to the assessee on 30th March, 2022. As such, the minimum requirement to initiate the reassessment proceedings under s. 148 of the Act fulfils appropriately." The learned AO as regards the service of notice relied upon the decision of Hon'ble Allahabad High Court.

12.2 The assessee in the paper book filed submitted copy of pass port which was valid from 16th March, 2015 to 13th March, 2025 and place of issue is Dubai (APB-18), at p. 20 the details of old passport and place of issue shows Dubai. At p. 17 of the paper book the jurisdictional details of the assessee is filed it shows the "Circle (International Taxation), Jaipur. Thus, the learned AO while sending this report based on the submission has not controverted this aspect of the matter which establishes that the residential status of the assessee is undisputedly NRI as on the date of issue of notice under s. 148 of the Act. Thus, based on this evidence placed on record and the same being not controverted we are of the considered view that the assessee is non-resident as on the date of issue of notice under s. 148 of the Act. The bench further noted from order-sheet entry dt. 16th March, 2023 that Faceless Assessment Unit (FAU) requested through NaFAC to transfer out this case from them because the case is of non-resident individual or of a foreign company and can be assessed only at international charge. Thus, the contention raised by the assessee has already been observed by the FAU in the assessment proceeding when the case was transmitted from ITO, Ajmer to FAU. In the light of these facts we are of the considered view that the ITO, Ward-2(2), Ajmer has no jurisdiction when the notice under s. 148 was issued on 30th March, 2022. Therefore, the in order to sustain the validity of the reassessment, a reassessment notice is required to be issued by an AO having proper jurisdiction over the assessee to whom such notice has been issued. Based on the evidence placed on record and after giving sufficient time to the Revenue to rebut the contention based on the set of evidence placed on record, but Revenue could not demonstrate that when the notice issued on 30th March, 2022, ITO, Ward 2(2), Ajmer, has valid jurisdiction. In the light of this fact, we quash the order of the assessment and ground Nos. 1 and 2 raised by the assessee is allowed.

12.3 Ground Nos. 4, 5 and 6 are related to the merits of the case wherein the learned Authorised Representative of the assessee submitted before us that the Addl. evidence filed by the assessee has already been admitted by the learned DRP and learned AO did not consider even the original cost of the property sold for which all the evidence placed on record and the assessee has provided before the learned DRP that there is no income left to charge the tax by filing the computation of capital gain but the learned AO in the draft order taken one stand and after the direction of the learned DRP added the sum without considering the fact and without issuing any fresh show-cause notice. Thus, the order of the AO is perverse and required to be quashed.

12.4 Ground No. 3 relates to the DRP proceedings, ground No. 7 is general in nature, ground No. 8 relates to not mentioned of the DIN in DRP order, ground No. 9 relates to consider the assessment in faceless manner and ground No. 11 is charging of tax under s. 115BBE of the Act. Since we have allowed the appeal of the assessee on technical grounds, all these other grounds raised by the assessee become educative in nature.

In the result, the appeal of the assessee is allowed.