

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

आयकर अपील सं./ITA No. 461/JP/2018
निर्धारण वर्ष / Assessment Year :2010-11

Smt. Gyatri Sharma, B-8, Vivekanand Puram, Matunda Road, Bundi.	बनाम Vs.	ITO, Ward-Bundi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABHPA 4265 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Shravan Kumar Gupta (Adv)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/10/2020
उदघोषणा की तारीख / Date of Pronouncement : 21/12/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Kota dated 15/01/2018 for the A.Y. 2010-11 wherein the assessee has raised following grounds of appeal:

- “1.1 *The impugned order u/s 147/144 dated 16.03.2016 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.*
- 1.2 *The action taken u/s 147 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.*
2. *The Id. AO has grossly erred in law as well as on the facts of the case in passing the ex parte assessment order, without providing the adequate and reasonable*

opportunity of being heard in gross breach of law. Hence the order so passed may kindly be quashed and the additions so may kindly be deleted in full.

3. *Rs.16,49,210/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.16,49,210/- on account of Long term capital gain on sale of residential agriculture land by not accepting the land development expenses/cost and other reasons. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence same may kindly be deleted in full.*
4. *Rs.1,67,125/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the addition of Rs.1,67,125/- on account of alleged excess sale consideration received on sale of land as against actual sale consideration. Hence the addition so made by the AO and confirmed by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence same may kindly be deleted in full.*
5. *Rs. 10,97,040/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in not allowing the deduction of Rs.10,97040/- u/s 54F on the purchase of new assets for which the assessee is entitled. Hence the deduction so denied by the AO and Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the addition may kindly be directed to allow the same.*
6. *Rs.1,02,000/- : The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the disallowance of Rs.52,000/- on account of Brokerage paid and enhancing the same to the tune of Rs.1,02,000/- which was disallowed by the Id. AO at Rs.52,000/- , without giving any show cause notice as per Sec. 251(2). Hence the income so enhanced by the Id. CIT(A) is being totally contrary to the provisions of*

law and facts on the record and hence the same may kindly be deleted in full.

7. *The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A B&C. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.*
8. *The appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”*

The assessee has also raised additional ground of appeal, which are reproduced below:

“Add. GOA 1 : *Further alternatively and without prejudice to the GOA-3, if the entire or part addition out of addition of Rs.16,49,204/- is sustained, then Id. AO may kindly be directed to allow the deduction of Rs.25,27,142/- u/s 54F shown in the return and actually incurred, in place of Rs.10,97,040/- claimed being the remaining deduction after claiming deduction u/s 54B and AO may verify the claim by its process and the Id. AO and CIT(A) both have grossly erred in not doing so. Hence the same may kindly be directed and delete the addition to that extent.*

Add. GOA-2 : *The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming in enhancing the addition of Rs.1,40,000/- on account of brokerage or commission paid on purchase of property and reduced the claim from Rs. 17,07,290/- to Rs.15,67,290/- u/s 54B, without giving any show cause notice as per Sec. 251 (2). Hence the income so enhanced or claim so reduced by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.*

We have submit that these grounds of appeal are being legal issue and also clearly arose from the order of AO and CIT(A) and in the return of income and having directly linked up with other grounds of appeal before your honor

Therefore your honor are humbly requested to kindly admit the above additional grounds of appeal as above in the interest of natural justice and oblige.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. Brief facts of the case are that the assessee is not a regular income tax assessee. In this case the AO has issued the notice u/s 148 of the Income Tax Act, 1961 (in short, the Act) on dated 01.05.2014 and the same was received by the assessee on 16.09.2015. The AO has issued the notice u/s 148 of the Act on the reason that "As per AIR/CIB Information during the F.Y 2009-10 the assessee has sold immovable property of Rs.30.00 lakh or more. As per office record the assessee has not filed his return of income for the A.Y. 2010-11. Therefore the A.O. has reason to believe that income of Rs.68,32,875/- has escaped assessment. In response to the notice, the assessee has filed the return of income declaring the total income of Rs.1,17,650/- on 06.01.2016. The AO has observed that the assessee has sold 8.22 Hectare Nahari Agriculture land situated at Mangrole Bundi for Rs.68,00,000/- on dated 22.04.2009 to Smt. Rajbala and Sub Registrar has valued the same at Rs.68,32,875/- u/s 5 of

the Act. Which allegedly comes in the Municipal limit of Mangrole. The A.O. has also observed that the assessee has shown land development expenses of Rs.12,52,560/- incurred in the year 2004-05 and after indexation Rs.16,49,204/-. During the course of assessment proceedings, the AO asked to produce the complete evidences of land development expenses. In response thereto the assessee has filed the reply by stating that the expenses are 12-13 years old which has been incurred for JCB Machine levelling, Mitti Purchase for better crops, tractor hiring charges etc. and asked to allow the time of one month. The AO due to non-availability of evidence has disallowed the land development claim of Rs.12,52,560/- after indexation of Rs.16,49,204/-. The A.O. has also observed that the assessee has received Rs.70,00,000/- from the purchaser on various dates. Hence the AO has asked the assessee about the excess deposits in bank account then to DLC rate and may not be added of these Rs.2,00,000/- in the total income. In response thereto the assessee has submitted that assessee has sold agriculture land for Rs.68.00 lacs and the land was sold with standing crops for that crops, the assessee has received Rs.2,00,000/- of that crop, hence a cheque No. 062227 dated 29.04.2009 related to sale of agriculture crop. The A.O. had not satisfied with the explanation of the assessee and made addition. The AO has further observed that the assessee has claimed deduction of

Rs.10,97,040/- u/s 54F and alleged that the assessee has not filled any evidence in support of claim. The AO has asked the details of expenses in construction in house property of Rs.25,27,142/-. No proper explanation was submitted by the assessee then the A.O. has disallowed deduction of Rs. 10,97,040/-. The AO further asked the assessee to file the PAN and ID proof of the person to whom brokerage of Rs.1,02,000/- has been paid. In response thereto the assessee has stated that the person to whom brokerage was paid are farmers and not having PAN. However, the AO did not feel satisfy with the reply and has disallowed Rs.52,000/- out of Rs.1,02,000/-.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering both the parties, upheld the order of the A.O., against which the assessee is in further appeal before the ITAT on the grounds and additional grounds mentioned above.

5. In this appeal, the assessee has raised various grounds of appeal but the main grievance of the assessee is against initiating the proceedings U/s 147 of the Act without issuance of notice U/s 143(2) of the Act. In this regard, the Id AR of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and before the Bench, he has filed

written submissions and additional written submissions and the same is reproduced below:

1. Assessment order is barred by limitation:- At the very outset it is submitted that the notice and assessment order passed by the AO is barred by the limitation because in this case the notice u/s 148 has been issued by the Id. AO on 01.05.2014 (PB2) or page 1 of the assessment order and the assessment was to be completed on or before 31.12.2015, as per the time limit for completion of the assessment u/s 153 (2), As per Sec. 153(2) No order of assessment, reassessment or recomputation shall be made u/s 147 after the expiry of nine months from the end of the financial year in which the notice u/s 148 was served. Thus as per assessment order notice issued u/s 148 dt. 01.05.2014 by the AO should be served within year and it may not be happened that the same shall be served after 16 months. As the Id. AO stated that the notice has been received by the assessee on 16.09.2015, he has not use the word served. Hence prima face on record the assessment order passed by the AO on dt. 16.03.2016 is barred by limitation and liable to be quashed.. How it is possible that the Id. AO issued the notice u/s 148 on 01.05.2014 and keep with him till 16.09.2015 or 16 months with him. It create a serious doubt. If your honor wish to verify the facts, then we pray your honor to call the assessment record.

2. No date of reasons recorded: Further from the perusal of the reasons recorded(PB 2) it is not clear that when the reasons has been recorded when the sanction of the Add.CIT or CIT has been received, also not appearing that there was the satisfaction of the Add. CIT or Pr. CIT etc all these are absent on the reason recorded as provided by the Id. AO. Thus the proceedings for reasons recorded and details is also not as per law, inaccurate and improper and liable to be quashed.

As per reasons recorded it is clear that the reasons are not proper and not sufficient. And it appears from the reasons that at the time of recording the reasons the Id. AO was having only information and not any material evidence, because there is no mention in what amount land sold and what is the DLC rate etc. Hence how it can be said that there was reasons to believe and satisfaction of the AO and Pr. CIT & Add. CIT. On the basis of the invalid, improper and insufficient and in want of satisfaction of higher authority, no notice or reopening can be done. As per the language and settled legal position that the Id. AO must have reason to believe not reason

to suspect and as per the reason it is not appearing that the Id. AO have reason to believe. Assessment u/s 147 is not a regular assessment.

3. No satisfaction: On perusal of the reasons recorded u/s 148 (PB1) that while recording the reasons the Id. Pr.CIT and Add.CIT has not made their own independent satisfaction and not applied their mind they have said yes, which is not sufficient. The Id. Pr.CIT and Add.CIT has grant approval in technical manner by stating yes or approved. He has relied on the following decisions”

1. *Pr. CIT vs. N.C. CABLES LTD. (2017) 98 CCH 0018 Del HC*
2. *PAC AIR SYSTEMS P. LTD. vs. ITO (2020) 58 CCH 0001 Del Trib*
3. *GORIKA INVESTMENT AND EXPORT (P) LTD. vs. ITO (2018) 53 CCH 0168 Del Trib*
4. *TARA ALLOYS LTD. vs. ITO (2018) 63 ITR (Trib) 0484 (Delhi)*

The Id AR has also submitted as under:

1. Wrong Enhancement u/s 251(1): Further it is submitted that in this case the Id. CIT(A) has made enhancement u/s 251 of Rs.50,000/- on account of brokerage paid on sale of land, Rs. 1,40,000/- on account of brokerage or commission paid on purchase of land and 32,175/-(Rs. 2,00,000/-1,67,125/-) on account of unexplained credit totalling to Rs.2,22,175/- u/s 251 without giving any show cause notice to the assessee and it is the settled legal position that no income can be enhance by the

And Sec. 251 Provides as under:

251. Powers of the Commissioner (Appeals).- (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;
- (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- (c) in any other case, he may pass such orders in the appeal as he thinks

fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

And it is not disputed that the Id. CIT(A) has enhanced the income as he himself admitted in order page 7,9,10 of his order.

Further on enhancement of Rs.1,40,000/- we have filled the Add. GOA-2, which may kindly be considered.

Thus the addition and enhancement made by the Id. CIT(A) is invalid, illegal and liable to be deleted in full.

(C) SUBMISSIONS : On GOA 3,4,5 and Add. GOA1

1.1. In this regard we have to submit that the assessee has claimed land development exp. of Rs.12,52,560/- incurred in the year 2004-05 and after indexation 16,49,204/-. On being asked the details and evidences of land development expenses by the Id. AO, had stated that the expenses is 12-13 years old which has been incurred for JCB Machine levelling, Mitti Purchase for better crops, tractor hiring charges etc and asked to allow the time of one month. Hence the Id. AO in want of evidence has disallowed the land development claim of Rs.12,52,560/- after indexation of Rs.16,49,204/- and the Id. CIT(A) has also not provided the adequate opportunity of being heard he has only three opportunity i.e on 24.08.17, 06.09.2017 and 08.11.2017. But the assessee was being the lady and was depended on the counsel and due to some misunderstanding and communication gap between the assessee and her counsel the proper evidences and details could not be filled before the lower authority. Because the counsel was at Kota and the assessee was residing at Vivekand Puram Bundi.

2.2 Further when the assessee has purchased the land the same was not flat and not proper for good agriculture produce. The land was about 8.22 Hect. or 51 Bhigas. So to do development as sand filling, to do flat, Tar band, facing etc. She had given an contract to Sh. Karan Singh for Rs. 12,52,000/- in the year 2004-05. In support we are enclosing herewith the affidavit of Contractor. And looking to the area of land and position it cannot be said that no development expenses has been incurred by the

assessee. At the worst the Id. AO could have estimated and verified from his own source.

2.3. In the interest of natural justice we pray your honor either accept our contention to delete the addition or the matter may be restored to the Id. AO for fresh examination so that we can produce the possible evidence or the contractor f required.

2.4 Further the Id. AO has denied the claim or deduction of Rs.10,97,040/- u/s 54F on the ground of that assessee has not filled any evidence in support of claim. In this regard we have to submit the correct facts is that as the assessee has sold the agriculture land for Rs.68.00 Lacks and calculated the LTCG vide computation of Total Income (PB 3) in which she claimed the indexed cost of acquisition of Rs.16,50,784/-, Stamp Duty on Gift of Rs.5,08,993/- and claim of Rs.17,07,290/- u/s 54B, these are not disputed by the Id.AO. The assessee has also claimed the indexed cost of land Development expenses of Rs.16,49,204/- (for which we have already sated in para 1 abvoe). After these claims the LTCG remained of Rs.10,97,040/- which has been claimed by the assessee u/s 54F, which is allowable to this extent after claiming above deduction. However the assessee had incurred the expense of Rs. 36,52,000/- approx on the construction of house vide report of Registered valure (PB 6-8) and Photograph of house (PB9). And we have shown cost of construction in the computation of total income at Rs. 25,27,142/- , which was incurred till 31.03.2010 and till 31.07.2010 the cost has been incurred at Rs. 36,52,000/-.

Thus the assessee was also entitled for the deduction of Rs. 36,52,000/- u/s 54F as per law. Hence we have taken an additional Grounds of appeal as under :-

"Add. GOA 1 : Further alternatively and without prejudice to the GOA-3, if the entire or part addition out of addition of Rs.16,49,204/- is sustained, then Id. AO may kindly be directed to allow the deduction of Rs.25,27,142/- u/s 54F shown in the return and actually incurred, in place of Rs.10,97,040/- claimed being the reaming deduction after claiming deduction u/s 54B and AO may verify the claim by its process and the Id. AO and CIT(A) both have grossly erred in not doing so. Hence the same may kindly be directed and delete the addition to that extent".

And this is also arising from the record and legal issue and it is the settled law if any claim has not been made before the lower authority the same can be claimed before the appellate authority if the assessee is entitled.

Therefore we submit that if the claim of the assessee of Rs. 16,49,204/- on account of the land development Expenses by your honor then the Id. AO may kindly be directed to give the full claim of construction u/s 54F after adjustment or short fall of other deductions, if any after verification and considering our evidence. The claim should not be denied due to some technical reason.

The land on which the construction was made was in the name of assessee in support we are filling the land documents and details (PB10-32).

These are the additional evidence for that we are filling the application for admitting the additional evidences.

Further we also submit that if the matter is restored back to the Id. AO then the Id. AO may kindly be directed to allow the above claim and opportunity for producing evidences in support of our claim may kindly be provided.

(D) SUBMISSIONS ON GOA6:

1. In this regard it is submitted that the Id. AO has made the disallowance of Rs.50,000/- out of Rs.1,02,000/- on account of brokerage and the Id. CIT(A) enhanced the disallowance and confirmed the entire disallowance. In this regard it is submitted it is general practice to pay the brokerage in the property transaction and in the present case the person to whom brokerage was paid has expired. And it is not possible to produce the person and his death certificate is enclosed (PB35). Further the Id. CIT(A) has enhance the same without issuing any show cause notice to the assessee. For which we have already submitted in submission in "para B" as above which may kindly be considered.

As the assessee is being a lady is unable to sale the land directly or unable to search the customers directly herself, therefore she has to engage the broker for this work for that she had to pay commission and the expense cannot be denied only in want of evidence but the facts and position should be appreciated.

3. Hence in view of the above facts, circumstances and legal position entire addition may kindly be deleted in full and oblige."

6. On the other hand, the Id DR has relied on the orders of the authorities below and relied on the various judicial pronouncements as under:

- (i) ITA No. 95 of 2009 of Hon'ble Calcutta High Court decision dated 05/10/2010
- (ii) Manji Dana Vs CIT (1966) 60 ITR 582 (SC)
- (iii) ITA No. 950/2008 of Hon'ble Delhi High Court decision dated 11/07/2011
- (iv) Tax Case (appeal) No. 2278 of 2006 of Hon'ble Madras High Court decision dated 08/11/2006.
- (v) ITA No. 10/2017 of Hon'ble J&K High Court decision dated 11/10/2018
- (vi) CIT Vs Premium Capital Market (2005) 275 ITR 260 (MP)
- (vii) Hari Singh & Associates Vs ITO (2009) 118 ITD 564 (Jodhpur)
- (viii) ITA No. 1448/Pun/14 M/s K.S. Cold Storage Vs ACIT order dated 28/11/2018.

7. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. In this appeal, the assessee has raised several grounds and has also taken additional grounds in order to challenge the impugned order U/s 147/154 of the Act, but one the legal grounds raised

by the assessee relates to non-issuance of notice U/s 143(2) of the Act by the A.O.

8. We observe that when the assessee has filed the return u/s 148 on dt. 06.01.2016 the AO has not issued the notice u/s 143(2) and without issue the notice the AO has passed the assessment order, it is very settled legal position that when the assessee filed the return in response to the notice u/s 148 of the Act. It is mandatory on the part of the AO to issue the notice u/s 143(2) when the AO has taken cognizance of such return. He has not treated the return as non-est or invalid. We also found that as no notice u/s 143(2) was sent to the assessee for reassessment u/s 148 before completion assessment or the dead line i.e. 30/09/2016, so the return submitted by the assessee has to be deemed as accepted as such.

9. We also observe that the CBDT circular No.549 dated 31/10/1989 (1990) 823 CTR (SC) (1) makes it abundantly clear that once an assessee does not received a notice u/s 143(2) within the period stipulated then such an assessee "*can take it that the return filed by him has become final and no scrutiny proceedings are to be started in respect of that return*". The position emerges from this CBDT circular was referred to and clarified by Hon'ble Punjab and Haryana High Court in the case Vipan KhannaVs. CIT (2002) 175 CTR (P&H) 335. The Hon'ble High Court referred the circular in

this case and observed that in case where the AO chose to verify the return and frame an assessment he has to issue a notice u/s 143(3) of the Act requiring the assessee to produce his books of accounts and other material in support of his return. The Hon'ble High Court has further observed as:

"Thereafter he can make an assessment order under sub-section(3) of the section 143 of the Act. Another important change incorporated in subsection (2) of section 143 of the Act is that the notice under this sub-section cannot be served on an assessee after the expiry of 12 months from the end of the month in which the return is furnished. Therefore, in a case where a return is filed and is proceed u/s 143(1)(a)of the Act and not notice under sub-section (2) of Section143) of the Act thereafter is served on the assessee within the stipulated period of 12 months, the assessment proceedings u/s 143 come to an end and the matter becomes final. Thus, although technically no assessment is framed in such a case yet the proceedings for assessment stand terminated.

10. We also observe that similarly the issue related to issue of notice u/s 143(2) in case of assessment has been discussed in detail by the Hon'ble Supreme Court in the case of ACIT & Anr Vs Hotel Blue Moon (2010) 229 CTR (SC) 219 wherein the Hon'ble Court has held that :

"An analysis of this subsection indicates that, after the return is filed, this clause enables the Assessing Officer to complete the assessment by following the procedure like issue of notice under section 143(2)/142 and complete the assessment under section 143(3). This section does not provide for accepting the return as provided under section 143(1)(a). The Assessing Officer has to complete the assessment under section 143(3) only. In case of default in not filing the return or not complying with the notice under section 143(2)/142, the Assessing Officer is authorized to complete the assessment ex parte under section 144. Clause (b) of section 158BC by referring to section 143(2) and (3) would appear to imply that the provisions of section 143(1) are excluded. But section 143(2)itself

becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under section 143(2). However, if an assessment is to be completed under section 143(3) read with section 158BC, notice under section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, requirement of notice under section 143(2) cannot be dispensed with." (emphasis added)

11. We further observe that issue of a notice u/s143(2) of the Act, is mandatory even in a reassessment proceeding initiated u/s 148 of the Act has been clearly laid down by the Hon'ble Delhi High Court in the case of M/s. Alpine Electronics Asia PTE Ltd. V/s DGIT &Ors.,341 ITR 247(Del) considering the decision of the Hon'ble Apex Court in the case of Hotel Blue Moon (supra) at para 24 of the judgment their Lordship has held that Section 143(2) was applicable to a proceedings u/s 147/148 also, since proviso to section148 of the Act, granted certain specific liberties to the revenue, with regard to extension of time for serving such notices. The Coordinate Bench in the cases of M/s. Amit Software Technologies Pvt. Ltd, (supra) after considering the decision of the Hon'ble Madras High Court as well as Delhi High Court had held that Section143(2) of the Act, was a mandatory requirement and not a

procedural one. In completing the assessment u/s 148 of the Act, compliance of the procedure laid down u/s 143 and 143(2) is mandatory.

12. We also observe that the sanction of the Add. CIT or CIT has neither been taken nor sought nor received by the ITO, also not appearing that there was any satisfaction of the Add. CIT/CIT or Pr. CIT etc. all these are absent on the reason recorded as provided by the AO and the same may be verified from the order sheet and assessment record.

13. From the record, we noticed that this specific ground was not raised by the assessee before the Id. CIT(A) or before the A.O.. Since, this ground is purely legal in nature, therefore, it can be raised by the assessee or any other party contesting the appeal at any point of time or at any stage. In this respect, we draw strength on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT 299 ITR 383. We have perused the revenue records as well as assessment records, which was summoned by us and after going through the records, we found that there is no notesheet for issuance or service of notice issued U/s 143(2) of the Act by the revenue and even in the assessment order passed U/s 147/144 of the Act by the A.O., there is no mention of issuance or service of notice U/s 143(2) of the Act. Since, the issue of notice U/s 143(2) of the Act is mandatory and even reassessment proceedings initiated U/s 148 of the Act it has clearly been laid down by the Hon'ble

Delhi High court in the case of M/s Alpine Electronics Asia PTE Ltd. Vs DGIT & Ors. 341 ITR 247 considering the decision of the Hon'ble Apex Court in the case of ACIT Vs Hotel Blue Moon 321 ITR 362 at para 24 of the said judgment, the Hon'ble Court had held that Section 143(2) was applicable to a proceedings u/s 147/148 of the Act and since provision to Section 148 of the Act, granted certain specific liberties to the revenue with regard to extension of time for serving such notices. Similar issue has been decided by the Coordinate bench of this Tribunal in the case of Shri Mahendra Kumar Sethia Vs ITO(T&J) order dated 31/05/2018 wherein the Coordinate Bench has held as under:

"6. Having considered the rival submissions as well as careful perusal of record we note that the Assessing Officer has not stated either in the assessment order or in the order sheets of the assessment proceedings that any notice U/s 143(2) of the Act was issued to the assessee. Even the assessment record produced before us by the Id. DR does not contain any notice issued U/s 143(2) of the Act. Thus, it is clear that there is no notice U/s 143(2) of the act issued by the AO and the reassessment proceedings in the case of the assessee were completed without issuing a notice U/s 143(2) of the Act. The Hon'ble Supreme Court in case of ACIT vs. Hotel Blue Moon(supra) has held that failure on the part of the assessing authority to issue notice U/s 143(2) cannot be a mere procedural irregularity and the same is not curable. It is not a mere formality but it gives the jurisdiction to the Assessing officer to complete the assessment U/s 143(3) of the Act therefore, non issuance of notice U/s 143(2) vitiates the assessment

proceedings. In view of the decision of the Hon'ble Supreme Court in case of ACIT Vs. Hotel Blue Moon (supra) as well as the decision of Hon'ble Allahabad High Court in case of CIT vs. Rajeev Sharma (supra) the assessment proceedings completed without issuing notice U/s 143(2) of the act are void ab-initio and liable to be quashed. Accordingly, we quash the impugned assessment being illegal and void ab-initio. Since, we have quashed the assessment as invalid, therefore, we do not propose to go into other grounds raised in this appeal. In the result, the appeal filed by the assessee is allowed."

14. From the record, we also noticed that the A.O. has not stated either in the assessment order or in the ordersheets of the assessment proceedings that any notice U/s 143(2) of the Act was issued to the assessee. It is clear that there is no notice U/s 143(2) of the Act and reassessment proceedings in the case of assessee were completed without issuance of a notice U/s 143(2) of the Act. The Hon'ble Supreme Court in the case of ACIT Vs Hotel Blue Moon (supra) has held that failure on the part of the assessing authority to issue notice U/s 143(2) of the Act cannot be a mere procedural irregularity and the same is not curable. It is not a mere formality but it given the jurisdiction to the A.O. to complete the assessment U/s 143(3) of the Act, therefore, non-issuance of notice U/s 143(2) of the Act vitiates the assessment proceedings. In view of decision of Hon'ble Supreme Court in the case of ACIT Vs Hotel Blue Moon (supra) as well as other decisions in this regard cited above, the assessment proceedings completed without issuance of notice U/s 143(2) of the act

and void ab-initio and liable to be quashed. The judicial pronouncements referred and relied upon by the Id. DR are not applicable in the facts of the present case. In view of the above facts and circumstances, we quash the proceedings U/s 147/148 of the Act as invalid.

15. Since, we have quashed the proceedings initiated U/s 147/148 of the Act in the present case, therefore, we do not propose to go into other grounds raised in this appeal.

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

Order pronounced in the open court on 21st December, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 21/12/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Gyatri Sharma, Bundi.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Bundi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 461/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar