IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI

Before Sh. Kuldip Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1532/Del/2017 : Asstt. Year : 2009-10

Narendra Kumar Gill, C/o Shri N.K. Arora, Adv., 219, Civil Line South, Muzaffarnagar	Vs	Income Tax Officer, Ward-2(1), Muzaffarnagar
(APPELLANT)		**(RESPONDENT)**
PAN No. ACVPG8013G		

Assessee by : Sh. Prem Lata Bansal, Sr. Adv.
Revenue by : Ms. Rakhi Vimal, Sr. DR

Date of Hearing: 23.11.2020		Date of Pronouncement: 22.12.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the ld. CIT(A), Muzaffarnagar, dated 25.01.2017.

2. Following grounds have been raised by the assessee:

"1. That the learned CIT(A) has grossly erred both in law and on facts in upholding the reassessment proceedings and confirming the additions so made by the Ld. Assessing Officer by disallowing the capital gains as claimed by the assessee. The addition made therein has been made with preconceived notions and such impugned order is without jurisdiction, liable to be quashed, as such.

2. That the impugned order so passed by the learned CIT(A) is bad in law as it is devoid of the acknowledgment of the fact that no valid notice u/s 148 of the Act was issued to the assessee prior to culmination of the

reassessment proceedings and as such, the assessment so made is liable to be quashed.

2.1. That the learned CTT(A) has further erred both in law and on facts in upholding the validity of the notice u/s 148 of the Act when the said notice was issued to "Narendra Kumar Gill (HUF)'" having a different PAN, however, the assessment as frames was that of the "individual" bearing a different PAN as that mentioned on the notice u/s 148 of the Act.

2.2 The learned CIT(A) failed to quash the impugned order by overlooking that the learned Assessing Officer arbitrarily misused the powers given under the Act by further not providing the reasons recorded to the assessee bearing his PAN and thus, the learned Assessing Officer has grossly violated and misused the provisions of the statute and the assessment made thereto should be quashed, as such.

2.3 That the Learned CIT(A) has erred in law and on facts in invoking the provisions of Section 292B of the Act for rectifying the defects of the notice u/s 148 of the Act by wrongly interpreting the provisions and not considering the case laws assessee relied upon wherein the facts squarely covered assessee's ease.

3. That without prejudice to the above, the learned CIT(A) has further erred both in law and on facts in not taking into cognizance the provisions of section 55(2)(b)(i) wherein the valuation by an approved valuer is to be taken as "fair Market Value" for acquisition of property.

3.1. That the provision of section 55A(a) authorize the assessing officer to refer for valuation only when the value as claimed is less than its "fair market value". The provision prior to amendment on 01.07.2012 is relevant to assessment year 2009-10. Ld. Pr. CIT has erred in holding that amended provisions will apply on the assessments which are pending on the date of amendment and section 55A of the Act lays down the procedure and erred in holding that amended provisions are applicable on the assessment proceedings for year 2009-10 in spite of the amendment on 01.07.2012.

3.2. That the Learned CIT(A) has erred in law and on facts to held that reference is rightly made to DVO in provisions of section 55A without considering the words "is less than the fair market value" and erred in

considering the reference under section 55A(b) which clearly states that it will apply in any other case i.e. a case not covered by section 55A(a) of the Act.

3.3. That the Learned CIT(A) has without considering the provisions of section 55A has erred in approving the valuation report of DVO, which was not placed on records upto assessment and without considering the basis of valuation taken by DVO, who has applied the stamp valuation not the fair market value as on 01.04.1981. So the reference and consequential report of DVO is beyond the preview of section 55A.

3.4. That further the learned CIT(A) failed to appre4ciate the ratio laid down in ITO v Padarti Venkata Rama Chandra Rao [2016] 74 Taxmann.Com 195 in differentiating Cost of Acquisition u/s 55(2)(b) of the Act from "Fair Market Value".

4. That the Learned CIT(A) has erred on facts that stamp valuation as adopted for capital gain under section 50C is of "G.T. Road, Muzaffarnagar", while the fair market value is taken of "Rampuri, Muzaffarnagar", so the valuation is considered for the place which is not on "G.T. Road, Muzaffarnagar".

4.1. That the Learned CIT(A) has further erred by not appreciating that the value as taken by the assessee is based on valuation of report of Govt. Approved Valuer.

4.2. That the reference to the Valuation Officer can only be made when the learned assessing officer is of the opinion that the value as declared by the assessee is below the fair market value of the property. The reference of property which is located at "G.T. Road, Muzaffarnagar and commercial property" mentioning as the property situated in "Rampuri Mohalla, Muzaffarnagar" is borne out of mere suspicion and surmises.

4.3. That the learned CIT(A) has grossly erred both in law and on facts in relying on the DVO report believing that the same was on record, however, the assessment as framed by the learned Assessing Officer lacked the reliance on the same, as the impugned order was passed on 31.03.2015 and the report, a fact also affirmed by the learned CIT(A) was passed on 08.01.2016. The reliance on the4 same believing it to be brought on record is not only wrong but makes the impugned assessment as framed as void-ab-initio.

5. That the capital gain as computed by learned assessing officer is wrong and Learned CIT(A) has erred in re-computing the capital gain on the basis of valuation report of DVO, which amount to re-assessment, which is barred by limitation.

RELIEF CLAIMED:

It is therefore, prayed that the order of learned CIT(A) be held to be un-tenable and further, assessment under section 147/143(3) of the Act is without jurisdiction and also, additions made along with interest levied may kindly be deleted and appeal of the appellant be allowed."

Brief facts of the issue

3. The assessee was running a petrol pump in the name of "Modern Service Station" after constructing a building of 82 sq. mts. on the land measuring 689 sq. mts. (821 sq. yds.). The said land was sold vide sale deed dated 31.12.2008 reflecting the sale consideration of land of Rs.50 lacs out of which the share of the assessee was Rs.37,50,000/-. The AO determined that the stamp duty value of the property of Rs.1,93,93,650/- and made addition of Rs.1,40,33,973/- under the head "Long Term Capital Gain" after invoking the provisions of Section 50C r.w.s. 48 of the Income Tax Act, 1961.

4. Owing to the reason to believe, that the income of the assessee escaped assessment with regard to the capital gains arising out of the sale of immovable property namely "Modern Service Station" situated at Rampuri, Muzaffarnagar. The

Assessing Officer, ITO Ward-1(2), Muzaffarnagar issued notice u/s 148 of the Income Tax Act, 1961 on 18.03.2014.

5. Further, notices u/s 143(2) and 142(1) were issued and duly served on the assessee. On the dates of hearing fixed on 11.12.2014, 17.12.2014, 29.12.2014, 12.01.2015, 15.01.2015, 02.02.2015, 19.02.2015 and 03.03.2015 nobody attended. The assessee has not filed any return incompliance to the notice. Hence, an opportunity was given to the assessee vide notice u/s 144 of the Act dated 13.03.2015. Then, in compliance to the notice issued, the assessee filed the ITR on 16.03.2015 declaring an income of Rs.5,53,890/-. The assessee filed replies to the queries of the Assessing Officer on 19.03.2015 and on 20.03.2015. Finally, the assessment proceedings have been concluded on 31.03.2015 resulting in passing on an assessment order with the income determined of Rs.1,41,79,759/- which includes long term capital gain of Rs.1,40,33,973/- against the return income of Rs.5,53,890/- which was inclusive of the capital gain of Rs.4,08,107/- as determined by the assesse.

<u>Jurisdictional Issue – Notice u/s 148:</u>

6. The ld. AR argued eloquently and also has filed written submissions summing of the arguments alongwith the case laws

which have been duly perused in detail alongwith the paper book and record available before us. The crux of the arguments are as under:

1. The assessee is having PAN in two capacity one karta of HUF having PAN – AAAHN8408F and another in individual capacity having PAN – ACVPJ8013G.
2. The assessee received notice u/s 148 issued by ITO, Ward-1(2), Muzaffarnagar reflecting the PAN of the HUF of the assessee i.e. AAAHN8408F.
3. Thereafter, another notice dated 20.05.2014 was received by the assessee, issued by ITO Ward-1(2), Muzaffarnagar u/s 142(1) of the Act directing him to comply with the notice issued u/s 148.
4. Thereafter, another notice dated 05.01.2015 issued by ITO Ward-1(2), Muzaffarnagar u/s 142(1) was received by the assessee, directing him to furnish the details of income of family, purchase deed of property sold during FY 2008-09, details of movable and immovable properties held by the assessee or his family members as on 31.03.2009 and also the names of family members, their sources of income and copies of ITRs, if any. The

assessee replied to the queries on 19.03.2015 and 20.03.2015.

5. The assessee submitted that the land belongs to the assessee in his individual capacity and the same was sold in the individual capacity.
6. The assessee was served with the notice issued by the Assessing Officer u/s 144 reflecting PAN – ACVPG8013G, this PAN pertained to the assessee individual.
7. In order to avoid best judgement assessment, the assessee filed the return in his individual capacity on 16.03.2015 along with detailed reply.
8. During the proceeding, the assessee was also informed that reassessment proceeding was initiated on the basis of sale of land on 31.12.2008.
9. That the impugned order so passed by the Ld. CIT(A) is bad-in-law as it is devoid of the acknowledgment of the fact that no valid notice u/s 148 of the act was issued to the assessee prior to culmination of the re-assessment proceedings and as such, the assessment so made is liable to be quashed.
10. The Ld. CIT(A) has further erred both in law and on facts in upholding the validity of notice u/s 148 of the Act

when the said notice was issued to "Narendra Kumar Gill (HUF)" having a different PAN, however, the assessment as framed was that of the "individual" bearing a different PAN as that mentioned on the notice u/s 148 of the Act.

11. The Ld. CIT(A) failed to quash the impugned order by overlooking that the Ld. Assessing Officer arbitrarily misused the powers given under the Act by further not providing the reasons recorded to the assessee bearing his PAN and thus, the Ld. Assessing Officer has grossly violated and misused the provisions of the statute and the assessment made thereto should be quashed as such.
12. The Ld. CIT(A) has erred in law and on facts in invoking the provisions of section 292B of the Act for rectifying the defects of the notice u/s 148 of the Act by wrongly interpreting the provisions and not considering the case laws assessee relied upon wherein the facts squarely covered assessee's case.
13. The assessment order-dated 31.03.2015 framed by the Assessing xxxxxxxxxxxxx individual capacity is bad-in-law as no notice u/s 148 had been issued by the Assessing Officer to the assessee in his individual capacity.

14. The notice u/s 147 was issued by the Assessing Officer to the assessee in his HUF capacity as it reflected the PAN of assessee HUF as AAAHN8408F.
15. The notice u/s 147 of the Act clearly reflected that the Assessing Officer was requiring the return containing details of the person in respect of which assessee was assessable or whose income was chargeable to tax in the hands of assessee.
16. The notice-dated 05.01.2015 also reflected that the assessee was directed to file the details of income of his family.
17. The issuance of valid notice u/s 147 is a jurisdictional aspect and any defect therein is not curable. It is not an irregularity but an illegality.
18. A valid notice u/s 147 confers jurisdiction on the Assessing Officer to assess / reassess the income of assessee or the income of person in respect of which assessee is assessable, which has escaped assessment. In the present case, assessment is framed in individual capacity but no notice u/s 148 had been issued to the assessee in individual capacity.

19. It is an undisputed fact that notice u/s 148 reflected PAN of HUF, it was admitted even by the Assessing Officer in his remand report stating that PAN of HUF was wrongly mentioned.
20. The Assessing Officer has also tried to save the notice by stating in the remand report that notice u/s 142(1) dated 05.01.2015 had reflected that the assessee was required to make compliance of para (b) only which was right tick marked. Assessing Officer had crossed para (a) & (c). Thus, the Assessing Officer had allegedly not required the details of income of family but required details of income of the individual.
21. The Assessing Officer has also stated that in the office copy of the notice-dated 05.01.2015, "Parivaar" word has not been right tick marked whereas in the notice served upon the assessee, the said word "Parivaar" has been right tick marked. It is to be submitted that a wrong inference had been drawn by the CIT(A) that the assessee had tempered with the said notice- dated 05.01.2015. Such an observation is highly objectionable.
22. Even otherwise, without prejudice to above, it is submitted that the notice u/s 148 has to be validly

issued. If it is not so then the assessment framed in pursuance to such notice is a nullity. Even subsequent notices, issued u/s 142(1), though correct, do not confer jurisdiction on the Assessing Officer to assess / reassess the escaped income. It is a well established principle of law that even acquiescence does not confer jurisdiction on the Assessing Officer.

23. The Assessing Officer has taken support of section 292B & 292BB in the remand report; however the said sections are not applicable to the facts of the present case. Section 292B is quoted as under:

"292B - No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

24. Section 292B saves only those notices in which there is an inadvertent error or an apparent error. It saves those notices which in substance and effect issued according to the interest and purpose of the Act. In the present case, there is no inadvertent error in the notice issued by the Assessing Officer. It specifically reflects the PAN of HUF.

7. The ld. DR argued that having received information by the Assessing Officer that the assessee has sold immovable property namely Modern Service Station, the Assessing Officer has recorded the reasons to believe in the case of Shri Narendra Kumar Gill (Individual) for the instant assessment year and the same can be verified from the record. The Assessing Officer has issued notice validly and in the said notice it has been clearly mentioned that the status of the assessee as **"व्यष्टि"** meaning thereby the notice has been issued to "Individual" in English. Further, the assessment was also completed in the name of the assessee in his individual capacity. Also the notice u/s 142(1) of the Act dated 05.01.2015 issued by the AO to the assessee is meant to assess the assessee in individual capacity. It has been argued that the notice was meant for assessing Shri Narendra Kumar Gill and it is a fact on record that only the PAN number was mistakenly quoted. It was argued that paras in the notice

क, ग have been ticked off which proves that the notice was not issued to Shri Narendra Kumar Gill (HUF). It was also argued that in the notice issued u/s 148, the status of the assessee has been clearly mentioned as individual in the second para of the notice u/s 148. It was further argued that the assessee was fully aware that the notice has been issued to him in individual capacity and also filed the return of income on 16.03.2015 in his individual capacity. Having filed the return in his individual capacity which was assessed as individual, the contention of the assessee at this juncture, that the notice was issued to HUF was wrong on facts. It was argued that the ITR in the capacity of individual has been filed with PAN No. ACPBG8013G which has been duly assessed after going through the details filed by the assessee in his individual capacity in response to the notice issued. The office record also shows that no sign has been marked by the by the Assessing Officer which indicates परिवार की आय (i.e. HUF). Rather, it clearly mentions **"व्यष्टि"** means "Individual".

8. Heard the arguments of both the parties and perused the material available on record.

9. From the above discussion, the moot issue to be decided is whether mentioning the PAN of another entity mistakenly instead of the PAN of the assessee makes the notice issued u/s 148 invalid or not when the notice is addressed to Shri Narendra Kumar Gill and the body of the notice clearly reflects that the notice has been issued to the assessee in his individual capacity.

9.1 At this juncture, we hold that there is no need to dwell upon the issue of notice u/s 142 or the contents thereof, as the notice u/s 142(1) do not confer any jurisdiction to the Assessing Officer. Hence, taking cognizance of the notice u/s 142(1) or the contents of the notice will only deviate the main issue of invoking the jurisdiction.

10. We have perused the reasons recorded as to whom the escapement of income was attributed and also the notice issued by the AO. The reasons recorded by the AO on 14.03.2014 clearly mentions the name of the assessee as Shri Narendra Kumar Gill. There was no mention of HUF in the reasons. For the sake of ready reference, the scanned version of reasons recorded by the AO for issue of notice u/s 148 is reproduced below:

Reason for issuing Notice u/s 148 of the Income Tax Act, 1961

Sh. Narendra Kumr Gill
861, Mangal Bhawan, South Bhopa Road,
Muzaffarnagar,
A.Y. 2009-10

Dated: 14.03.2014

As per information available with the undersigned, the assessee has sold an immovable property in the joint name of 3 persons situated at Moh. Rampuri, Muzafarnagar area 689.70 sq. mtr. During the financial years A.y. 2008-09 at a sale consideration at Rs.50,00,000/- whereas stamp duty has been paid on circle rate at Rs.1,93,93,650/- which is the difference of consideration Rs.1,93,93,650 - Rs.50,00,000/- ÷ ½ = Rs.71,96,825/- taxable under the provisions of 50-C of the Income Tax Act, 1961. As per sale deed the share of the assessee is ½ share of the total property.

Therefore, I have the reason to believe that the assessee has income chargeable to tax of Rs.71,96,825/-. Therefore, it is necessary so issue notice u/s 148 of the Income Tax Act, 1961.

Yours faithfully,
Sd/-
(A.K. Rajak),
Income Tax Officer,
Ward-1(2), Muzaffarnagar

11. We have also perused the notice issued u/s 148. In the notice dated 18.03.2014, there has been a clear mention of the word **"व्यष्टि"** which means "Individual". For the sake of ready reference, the scanned version of notice u/s 148 is reproduced below: [Page no. 61 of the CIT(A)]

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Appeal No.78/15-16/MZR
Sh. Narendra Kumar Gill, MZR
AY 2009-10

ANNEXURE – 1

आयकर अधिनियम 1961 की धारा 148 के अधीन सूचना

Notice under Section 148 of the Income Tax Act, 1961

स्थायी लेखा सं०:
PAN: AAAHN 8408F

Office of the
Income Tax Officer,
Ward-1(2), Muzaffarnagar
Dated:- 18-03-2014

सेवा में,
To, Sh. Narendra Kumar Gill
861, Mangal Bhawan, Bhopa Road,
Muzaffarnagar

चूंकि मेरे पास ऐसा विश्वास करने का कारण है कि निर्धारण वर्ष ...2009-10... के लिए कर से प्रभार्य आपकी आय /................................की आय जिसके सम्बन्ध में आप कर आयकर निर्धारित किया जाना है, आयकर अधिनियम, 1961 की धारा 147 के आशय के अनुसार निर्धारण से छूट गई है।

Whereas I have reason to believe that your income/the income of ----------------in respect of which you are assessable chargeable to tax for the assessment year 200 - has escaped assessment within the meaning of Section 147 of Income Tax Act, 1961.

इसलिए मै उक्त निर्धारण वर्ष की आय का निर्धारण/पुनः निर्धारण/अवक्षयक मोक/पुनः संगणित करने का प्रस्ताव करता हूँ और इसके द्वारा अपेक्षा करता हूँ कि इस सूचना के तामील होने की तारीख से 30 दिनों के अन्दर उक्त निर्धारण वर्ष की निर्धारण योग्य अपनी आय/...[illegible]... की आय, जिनके सम्बन्ध में आयकर निर्धारण किया जाता है, की विवरणी निर्धारित फार्म में प्रस्तुत करें।

I, therefore, propose to assess/re-assess the income/re-compute loss/depreciation allowance for the said assessment year and I hereby require you to deliver to me within 30 days form the the date of service of this notice, a return in the prescribed form of your income/the income of --------------in respect of which you are assessable.

यह सूचना आयकर आयुक्त/अपर आयकर आयुक्त, मुजफ्फरनगर केन्द्रीय प्रत्यक्ष कर बोर्ड से आवश्यक समाधान प्राप्त करके जारी की गई है।

This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income-tax / Addl. Commissioner of Income Tax-------------------------the Central Board of Direct Taxes.

Seal/मोहर

(अधिकारी के हस्ताक्षर)
(Signature of Officer)
Name/नाम (A.K. RAJAK)
Income Tax Officer
Ward-1(2), Muzaffarnagar
Designation/पद

आयकर अधिनियम १९६१ की धारा १४७ के सूचना

Notice under Section 148 of the Income Tax Act, 1961

अस्थायी लेखा संख्या
PAN AAAHN8408F

Office of the
Income Tax Officer,
Ward-1(2), Muzaffarnagar
Dated: 18.03.2014

सेवा में,
To
Shri Narendra Kumar Gill,
861, Mangal Bhawan, Bhopa Road,
Muzaffarnagar

चूंकि मेरे पास ऐसा विश्बास करने का कारन ही की निर्धारण बर्ष 2009-10 के लिए कर से प्रमार्य आपकी आय /………………. की आय जिसके सम्बन्ध में आप कर आयकर निर्धारित किया जाना है, आयकर अधिनियम १९६१ की धारा १४७ के आशय के अनुसार निर्धारण से छूट गई है।

Whereas I have reason to believe that you income/the income of………….in respect of which you are assessable chargeable to tax for the assessment year 2009-10 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

*इसीलिए मै उक्त निर्धारण बर्ष की आय का निर्धारण/पुनः निवारण / आवश्यक मोक / पुनः संगणित करने का प्रस्ताव करता हूँ और इसके द्वारा अपेक्षा करता हूँ कि इस सूचना के तामिल होने की तारीख से ३० दिनों के अंदर उक्त निर्धारण योग्य अपनी आय / **व्यष्टि** की आय, जिनके सम्बन्ध में आयकर निर्ध□रण किय□ज□□है, की विवरणी निर्ध□रित फॉर्म में प्रस्तुत करें।*

I, therefore, propose to assess/re-assess the income/re-compute loss/depreciation allowance for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of you income/the income of………….in respect of which you are assessable.

यह सूचन□आयकर आयुक्त / अपर आयकर आयुक्त मुज़फ्फरनगर केंद्रीय प्रत्यक्ष कर बोर्ड से आवश्यक सम□□ प्र□त करके ज□री की गई है।
This notice is being issued after obtaining the necessary satisfaction of the Commission of Income Tax/ Addl. Commissioner of Income Tax…………the Central Board of Direct Taxes.

Sd/-
(Signature of Officer)
(A.K. Rajak)

12. We also find that only the PAN mentioned in the notice do not belong to the assessee.

13. We have also gone through the case laws relied by the ld. AR.

14. Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain IbrahimJi Mithiborvala (1971) 82 ITR 821 (SC): Refers to reopening of a wrong year. In that case the assessment for year 1949-50 has been reopened instead of assessment year 1948-49.

14.1 The issue in the instant case is different. Whereas in the instant case, the assessment was rightly reopened and rightly completed in the hands of the assessee for the correct year.

15. CIT Vs. K. Adinarayana Murty (1967) 65 ITR 607 (SC) held that under the scheme of the Income-tax Act the "Individual" and the 'Hindu undivided family' are treated as separate units of assessment and if a notice under s. 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu undivided family', the notice is illegal and ultra-vires and without jurisdiction. [391F-G] The Income-tax Officer was therefore justified in ignoring the first

notice under s. 34 of the Act and the return filed by the assessee in response to that notice and consequently the assessment made by the Income-tax Officer pursuant to the second notice was a valid assessment. [391H] In this case the Hon'ble Supreme Court reversed the judgment of the Hon'ble High Court wherein the Hon'ble High Court held that In reference, the High Court held that the first of the notices under s. 34 was not invalid in law and consequently the issue of the second notice was illegal and the assessment made in pursuance of it was illegal.

15.1 We have gone through above said judgment. In this case first notice was issued in the name of the "Individual" instead of "HUF" and the correct notice issued to the "HUF" is after a period of 8 years. Hence, the Hon'ble Court ruled that the second notice was invalid. Thus, the facts of this case are different set of facts, hence not applicable.

16. CIT vs Ram Das Deokinandan Prasad (HUF) (2005) 277 ITR 17 (ALL): The learned counsel for the Revenue has not advanced any argument that the finding of the Tribunal that notice under Section 148 of the Act was meant for the Karta of the HUF and not in his individual capacity. The only point urged

by the learned counsel for the Revenue was that since the assessee has filed a return of HUF and the income sought to be reassessed was of HUF, the proceedings are valid, notwithstanding the fact that the notice was issued to the assessee in his individual capacity. Moreover, the finding of the Tribunal that the notice under Section 148 of the Act did not disclose that it was issued to reassess the escaped income of the HUF, is a finding of fact. In the statement of the case, the Tribunal has mentioned that it is annexing the copies of the notices issued under Section 148 of the Act. But, the copies of those notices have not been annexed along with the statement of the case, sent by the Tribunal. Nor they have been included in the paper book filed by the Department. In this state of affairs, this Court proceeded to adjudicate the referred two questions in the light of the findings of fact recorded by the Tribunal, taking them to be correct. Both the counsel advanced the arguments only on the question as to whether the notice issued to an assessee in his individual capacity can be treated to be a valid notice to reassess the income of HUF of which he is a Karta.

16.1 In the above case, the notice was issued to the individual and assessment was completed in the case of HUF. However, in the instant case, the notice was issued to the individual, it was mentioned in the notice specifically that it is for the individual and assessment was also completed in the case of individual.

17. Madan Lal Aggarwal vs CIT (1983) 13 Taxmann 120 (ALL): We are, therefore, of opinion that the notice under Section 34 issued to Sri Madan Lal Agarwal on 29th September, 1962, was vague and as such invalid. The vagueness of the said notice did not stand cured because the ITO at a later stage informed the assessee that he was to file his return in the status of HUF. The proceedings following such a vague and invalid notice also stand vitiated. In this view of the matter, it is not necessary for us to go into the various other grounds raised by the learned counsel for the assessee for questioning the validity of the proceedings under Section 147(a) of the I.T. Act, 1961.

17.1 While the above judgment clearly deals with the vagueness, in the case before us, the notice rather specifically mentioned that it is meant for "individual" – "**व्यष्टि**".

18. P.N. Sasikumar and Others vs CIT (1987) 170 ITR 80 (Ker): In this case, the dispute is whether the notice has to be served on the AOP or an individual when the assessment was meant to be made in the hands of the AOP. The facts are not applicable to the instant case.

19. Dnyaneshwar Govind Kalbhor (HUF) vs ACIT (2016) 74 Taxmann.com 67 (Pune-Trib): In this case, "the PAN Number appearing in the Notice under section 148 pertains to individual (Karta) and not the Noticee HUF. He next contended that a bare perusal of recorded reasons under section 148(2) would show that the reasons have been recorded in the name of Individual i.e. 'Shri Dnyaneshwar Govind Kalbhor' whereas the assessment is framed in the hands of HUF and not the Individual". In this case, the notice issued to entity 'X' and assessment was made in the case of entity 'Y', hence these facts are not applicable to the instant case before us.

19.1 In the case before us, the land has been sold by the assessee, the satisfaction has been recorded by the AO in the case of the assessee, the notice has been issued in the case of the assessee, the notice has been addressed and served on the assessee, the notice clearly mentioned that the assessment is

being made in his 'Individual' (**"व्यष्टि")** capacity. There was no mention of HUF either in the satisfaction recorded nor in the body of the notice that has been issued.

20. As established by this time, the action u/s 147 imposes certain obligations and amounts to disturbing the settled position of the assessee. No doubt, such action has certain civil consequences implicit in it and it imparts jurisdiction to the Assessing officer to reopen a completed or a time barred assessment and thus seeks to disturb an assessment which has otherwise reached finality. Section 147, thus cannot be invoked lightly or without application of mind and without reasonable satisfaction of the Assessing officer and without meeting the time limits set out in the provisions of Section 147 as is a substantive provision and imparts jurisdiction. A jurisdictional defect cannot be ascribed to be a mere technical defect and thus cannot be condoned by invoking section 292B of the Act. There is a marked distinction between want of basic and inherent jurisdiction and irregular exercise of jurisdiction. Defect on irregular exercise of jurisdiction alone can possibly be cured by taking shelter of section 292B. In the instant case, on going through the record, it can be said that the Assessing Officer invoked the provisions which can be considered judicious in invoking the jurisdiction. The reasons have been recorded rightly after going through the information and the notice has been rightly issued. When we try to look into the jurisdictional defect, we

don't find there is any jurisdictional defect by the assessee by the way of assuming of jurisdiction or recording of satisfaction or issue of notice or specifying very clearly to whom the assessment is proposed. The wrong mention of PAN may utmost taken as a mistake but not a defect. There is no defect in exercise of jurisdiction only there is a mistake of typing a wrong PAN. When we examine whether this incorrect mention of PAN can make the entire notice invalid, we are guided by the entire facts and circumstances of the case. We are not persuaded by the arguments of the representative of the assessee to read "HUF" in the notice when the notice mentions clearly about the "individual" (**"व्यष्टि").** In the printed notice, the word **"व्यष्टि"** has been specifically mentioned in the handwriting by the AO indicates clear application of the mind of the Assessing Officer while issuing the notice. We cannot read into HUF when **"व्यष्टि"** is written on the notice. The reasons recorded were not of HUF but of the assessee in "individual" capacity. Neither the word "HUF" nor the PAN of "HUF" mentioned in the reasons record, hence we cannot assume something which is not on record.

21. In Sardar Harbindersingh Sehgal v CIT, (227 ITR 512 Gau), the Hon'ble Court held that the notice to be valid in view of section 292-B of the Act as it conformed to the substance of the Act and was to effectuate

the purpose of the Act. Further it was held that defects or omissions, if any, in the notice did not cause any prejudice to the petitioners. The court went on to state that it can assume jurisdiction only when the notice on the face of it is illegal and that the court must not adopted a hypertechnical approach to quash a notice because it does not conform to all the niceties expected by an assessee in such a notice. The court has to adopt a broad and pragmatic view in construing such a notice in order to find out whether in substance and effect it is in conformity with or according to the intent and purpose of the Act. An inconsequential technicality must not be allowed to defeat justice.

22. The provisions of Section 292B reads as under:

> *"292B - No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid* ***merely*** *by reason of any* ***mistake****, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is* ***in substance and effect in conformity with or according to the intent and purpose of this Act."***

23. A careful reading of the Section point towards the benefit envisaged to all the stakeholders whether it is the citizen or the state. In our case, the assessee as well as the revenue. Even, the revenue is precluded from treating the "return of income" filed by the assessee as null and void in cases where there has

been a mistake, defect or omission in such return of income. The mistakes in the return such as wrong quoting of the Section or provision pertaining deduction, exemption or wrong filing of the column or wrong typing of PAN or address are not to be treated as fatal to make a valid return invalid. Section 292B has been invoked to benefit the assesses where the returns have been filed in correct jurisdiction. In the case of Nicholas Applegate South East Asia Fund Ltd. Vs ADIT, the Co-ordinate Bench of ITAT held that the question of application of Section 292B cannot be prejudged by finding that return, notice, etc. is not as per the requirement of the statute and is/are invalid; the finding that the return or notice etc. is invalid or to what extent it is invalid is unnecessary and counterproductive; if in substance and in effect return, notice or assessment is in conformity with or according to intent and purpose of the Act, the mistake defect or omission is to be ignored as per the underlining philosophy of Section 292B. There is a marked difference between want of basic or inherent jurisdiction and exercise of authority which has not been vested with the Assessing Officer. In the instant case, the Assessing Officer has rightly invoked the provisions of Section 148 by recording the reasons and by issue of notice to the proper person to which it

was intended to. The Co-ordinate Bench of the Tribunal in ITA No. 3875/Mum/2005 in the case of NASE Asia Fund Ltd. held that "10. On a plain reading of this section, it is observed that the return of income, etc., shall not be considered as invalid merely by ·defect or omission in such return if it is in substance and effect in conformity with the intent and purpose of this Act. The rationale behind this section is that the return of income, assessment notice, summons or other proceedings should not be 'held to be invalid due to technical mistakes, which otherwise do not have much impact touching its legality provided such return, assessment notice, summons or other proceedings, etc., are otherwise in conformity with the purpose of the Act. The 'purpose of the Act is to charge income tax on the total income of the assessee. This 'purpose' is best fulfilled if the correct income is determined and tax is charged thereon. It involves the making of assessment by the AO in which the particulars at income as furnished by the assessee are scrutinized for determining the correct total income. There may be a case in which the assessee has intentionally or unintentionally claimed wrong deductions or exemptions etc., to which he is not entitled. In that case the AO makes the disallowances as per law. Still in another situation the assessee may have stated the

correct income and no disallowance etc. are required. The 'purpose of the Act' is achieved when the correct total income is determined either by way of making adjustments by the Assessing Officer and enhancing the stated income to the correct income or by the assessee himself by furnishing the correct particulars of income, not warranting any enhancement by the AO. It, therefore, transpires that if a return has been furnished by the assessee which is otherwise in substance and effect in conformity with or according to the intent and purpose of this Act, then any technical defect in it would not render it to be invalid. In such a situation the provisions of section 292B would come to the rescue of the assessee and thus debar the revenue authorities from declaring such return to be invalid".

24. Similarly, when the proceeding (issue of notice in this case) is in substance and effect in conformity with or according to the intent and purpose of the Act, the action of the AO cannot be faulted with. Section 292B meant to save only those notices in which there is in advertent error. Its saves those notices which in substance and effect issued according to the interest and purpose of the Act. In the present case, there is an in advertent error in the notice issued by the AO reflecting only the PAN column of the notice mentions PAN of the "HUF" instead

of the 'individual' whereas the body of the notice and the address shows that the notice is clearly meant for the assessee himself. The provisions of Section 292B have been further clarified the Circular No. 179 of CBDT dated 30.09.1975 that this provision has been made to provide against purely technical objects without substance coming in the way of validity of the assessment proceedings. In the case of CIT Vs Masonellan India Ltd. 245 ITR 568 (Ker.), the Hon'ble Court held that Section 292B can be invoked if the action was in substance and in effect in conformity with the intent and purpose of the Act. The entire proposition arises from the established *juris prudence* that substance over form is the underlying philosophy of Section 292B. If in substance and in effect the notice is in conformity and with or according to the intent and purpose of the Income Tax Act, the mistake is to be ignored. Quoting a wrong PAN in the presence of numerous evidences to prove the intent and the purpose is a subject matter of Section 292B in the instant case. If the significance of word "substance" and "effect" is kept in mind then there is no justification to treat the notice as in valid. In the case of Shrish M. Dalvi 287 ITR 242 (Mum), the Hon'ble Court observed that as long as the defect or mistake has not caused prejudice to the assessee, the mistake was

protected under the umbrella of Section 292B of the Act. The procedural provision has to be examined from the stand point of substantial complaints. Where such violation has occasioned prejudice to the assessee then only the assessee is protected from the rigors of wrong exercise of jurisdiction. As long as, no prejudice is occasioned to the assessee, as in this case the notice issued is protected by the provisions of Section 292B.

25. We are not certainly supporting or holding that a notice issued to Shri XXXXX "HUF" or Shri XXXXX "Karta" or Shri XXXXX "Karta HUF" is a valid notice when the assessment proceedings are meant for Shri XXXXX "individual". In the instant case, the notice has been addressed to "Shri Narendra Kumar Gill" and also mentioned the word **"व्यष्टि"** which makes it more clear and explicit to whom the notice is aimed at. It is the assessee whether individual, HUF, company, firm, AOP which owns the PAN. When the issue of primacy of the assessee over the PAN or primacy of the PAN over the assessee is to be considered, it is certainly the assessee (individual, HUF, company, firm, AOP) takes precedence.

26. Thus, on going through the provisions of the Act, judgments of the various Courts, the reasons recorded, the

address on the notice, the body of the notice issue of notice, we hold that the notice of the Assessing Officer wherein there is a mistake only in the PAN number, the notice is covered by the provisions of Section 292B.

<u>The issue of Valuation</u>:

27. Before the AO, the assessee furnished purchase deed of the property which was purchased by his father Shri Bui Chand on 03.07.1969 alongwith other co-owners, his father Shri Mangai Singh, mother Smt Giriraj Kaur and brother Shri Om Prakash. Meanwhile Shri Mangai Singh expired and his share devolved on his son Shri Bui Chand and Shri Om Prakash. Vide Hibenama (Gift Deed) dated 10.06.1974, Shri Om Prakash gifted his share in land to his brother Shri Bui Chand. Shri Bui Chand expired on 08.08.1972 and the assessee - Narendra Kumar Gill inherited the assets of his father Shri Bui Chand including the land in question. Thus assessee owned 75% of the land measuring 689.70 sq mtr (825 sq yd). On this land, assessee was running a petrol pump in the name of Modern Service Station after constructing a building on 82 sq mtr of land. The assessee furnished a sale deed dated 31.12.2008 reflecting the sale of land at a consideration of Rs.50,00,000/-, share of the

assessee being 37,50,000/- though the building of petrol pump and the machinery thereon was not sold by the assessee. The assessee also explained that the property was mortgaged with the bank and therefore, it was a distress sale. Since as a consequence of sale, loss was incurred by the assessee the same was not reflected in the return filed originally.

28. During the assessment proceeding, ITO Ward-1 (2), Muzaffarnagar sought the information regarding commercial rate of the property from Tehsildar Sadar Muzaffarnagar, who vide letter-dated 02.02.2015 stated that in the year 1981, rate of the commercial property were not available though the rate of property situated in Ram Puri Labdawala was Rs.2000-3000 per sq yd. Tehsildar has also stated that on local inquiry it was informed that the market rate of the aforesaid area was approx 72,000 to 73,000 per sq. yd. Before the Assessing Officer, assessee had furnished valuation report of the registered valuer, reflecting the value of property at Rs.32,39,000/- as on 01.04.1981, share of the assessee was 24,29,060/-. Registered valuer had taken the value of property at Rs.3,600/- per sq. mtr. on the basis of report of Tehsildar. The assessee also furnished the rate list of various period to stress the point that at all points of time, the value of commercial property and

residential property was different. Since for the purposes of sale consideration, rate of commercial property was adopted therefore for the purposes of cost of acquisition also commercial rate was to be adopted.

29. The Assessing Officer was not convinced with the valuation claimed by the assessee sought the information from ADM Finance who stated the rate of the property at Rs.100/- per sq. yd. as on 01.04.1981. Accordingly, Assessing Officer took the sale consideration at the circle rate which was Rs.24,500/- per sq mtr at the relevant time and calculated the capital gain as under:-

Full value of consideration:

24,500 x 689.70 sq mtr = 1,93,93,650/-

Less : value of machinery = 2,00,000/-

Net amount = 1,91,93,650/-

Cost of acquisition:

Rs.120 per sq mtr x 689.70 sq mtr = Rs.82,764

Indexed cost of land = 82764x582/100 Rs.4,81,686/-

Long term capital gain Rs.1,87,11,964/-

Share of assessee (75%) Rs.1,40,33,973/-

Accordingly, Assessing Officer made the addition of capital gain of Rs.1,40,33,973/- to the income of assessee.

30. Against this order, the assessee filed an appeal before the ld. CIT(A). On merits, the assessee challenged the valuation of land as on 01.04.1981 taken by the Assessing Officer at Rs.120/- per sq mtr claiming that the said valuation pertained to Rampuri which was a residential area whereas land in question was situated on GT Road, Roorkee Road, Muzaffarnagar which was a commercial property.

31. During the proceeding, CIT(A) received the valuation made by the DVO (reference was made by the Assessing Officer during the assessment proceeding) who had adopted the value of land at Rs.167.50 sq mtr (Rs.120/- per sq mtr + 20% on account of location being corner plot + 20% being commercial property).

32. The ld. CIT (A) directed the Assessing Officer to adopt the valuation as made by the DVO. He directed to take sale consideration at Rs.24,500/- per sq. mtr. as per stamp duty valuation and to take cost of acquisition as on 01.04.1981 at Rs.167.50 per sq mtr as taken by DVO and to compute the capital gain accordingly. The report of the DVO has been

received during the proceedings before the ld. CIT(A), while the reference has been made during the assessment proceedings.

33. The crux of the issue are as under:

1.	Area of the property	689.70 sq.mt.
2.	Constructed area of the property	82 sq.mt.
3.	Sale price of the property	Rs.50,00,000
4.	Stamp duty value of the land	Rs.1,68,97,650
5.	Value of the machinery and construction	Rs.24,96,000
6.	Stamp duty value of the property (land and construction)	Rs.1,93,93,650
7.	Stamp duty value of the land	Rs.24,500/sq.mt.
7.	Cost of acquisition as per AO (as per ADM Finance)-1981	Rs.120/sq.mt.
8.	Cost of acquisition as per CIT(A) (as per DVO report)-1981	Rs.167/sq.mt.
9.	Cost of acquisition as per the assessee (as per RV report)-1981	Rs.3600/sq.mt.

34. Before us during the hearing, at the outset, the ld. AR objected to the reference made to the valuation officer by the assessing authority.

35. The arguments of the ld. DR are as under:

"1. The Ld. CIT(A) has taken into cognizance the provisions of section 55(2)(b)(i) wherein the valuation by an approved valuer is to be taken as "Fair Market Value" for acquisition of property.

1.1 The provisions of section 55A(a) authorize the Assessing Officer to refer for valuation only when the value

as claimed is less than its "Fair Market Value". The provision prior to amendment on 01.07.2012 is relevant to AY 2009-10. Authorities erred in holding that amended provisions will apply on the assessment which are pending on the date of amendment and section 55A of the Act lays down the procedure and erred in holding that amended provisions are applicable on the assessment proceedings for year 2009-10 in spite of amendment on 01.07.2012.

2 The Ld. CIT(A) wrongly held that reference is rightly made to DVO in provisions of section 55A without considering the words "is less than the fair market value" and erred in considering the reference under section 55A(b) which clearly states that it will apply in any other case i.e. a case not covered by section 55A(a) of the Act.

3 That the Ld. CIT(A) has without considering the provisions of section 55A has erred in approving the valuation report of DVO, which was not placed on records upto assessment and without considering the basis of valuation taken.

4. Reiterating the submissions made before the ld. CIT (A), the ld. AR has argued that the reference to the Valuation Officer u/s 55A cannot be resorted to when the value claim is more than the fair market value. The ld. AR argued that the

provisions that have come into force w.e.f. 01.07.2012 cannot be applied to the case of the assessee pertaining to the assessment year 2009-10.

5. There was difference in the description of the property as situated at GT Road, Muzaffarnagar and commercial property which was wrongly mentioned as Rampuri Mohalla, Muzaffarnagar. The valuation of the prices at Rampuri and GT Road varies to a great extent.

6. The ld. AR relied on the judgments in the case of CIT Vs Manjulaben M. Unadkat (2015) 55 Taxmann 62 (Guj.), Mr. Anjali Bharat Kabra Vs ITO, Ward-2(2), Jalgaon (2016) 75 Taxmann 5 (Pune-Trib.), CIT Vs Puja Prints (2014) 224 Taxmann 22/360 (Bom.)."

36. The ld. DR relied on the orders of the authorities below which have been duly perused.

37. Heard the arguments of both the parties and perused the material available on record.

38. We deal first with the argument relating to invoking the jurisdiction by the AO u/s 55A.

39. The provisions of Section 55A before 01.07.2012 reads as under:

> *"55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—*
>
> *(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is* ***less than its fair market value****;*
>
> *(b) in any other case, if the Assessing Officer is of opinion—*
>
> *(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or*
>
> *(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,*
>
> *and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*
>
> *Explanation.—In this section, "Valuation Officer" has the same meaning, as in clause (r) of section 2 of the Wealth-Tax Act, 1957 (27 of 1957)."*

40. The amended provisions of Section 55A which came into force w.e.f. 01.07.2012 read as under:

> *"55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—*

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed ***[is at variance with its fair market value];***

(b) in any other case, if the Assessing Officer is of opinion—

(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

41. The major difference being the change of words **"less than its fair market value"** to "***is at variance with its fair market value".***

42. We have examined the explanatory note to the Finance Act, 2012. Clause 20 of the Bill seeks to amend section 55A of the Income-tax Act relating to reference to valuation officer. The existing provisions contained in clause (a) of the aforesaid section 55A provide that an Assessing Officer with a view to ascertain the fair market value of a capital asset may refer the valuation of a capital asset to a Valuation Officer where, in his opinion the value of the asset as claimed by the assessee is less than its fair market value. It is proposed to amend the aforesaid clause so as to provide that reference may be made to the Valuation Officer for ascertaining the fair market value of a capital asset in case such

value is at variance with its fair market value instead of making a reference only when such value is less than its fair market value. This amendment will take effect from 1st July, 2012.

43. Reference to a Valuation Officer [Section 55A]: In a case where the capital asset became the property of the tax payer (or of the previous owner) before 1st April, 1981, the tax payer has the option of substituting the cost of acquisition with the fair market value of the asset as on 1st April, 1981. Higher the fair market value adopted by the tax payer as cost, the lower would be his capital gains on sale. As per present provisions of the Income-tax Act, the Assessing Officer could not refer this valuation to a Valuation Officer, even if he was of the opinion that the value claimed by the tax payer is higher than the fair market value, due to the specific wording of the relevant provision. It is proposed to change the wording so that if the Assessing Officer is of the opinion that the value taken by the tax payer is higher than the fair market value of the asset as on 1st April 1981, then he can make a reference to the Valuation Officer. The valuation officer would then determine the fair market value of the property as on 1.4.1981. This amendment is applicable with effect from 1st July, 2012.

44. We have also examined whether the amendment brought w.e.f. 01.07.2012 is clarificatory or procedural or substantive or

ratificatory or declaratory or retrospective or prospective. On going through the explanatory note to the Finance Bill 2012, we find that the amendment is substantive in nature and is prospective. The amendment is applicable to all the proceedings taken up after 01.07.2012. In the case of Dove Investments Pvt. Ltd. Vs Gujarat Industrial Investment Corporation (2006) 129 Comp Cases 929 (SC), the Hon'ble Apex Court has observed that regard must be had to the context, the subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid down in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get the real intention of the Legislature by carefully analyzing the whole scope of the statute or section or phrase under consideration. In the instant case, the notice has been issued on 18.03.2014 and the proceedings have been concluded on 31.03.2015. Hence, the invoking of provisions of Section 55A existing from 01.07.2012 by the Assessing Officer and reference to the Valuation Officer which is in accordance with the provisions of the Act inforce at that time, cannot be faulted with.

Objection to the Valuation Process:

45. Before us, the ld. AR has taken objections to the process of valuation on the grounds that the area of GT Road and Rampuri Mohalla are different. The property is situated at Roorkee Road, Muzaffarnagar between hospital to Roorkee Chungi. The ld. AR argued that the Assessing Officer has no reason to refer the property for valuation at the first instance. Further, it was argued that the registered valuer has determined the value as on 01.04.1981 @ Rs.3,600. The Tahsildar Sadar has replied that the rates range from Rs.2000-3000 per sq. yd. whereas the AO has taken Rs.120/- per sq. yd. based on the report of the ADM Finance and the ld. CIT(A) has determined the price @ Rs.167.50 per sq. mtr. based on the report of the DVO. It was argued that the reference itself is illegal and the valuation process is faulty.

46. The ld. DR relied on the orders of the authorities below.

47. Heard the arguments of both the parties and perused the material available on record.

48. In the preceding paragraph, we have already held that the Assessing Officer has rightly invoked the provisions of Section

55A. To ascertain the value of the capital asset during the assessment proceedings, the authorities need to determine the value by making reference to the Valuation Officer for ascertaining the correct value. The Assessing Officer has to primarily examine the report given by the assessee by the way of registered valuer and come to a satisfaction whether a further reference is required or not. In the instant case, we find that the AO has obtained circle rates notified by State Government as provided by the ADM Finance and after going through the difference in the values determined by the registered valuer and the circle rates, the AO had come to conclusion to refer the property to DVO. The grounds on which the opinion of the AO is based are reflected at column 14 of the reference letter by the AO to the DVO. Thus, the AO had fulfilled the primary condition of satisfying himself for reference to the DVO. From the record, we find that the property was known as Plot No. 3, Mohalla Rampuri, Roorkee Road, Muzaffarnagar and the same has been inspected by the Valuation Officer, Meerut on 07.10.2015 and the report has been finalized on 15.12.2015. Hence, there is no dispute about the property in question that is to be valued. The DVO has in his report mentioned that the property is at Mohalla Rampuri,

Roorkee Road, Muzaffarnagar and determined the FMV of the land @ Rs.100/- per sq. mtr. and adjusted with construction and determined an amount of Rs.167.50 per sq. mtr.

49. Hence, the point of adjudication narrows down to the question if the value as determined by the registered valuer is correct or the value determined by the DVO is correct.

50. The registered valuer and the Valuation Officer both perform the same task one in a private capacity and the other is appointed by the department. Both authorities have to prepare the reports based on the circle rate, construction parameters, location, cost of materials and other established norms.

51. We find that the DVO has taken Rs.100 per sq. mtr. based on the notified land rates for Mohalla Rampuri, Roorkee Road, Muzaffarnagar which is the place of situs of the property and after considering the construction, the DVO has determined the value @ Rs.167.50 per sq. mtr. The assessee contended that the deduction @7.5% is not justified as the construction work was carried through the contractor. Similarly, the assessee has disputed the civil work and the cost of structure. The assessee has also disputed and sought extra amount for height @Rs.125 for 0.30 Mt.Ht. The assessee submitted that when the plot was

purchased it was a very low lying area and to built the service station and petrol pump earth filling was required for which no benefit has been given by the DVO. Similarly, it was contended that as there is low out flow of water because of the service station where washing of vehicles takes place and a front nala was required to be constructed. No benefit has been given for the cost of construction of the boundary wall. Similarly, the tube well room of Ht. 3.35 Mt., Size: 11.15 Smt. has been constructed and the benefit of the basic rates has been denied. It was argued that the land rates segment has not been properly applied.

52. We have gone through the valuation report in detail and the objection of the assessee. Further, we have also gone through the reports of Tahsildar Sadar, ADM Finance regarding the circle rates. While the report of the DVO is based on the prices given as per the circle rates notified by the ADM Finance, the value determined by the registered valuer was based on the report of the Tahsildar which was based on the local enquiries. There has been a dispute as to which segment price of Rampuri Mohalla has to be taken into consideration. The benefit of construction has not been adequately allowed.

53. Hence, keeping in view the entire facts of the case, we hold that the ends of the justice would well served by referring the matter back to the file of the AO to accord further benefit to the construction of nala, boundary wall, tube well, earth filling work and to determine the price taking into consideration the value of Mohalla Rampuri segment.

54. Before parting, we would like to keep on record, our appreciations to Ms. Premlata Bansal, Sr. Adv. and Ms. Rakhi Vimal, Sr. DR for their powerful, persuasive arguments.

55. In the result, the appeal of the assessee on the grounds of reopening and reference to Valuation Officer is dismissed. The process and method of determining the FMV is set aside with directions.

Order Pronounced in the Open Court on 22/12/2020.

Sd/-
(Kuldip Singh)
Judicial Member

Sd/-
(Dr.B.R.R.Kumar)
Accountant Member

Dated: 22/12/2020
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR