# BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS)

# DIN: ITBA/APL/F/APL\_1/2024-25/1069548435(1) dated 09/10/2024

# (AY 2015-16)

Mohan Kumar Chandrabose (AJZPM5066G)

No.47, 15th West Cross Street,

MKB Nagar,

Chennai – 600 039 Appellant

**WRITTEN SUBMISSIONS**

The Appellant is a salaried individual and filed his return of income for AY 2015-16 on 24/06/2015, returning an income of Rs. 10,09,110/-. While this is so, the assessment for AY 2015-16 was re-opened vide notice dated 23/09/2016 and subsequently notices u/s 143(2) and 142(1) was issued and served on the appellant. The Appellant had duly submitted responses to the same. While this is so, it is humbly submitted that the appellant was out of the country and working in the United States of America, the Learned AO has engaged in further discussions and passed an order making the following additions:

1. Cash Deposits made – Rs 18,80,000

While this is so, further the assessment for AY 2015-16 was once again re-opened vide notice under section 148 digitally signed on 01/04/2021 12:36 PM IST with no fresh material on record or produced by the Learned AO and subsequently notices u/s 142(1) and 143(2) was issued and served on the appellant. The Appellant had duly submitted responses to the same. The Learned AO has made the following Additions:

1. Rs. 7,00,000 was made under Section 56(2) (vii)(b) of the I.T. Act, 1961 for difference in value of property as per agreement value and stamp duty value.

**PETITION FOR ADMISSION OF ADDITIONAL GROUND(S) OF APPEAL**

The Appellant respectfully submits this petition to the Honorable Commissioner of Income Tax (Appeals) for the admission of an additional ground of appeal. This ground arises from the pertinent facts and circumstances of the case and is crucial to the fair adjudication of the matter at hand.

At the time of the initial appeal filing, the Appellant was constrained by the unavailability of a critical piece of evidence, namely, the valuation report from an independent valuer or Departmental Valuation Officer. This report, which has since been obtained, provides substantial and material information that directly impacts the merits of the case.

The Appellant contends that the inclusion of this additional ground is essential for a comprehensive and just consideration of the appeal. It is submitted that the admission of this ground would not prejudice the proceedings but rather contribute to a more thorough and equitable assessment of the case.

In light of these circumstances, the Appellant earnestly requests the Honorable CIT(A) to exercise discretionary powers vested under the Income Tax Act and allow the incorporation of this additional ground into the ongoing appeal proceedings.

**Additional Ground No. 1:**

**Improper Application of Section 50C and disregard for 10% Valuation Tolerance by the Ld Assessing Officer**

The learned Assessing Officer erred in making additions under Section 50C of the Income Tax Act, 1961, by disregarding the allowable 10% variation between the valuation as per the Departmental Valuation Officer (DVO) report and the agreement value of the property sold. This 10% tolerance limit has been applicable since the inception of Section 50C on April 1, 2003. As the variation in the present case falls within this permissible limit, the impugned additions are unwarranted and should be deleted.

1. **Valuation Comparison and Statutory Compliance**
2. On March 26, 2024, the Departmental Valuation Officer (DVO) submitted a valuation report, enclosed herewith on page \_\_\_\_\_\_. The DVO assessed the property value at Rs. 52,44,000, whereas the agreement value stood at Rs. 48,00,000. The variance between these figures is **9.15%,** which falls within the 10% tolerance limit prescribed under Section 50C of the Income Tax Act, 1961. This compliance with the statutory threshold negates any grounds for additional tax liability under the aforementioned section.
3. **Retrospective Applicability of 10% Tolerance Band in Section 50C**
4. The 10% tolerance band prescribed in Section 50C of the Income Tax Act, 1961, is curative in nature and, as such, relates back to the effective date of the original statutory provisions, i.e., **April 1, 2003**. Established legal precedent supports the retrospective application of this 'safe harbor' rule.
5. The amendment introducing this 10% tolerance is, therefore, to be construed as having retrospective effect, aligning with the principle that curative amendments are intended to remedy existing statutory defects from their inception.
6. **Judicial Precedents Supporting Retrospective Application**

The Appellant respectfully submits that the enhancement of the tolerance limit to 10% under Section 50C of the Income Tax Act, 1961, should be applied retrospectively, effective from April 1, 2003. This contention is substantiated by the following judicial pronouncements.

* **Maria Fernandes Cheryl v. Income Tax Officer, (International Taxation), 2(3)(1), Mumbai [2021] 123 taxmann.com 252 (Mumbai - Trib.)**
* **Amrapali Cinema v. ACIT, Circle-I, Meerut [2021] 127 taxmann.com 376 (Delhi - Trib.)**
* **Assistant Commissioner of Income-tax. v. Sunil B Dalal [2022] 145 taxmann.com 313 (Mumbai - Trib.)**

These judgments consistently uphold the principle that the 10% tolerance limit is curative in nature and, therefore, operates retrospectively from the date of inception of Section 50C. The Appellant relies on the ratio decidendi established in these cases to support the application of the enhanced tolerance limit to the case at hand

Text of above judgements are enclosed herewith at page no. \_\_\_\_\_\_\_\_\_\_\_ of this paper book.

**Without prejudice to the above ground of appeal, proceeding to submissions for Ground No. 1**

**Ground No. 1:**

**Considering the Judgement of Hon’ble Supreme Court (UOI & Ors. Vs Ashish Agrawal, Civil Appeal No. 3005/2022) and/or instructions of CBDT (Instruction No. 01/2022), Notice issued under Section 148 and assessment by Ld Assessing Officer is bad in law and void ab initio.**

For your kind perusal, Judgement of the Hon’ble Supreme Court in the matter of UOI & Ors. Vs Ashish Agrawal, Civil Appeal No. 3005/2022 is enclosed herewith this paper book at page no. \_\_\_\_\_\_\_\_\_.

Instructions of CBDT (Instruction No. 01/2022) is enclosed herewith in this paper book on page no. \_\_\_\_\_\_\_\_\_.

Notice issued under Section 148 is enclosed herewith in this paper book on page no. \_\_\_\_\_\_\_\_\_.

Assessment order as passed by Ld Assessing Officer enclosed herewith this paper book at page no. \_\_\_\_\_\_\_\_\_.

1. **Contention Regarding Validity of Notice under Section 148**

**Date of Issuance of Notice:**

1. The notice under section 148 of the Income Tax Act, 1961 (DIN & Notice No. ITBA/AST/S/148/2020-21/1032109890(1)) bears the date March 31, 2021. However, the digital signature on this notice is dated April 1, 2021. It is submitted that as the Learned Assessing Officer opted for digital signature, the effective date of issuance should be considered as April 1, 2021, in accordance with established principles of digital documentation.

**Footnote Clarification:**

1. The Appellant draws attention to the footnote of the aforementioned notice, which explicitly states: "***Note: If digitally signed, the date of digital signature may be taken as date of document***." This clear instruction supports the contention that April 1, 2021, should be considered as the operative date of the notice.

**Judicial Precedent:**

1. The Appellant relies on the judgment of the Hon'ble Delhi High Court in the case of Suman Jeet Agarwal vs Income Tax Officer, Ward 61(1), & Ors. W.P.(C) 10/2022, CM APPL.16/2022 (Interim relief & CM APPL.13602/2022 (condonation of delay)). This judgment provides relevant guidance on the interpretation of digitally signed notices and their effective dates.

*The full text of the judgment is enclosed herewith in this paper book on page no. \_\_\_\_\_\_\_\_\_\_. In this judgment on page no. 148, it was held as* ***31.1. Category ‘A’: The Notices falling under category ‘A’, which were digitally signed on or after the 1st of April, 2021, are held to bear the date on which the said Notices were digitally signed and not 31st March 2021.***

1. **Applicability of Supreme Court Judgment to Section 148 Notice**

**Issuance of Notice and Relevant Jurisprudence:**

1. The notice under Section 148 of the Income Tax Act, 1961 (DIN & Notice No. ***ITBA/AST/S/148/2020-21/1032109890(1))*** was issued on **April 1, 2021**. This notice falls squarely within the ambit of the Hon'ble Supreme Court's judgment in ***Union of India & Ors. Vs Ashish Agrawal, Civil Appeal No. 3005/2022***.

**Universal Application of the Judgment:**

1. The aforementioned Supreme Court judgment explicitly clarifies its applicability to all cases involving extended reassessment notices, irrespective of whether such notices have been challenged. This universal application is evident from various paragraphs of the judgment.

**Preservation of Appellants Rights and Defenses:**

1. The Hon'ble Supreme Court, in the same judgment, has unequivocally held: "*All defenses which may be available to the assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in the law shall continue to be available*."

This ruling preserves all statutory and legal defenses available to the Appellant under the Income Tax Act and the Finance Act, 2021.

Accordingly, sub-section (1) of new section 149 of the I.T. Act, 1961 as amended by the Finance Act, 2021 reads as under:

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

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

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

*(i) an asset;*

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

*(iii) an entry or entries in the books of account,*

*which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year*

***Provided*** *that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April 2021, if such notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021*

**Statutory Time Limitation:**

1. As per the proviso to Section 149 of the Income Tax Act, 1961, no notice under Section 148 can be issued if it was not permissible under the unamended law (pre-April 1, 2021).

**Time-Barred Notice:**

1. The notice under Section 148 for Assessment Year 2015-16 was digitally signed and issued on April 1, 2021, well beyond the three-year limitation period, which expired on March 31, 2019. Also, the alleged escapement of income (Rs. 7 lakhs) falls below the Rs. 50 lakhs threshold.

**Lack of Substantiation:**

1. The Assessing Officer failed to provide any fresh evidence, books of accounts, or documents substantiating the grounds for invoking Section 148, as required by law.

**Non-Compliance with Statutory Provisions:**

1. The reopening fails to satisfy the conditions stipulated in both clauses of the proviso to Section 149(1), rendering it legally untenable.
2. **CBDT Instructions No. 01/2022**
3. The appellant respectfully draws attention to CBDT ***Instruction No. 01/2022*** dated 11th May 2022, specifically ***paragraph 7.1 on page 3***. The Assessing Officer has not adhered to these instructions in the present case. The notice under section 148 pertains to AY 2015-16, with an alleged income escapement of Rs. 7 lakhs, which is below the Rs. 50 lakhs threshold specified in the instructions. The Assessing Officer is obligated to follow and implement CBDT instructions, but has failed to do so in this instance.

*Hon’ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amount to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case of for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amount to or is likely to amount to less than fifty lakh rupees. Separate instructions shall be issued regarding procedure for disposing these cases.*

*<<Insert Ravinder sir CBDT instruction here as well >>>*

**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 2**

**Ground No. 2**

**Ld Assessing Officer grossly erred in concluding the assessment without the issuance of a draft assessment order as per provisions of Section 144B of the I.T. Act, 1961.**

1. **Non-Compliance with Section 144B**
2. The Ld. Assessing Officer failed to adhere to the mandatory procedure prescribed under Section 144B of the Income Tax Act, 1961, specifically by omitting to issue a draft assessment order as required for faceless assessments.
3. **Violation of Principles of Natural Justice**
4. The assessment was concluded without issuing a draft assessment order, thereby denying the Appellant the opportunity to be heard.
5. The direct issuance of the final assessment order, bypassing the draft stage, constitutes a grave violation of natural justice principles and a material breach of the procedural requirements stipulated in Section 144B.

**Legal Precedents**

The appellant relies on the following judicial pronouncements to support these contentions

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| **Ellathkandi Khaleel Ahammad v. Union of India WP (C) NO. 13513 OF 2022, JULY 4, 2022 [2022] 142 taxmann.com 402 (Kerala)** |
| Where AO passed faceless assessment order along with notice of demand and penalty without issuing a draft assessment to the assessee with proposed variation, impugned assessment order and penalty notice were to be set aside. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **RMSI (P.) Ltd. V. National Faceless Assessment Centre, Delhi (Delhi HC) [2022] 136 taxmann.com 61 (Delhi)** |
| Where in faceless assessment, NFAC passed a final assessment order in case of the assessee, without issuing a Show Cause Notice and a draft assessment order which was mandated under section 144B(1)(xvi), assessment order not made in accordance with the procedure laid down in section 144B would be non-est. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Corpus Christi Educational Society v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax, National E-Assessment Centre (Kerala HC) [2022] 139 taxmann.com 576 (Kerala)/ [2022]** |
| Where AO denied the claim of the petitioner under section 10(23C) and passed faceless assessment order without issuing a draft assessment order, since there were variations in the impugned assessment order from the return filed by the petitioner, in such case draft assessment order cum show cause notice was required to be issued to the petitioner; impugned order passed without issuing draft assessment order was to be set aside. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Dediyasan Industrial Co-Op. Credit Society Ltd. v. Addl./Jt./Dy./Assistant Commissioner of Income-tax/Income-tax Officer [2022] 141 taxmann.com 452 (Gujarat) [20-06-2022]** |
| Where in faceless assessment, Assessing Officer passed an assessment order against the assessee-society without providing it with an opportunity for hearing by not following the prescribed procedure for faceless assessment under section 144B, the impugned assessment order was liable to be quashed. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Golden Tobacco Ltd. v. National Faceless Assessment Centre [2021] 132 taxmann.com 296 (Bombay)** |
| Where in faceless assessment, NFAC passed a final assessment order against the assessee without issuing a show-cause notice in form of a draft assessment order to provide an opportunity for hearing to the assessee which was a mandatory requirement for faceless assessment under section 144B(1)(xvi), impugned final assessment order was to be quashed. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Idex India (P.) Ltd. v. Addl./Jt./Dy./Asstt. Commissioner of Income-tax/Income-tax Officer [2022] 135 taxmann.com 170 (Gujarat)** |
| Where in faceless assessment, Assessing Officer passed a final assessment order against the assessee without issuing a final show cause notice-cum-draft assessment order providing an opportunity for hearing to the assessee which was a mandatory requirement for faceless assessment under section 144B(1)(xvi) and section 144B(1)(xx)(ii), the impugned assessment order was unjustified and same was to be quashed. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 3**

**Ground No. 3:**

**Ld Assessing Officer grossly erred in not providing an opportunity of being heard through personal hearing mode, before the conclusion of the assessment. Principles of natural justice not followed by Ld Assessing Officer.**

1. **Denial of Opportunity for Personal Hearing**
2. The income tax portal failed to provide an option for requesting a personal hearing in response to any notices served to the Appellant during the assessment proceedings. This omission constitutes a clear violation of the principles of natural justice.
3. The Appellant explicitly requested a personal hearing in the response to the notice under Section 143(2), submitted on February 16, 2022. The Assessing Officer overlooked this request, effectively denying the Appellant's right to be heard.
4. The Assessing Officer acted arbitrarily by:
5. Failing to consider the facts and circumstances of the case
6. Denying the Appellant fundamental principles of natural justice, and
7. Concluding the assessment without granting the right of personal hearing.
8. An assessment concluded without granting the right of personal hearing, despite an explicit request, is tantamount to a denial of natural justice. Such an assessment should be regarded as null and void.

**Judicial Precedents:**

The Appellant relies on the following judicial pronouncements to support these contentions:

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| **Premlata Ramakant Fatehpuria v. Principal Commissioner of Income-tax [2022] 140 taxmann.com 97 (Bombay)** |
| Where in response to the show cause notice, the assessee made a request for grant of a personal hearing within the time granted to file a reply, however, the impugned order of assessment was passed without affording an opportunity for hearing, the impugned order of assessment was liable to be set aside on the ground of violation of principles of natural justice. Case law is enclosed at page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Dediyasan Industrial Co-Op. Credit Society Ltd. v. Addl./Jt./Dy./Assistant Commissioner of Income-tax/Income-tax Officer [2022] 141 taxmann.com 452 (Gujarat)** |
| Where in faceless assessment, Assessing Officer passed an assessment order against the assessee-society without providing it with an opportunity for hearing by not following the prescribed procedure for faceless assessment under section 144B, the impugned assessment order was liable to be quashed. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Bharat Aluminium Company Ltd. v. Union of India [2022] 134 taxmann.com 187 (Delhi)** |
| The assessee would have a vested right to a personal hearing in a faceless assessment proceeding under section 144B and granting of a personal hearing would not be discretionary as per individual facts of each case. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Fifth Field Realtors (P.) Ltd. v. Assistant Commissioner of Income-tax, National e-Assessment Centre, Delhi [2022] 135 taxmann.com 76 (Madras)** |
| Where the Assessing Officer passed an assessment order under section 144B without affording an opportunity for a personal hearing to the assessee, the impugned assessment order was to be set aside. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Atulbhai Kantilal Mehta v. Additional /Joint/ Deputy/Assistant Commissioner of Income Tax/Income-tax Officer [2022] 142 taxmann.com 448 (Gujarat)** |
| Where in spite of a specific request for a personal hearing being made by the assessee, the Assessing authority without adhering to such request had proceeded to pass the final assessment order, it was in clear violation of the statutory scheme of section 144B and said order was, therefore, held to be null and void. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

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| **Omkar Nath v. National Faceless Assessment Centre, Delhi [2022] 138 taxmann.com 146 (Delhi)** |
| Where the assessee responded to the notice of revenue while furnishing necessary information much prior to the issuance of the assessment order under section 144B and sought an opportunity for being heard in person, the impugned assessment passed without granting the proper and meaningful opportunity to the assessee for a personal hearing was to be set aside. Case law is enclosed on page no. \_\_\_\_\_\_\_\_ of this paper book. |

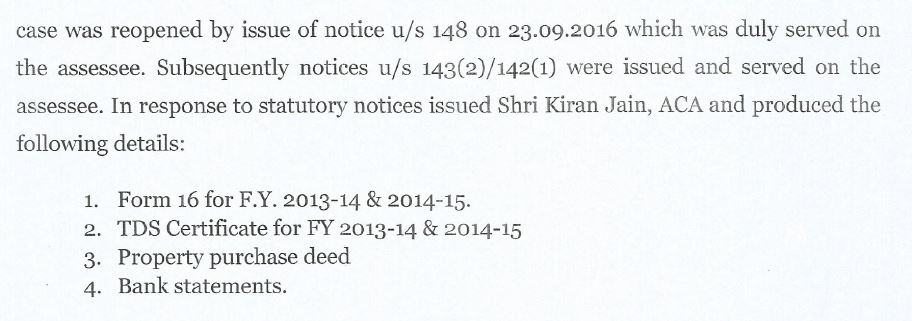
**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 4**

**Ground No. 4**

**Ld Assessing Officer grossly erred in re-opening of assessment under Section 148 which was validly completed u/s 143(3), as there was no omission on part of the assessee to disclose any material fact necessary for the completion of the earlier assessment.**

1. **Prior Conclusive Assessment and Full Disclosure of Material Facts**
2. The assessment for AY 2015-16 was previously concluded on December 19, 2017, under section 148 read with section 147 read with section 143(3) of the Income Tax Act, 1961.
3. During the earlier assessment proceedings, the Appellant, has furnished all pertinent documents related to the property purchase, including the purchase deed, to the Assessing Officer on February 14, 2017.
4. The previous Assessing Officer conducted a detailed examination of the property transactions in the assessment order, making multiple references and remarks regarding the property purchase.
5. The response to the notice issued under section 142(1) dated February 14, 2017, is enclosed on page \_\_\_\_\_\_\_\_ of this paper book and the previous assessment order dated December 19, 2017, is enclosed on page \_\_\_\_\_\_\_\_ of this paper book for reference.
6. **Documentary Evidence**

Relevant extracts from the ***previously passed assessment order*** are enclosed herewith, demonstrating the comprehensive nature of the earlier assessment.



1. **Legal Impermissibility of Reassessment Based on Change of Opinion**
2. The reopening of the case under Section 148 of the Income Tax Act, 1961 clearly demonstrates a change of mind or opinion by the Assessing Officer. This is evidenced by the fact that all relevant information was available and considered in the previous assessment.
3. It is a well-established principle of law that reassessment proceedings cannot be initiated merely on the basis of a change of opinion. The current reopening appears to be a blatant and deliberate change of opinion, which is not permissible under the law.

*This position is settled law as laid down by the Supreme court in the case of* ***CIT Vs. Kelvinator of India Ltd. (256 ITR 1)*** *and the decision of the Supreme Court in the case of* ***Indian and Eastern Newspaper Society v. CIT [1979] 119 ITR 996 (SC).*** *Both Case laws are enclosed herewith on page no. \_\_\_\_\_\_\_\_\_ of this paper book.*

This submission contends that the reassessment proceedings are legally untenable as they are based solely on a change of opinion, with no new material facts or evidence to justify the reopening under Section 148

**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 5**

**Ground No. 5:**

**The Ld Assessing Officer grossly erred in concluding the assessment without obtaining a report from the technical unit for the valuation of the property.**

1. **Deficiencies in Assessment and Valuation Process**

The Assessing Officer concluded the assessment without obtaining a report from the technical unit for property valuation, a significant procedural lapse as evident from the excerpt from the impugned assessment order as below.



**Denial of Statutory Right**

The Appellant was denied the statutory right for property valuation as per Section 56(2)(vii)(b) of the Income Tax Act, 1961.

**Arbitrary Application of Stamp Duty Valuation**

The Assessing Officer relied solely on stamp duty valuation without considering crucial factors such as:

1. The property's age (41 years old at purchase)
2. Structural condition (dilapidated state, extensive damage)
3. Prevailing market conditions at the time of purchase

**Evidence of Fair Transaction**

The purchase consideration of Rs. 48 lakhs were paid via crossed cheques/demand drafts and the Photographic evidence of the property's condition is provided (page \_\_\_ of paper book).

**Disregard of Submitted Evidence**

The Learned Assessing Officer ignored the Submissions dated February 16, 2022, detailing property condition and transaction details and Official documents showing reduced guideline values (page \_\_\_ of paper book).

**Failure to Verify Transaction Authenticity**

The Assessing Officer neither obtained a valuation officer's report nor conducted any independent verification of the transaction's genuineness.

*In this, I take to support of the judgment of ITAT Mumbai Bench B in the case of Mohd. Ilyas Ansari v. Income Tax Officer 23(2)(3), Mumbai [2021] 123 taxmann.com 122 (Mumbai - Trib.). Judgment is enclosed herewith on page no. \_\_\_\_\_\_ of this paper book.*

**In this judgment, it was held that**

*Where the Assessing Officer mechanically applied provisions of section 56(2) to the difference between stamp duty value and actual sale consideration paid by the assessee and made additions, without making any efforts to find out the actual cost of the property, additions made by Assessing Officer were to be set aside.*

Additionally, I take support of the judgment of the Madras High Court in the case of *Commissioner of Income Tax, Ward-3, Tirunelveli v. Smt. Padmavathi [2020] 120 taxmann.com 187 (Madras). Judgment is enclosed herewith on page no. \_\_\_\_\_\_ of this paper book.*

**In this judgment, it was held that the**

*Guideline value is only an indicator and same is fixed by State Government for purpose of calculating stamp duty on a deal of conveyance and merely because guideline value was higher than sale consideration shown in deed of conveyance, it cannot be sole reason for holding that assessment was erroneous and prejudicial to interest of revenue.*

*I take support of one more judgment of jurisdictional ITAT Chennai Bench ‘D’ in the case of Palaniappan Lakshumanan Chettiar v. Assistant Commissioner of Income Tax, Non-Corporate Circle - 8(1), Chennai [2020] 115 taxmann.com 339 (Chennai - Trib.). Judgment is enclosed herewith on page no. \_\_\_\_\_\_ of this paper book.*

**The gist of the judgment is:**

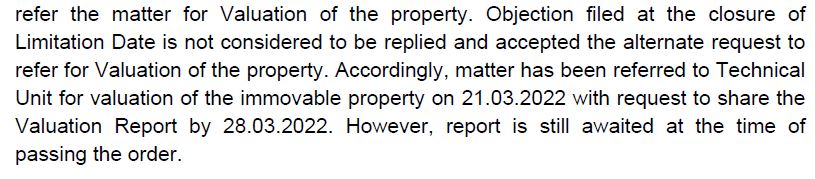
*Assessee was in business of hiring/leasing of heavy-duty cranes and other equipment's under a proprietary concern - It purchased vacant land vide registered sale deed for a total consideration of Rs. 3.51 crore, while guideline value of property fixed by State Government for stamp duty purposes was Rs. 3.64 crore - Assessing Officer invoked provisions of section 56(2)(vii) and brought to tax differential between guideline value and sale consideration - However, firstly it was observed that differential was less than 5 per cent, secondly, assessee challenged guideline value being adopted by Assessing Officer for purposes of section 56(2)(vii) and matter was referred by Assessing Officer to valuation cell but report of DVO was not brought on record by revenue even while it was incumbent on revenue to bring on record report of DVO, thirdly, State Government had itself reduced guideline value in 2017 which was indicator of fact that market value of property was lower than guideline value which aspect was taken note of by State Government and amendments were made in guideline value in tune with market price albeit in 2017 while present assessment year of concern was 2016-17, fourthly amendments were made by Finance Act, 2018 in section 56(2) wherein differential up to 5 per cent was allowed and no additions could be made under deeming fiction of section 56(2) albeit it was applicable from assessment year 2019-20 onwards and fifthly no incriminating evidence was brought on record by revenue which could evidence that assessee in fact paid higher sale consideration than actual sale consideration recorded in registered sale document - Whether thus, in view of cumulative effect of aforesaid reasonings, additions as were made by Assessing Officer which were later confirmed by Commissioner (Appeals) were to be deleted - Held, yes [Para 4] [In favour of assessee]*

**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 6**

**Ground No. 6**

**The Ld Assessing officer grossly erred in concluding the assessment stating that the objections filed at the closure of the limitation date are not considered.**

I like to produce herewith a relevant extract of the assessment order passed by the Ld. Assessing officer



The Ld. Assessing officer clearly mentioned in his assessment order that “*Objections filed at the closure of limitation date is not considered”*

I like to bring your kind attention to the following dates:

**Table 1 – Notice u/s 148 issued by JAO, Non-Corp Ward 17(2), CHENNAI**

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| --- | --- | --- | --- | --- |
| **Notice u/s** | **Date of notice** | **Due date of reply** | **Actual Date of reply** | **Delay caused in reply** |
| 148 | 01-April-2021 | 30-April-2021 | 07-January-2022 | Yes |
| **Issuing Authority** | | **Digitally Signed** | **Time Stamp on Digital Signature** | |
| JAO, Non-Crop Ward 17(2) CHN | | Yes | 01-April-2021 12:36 PM IST | |
| **DIN #** | | | **E-filing Acknowledgment No.** | |
| ITBA/AST/S/148/2020-21/1032109890(1) | | | 888647660070122 | |

**The reason for the delay in the above reply was due to:**

1. Appellant is an NRI residing in an overseas location (United States of America) and on receipt of the notice u/s 148 on his email dated 01st April 2021, immediately tried to reach the Ld. Assessing Officer by an in-person visit to the Income Tax office through his Authorized Representative and also through email/phone communications. However, the Income-tax office was closed due to the widespread impact of COVID-19 across the country.
2. Multiple e-mails were sent to chennai.ito.nc17.2@incometax.gov.in and phone calls to +91-44-28295275 made by the Appellant were not responded to by the Jurisdictional Assessing officer.
3. Subsequently, Income Tax Portal was newly upgraded on 07th June 2021, and thereafter due to technical glitches in the portal, there was no notice u/s 148 displayed in the income tax portal under the login of the Appellant to file a reply.
4. It is worthwhile to mention here at this point that even Hon’ble Finance Minister summoned the MD & CEO of Infosys on 23rd August 2021 and sought to explain, why even after 2.5 months of the launch of the new income tax portal, the glitches in the new income tax portal have NOT been resolved.
5. Later in December 2021, when the income tax portal started displaying the notice u/s 148, Appellant contacted the income tax office through e-mail at chennai.ito.nc17.2@incometax.gov.in and phone calls at +91-44-28295275.
6. It is worthwhile to mention here at this point that the Appellant, even in his email to Ld Assessing Officer dated 20th December 2021, had clearly stated that he received the email with the notice u/s 148 only on 1st April 2021 and further attached a copy of the email and the notice u/s 148 that he received to the Jurisdictional assessing officer for his perusal.
7. In the Income-tax portal, the Appellant raised grievance vide. Grievance# 3516454 and the Ld. Assessing Officer provided the resolution stating to file a return of income for the re-assessment notice issued u/s 148 for AY 2015-16, the said grievance response is enclosed herewith on page no. \_\_\_\_\_\_\_\_\_\_ of this paper book.
8. E-filing acknowledgment of the Return of Income filed, copy of e-mails sent to chennai.ito.nc17.2@incometax.gov.in, phone call record details of the Appellant for the month of December 2021 are enclosed herewith on page no.\_\_\_\_\_\_\_\_\_\_ of this paper book.

**Table 2 – Notice u/s 142(1) issued by JAO, Non-Corp Ward 17(2), CHENNAI**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Notice u/s** | **Date of notice** | **Due date of reply** | **Actual Date of reply** | **Delay caused in reply** |
| 142(1) | 23-January-2022 | 23-January-2022 | 23-January-2022 | No |
| **Issuing Authority** | | **Digitally Signed** | **Time Stamp on Digital Signature** | |
| JAO, Non-Crop Ward 17(2) CHN | | No | Not digitally signed by JAO | |
| **DIN #** | | | **Reply Acknowledgment No.** | |
| ITBA/AST/F/142(1)/2021-22/1038497572(1) | | | 964116281230122 | |

**The fact of uploading this notice on the income tax portal only on 23rd Jan 2022**:

1. This notice u/s 142(1) with DIN & Notice No: (ITBA/AST/F/142(1)/2021-22/1038497931(1)) was uploaded to the Income Tax portal only on 23rd January 2022, **this is a pre-dated notice uploaded to income tax portal with No digital signature**.
2. This fact had been clearly remarked and reported by the Appellant in his response to this notice in the income tax portal, stating that he received an SMS notification only on **23rd January 2022 at 01:20:00 AM IST**, and the requested document(s) which is the return of income (ITR -2) for AY 2015-16 had been already filed on 07th January 2022 itself.
3. Acknowledgment of reply to this notice u/s 142(1), and a screenshot of SMS received are enclosed herewith on page no. \_\_\_\_\_\_\_\_\_ of this paper book.

**Table 3 – Notice u/s 143(2) issued by NFAC, DELHI**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Notice u/s** | **Date of notice** | **Due date of reply** | **Actual Date of reply** | **Delay caused in reply** |
| 143(2) | 03-February-2022 | 17-February-2022 | 16-February-2022 | No |
| **Issuing Authority** | | **Digitally Signed** | **Time Stamp on Digital Signature** | |
| NFAC, DELHI | | Yes | 03-February-2022 16:34:36 IST | |
| **DIN #** | | | **Reply Acknowledgment No.** | |
| ITBA/AST/F/143(2) \_5/2021-22/1039367872(1) | | | 220169211160222 | |

**Table 4 – Notice u/s 142(1) issued by NFAC, DELHI**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Notice u/s** | **Date of notice** | **Due date of reply** | **Actual Date of reply** | **Delay caused in reply** |
| 142(1) | 23-March-2022 | 25-March-2022 | 24-March-2022 | No |
| **Issuing Authority** | | **Digitally Signed** | **Time Stamp on Digital Signature** | |
| NFAC, DELHI | | Yes | 23-March-2022 23:40:27 IST | |
| **DIN #** | | | **Reply Acknowledgment No.** | |
| ITBA/AST/F/142(1)/2021-22/1041400752(1) | | | 420070461240322 | |

Above mentioned notice under section 142(1) was issued redundantly due to:

* Ld. Assessing Officer did NOT read/consider the response filed for the notice under section 143(2) dated: 16th February 2022
* Appellant in his response to this said notice u/s 142(1) had clearly requested the Ld. Assessing Officer to consider the response that he already submitted for the notice under section 143(2) dated: 16th February 2022
* Acknowledgment of reply filed is enclosed on page no. \_\_\_\_\_\_\_\_\_\_ of this paper book.

**Table 5 – Notice u/s 144 issued by NFAC, DELHI**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Notice u/s** | **Date of notice** | **Due date of reply** | **Actual Date of reply** | **Delay caused in reply** |
| 144 | 25-March-2022 | 28-March-2022 | 26-March-2022 | No |
| **Issuing Authority** | | **Digitally Signed** | **Time Stamp on Digital Signature** | |
| NFAC, DELHI | | Yes | 25-March-2022 15:33:38 IST | |
| **DIN #** | | | **Reply Acknowledgment No.** | |
| ITBA/AST/F/144(SCN)(F)/2021-22/1041516375(1) | | | 430145891260322 | |

Above mentioned notice under section 144 was issued redundantly due to:

* Ld. Assessing Officer did NOT read/consider the response filed for the notice under section 143(2) dated: 16th February 2022
* Appellant in his response to this said notice u/s 144 had clearly requested the Ld. Assessing Officer to consider the response that he already submitted for the notice under section 143(2) dated: 16th February 2022, and the response that he already submitted for 142(1) dated: 24th March 2022.
* Acknowledgment of reply filed is enclosed on page no. \_\_\_\_\_\_\_\_\_\_ of this paper book.

1. Acknowledgment of actual replies to all the notices served to the Appellant during the course of this assessment proceedings are enclosed here on page no. \_\_\_\_\_\_\_\_ of this paper book.
2. By looking at the above Tables (**Table 1** *through* **Table 5**), it is crystal clear that no reply has been filed at the closure of the limitation date. Whenever the Ld Assessing Officer issued a notice, the Appellant had duly filed the reply within the time limit allowed, so the contention of Ld. Assessing Officer that “*Objections filed at the closure of limitation date is not considered to be replied*” is NOT correct and NOT justifiable.
3. It is well established in this case the Ld. Assessing Officer had acted hurriedly without applying mind, and blindly ignored all the submissions made by the Appellant during assessment proceedings.
4. Further, the Ld. Assessing Officer had NOT considered the submissions even during the finalization of the assessment order and simply ignored them, which clearly shows gross negligence and proves the entire assessment proceedings has been carried out merely on suspicious, conjectures, surmises, extraneous and irrelevant considerations manner by the Ld Assessing Officer.

**Without prejudice to the above grounds of appeal, proceeding to submissions for Ground No. 7**

**Ground No. 7**

**Ld Assessing Officer grossly erred in making additions under Section 56(2)(vii)(b) of the IT Act 1961 for a difference in stamp duty value and agreement value of Rs 7 lakhs without considering the facts and circumstances of this case.**

In this case, the Ld. Assessing Officer did not consider the following facts, circumstances, and assessment submissions that were submitted duly and timely during the assessment proceedings.

**Absence of Technical Valuation Report:**

The Ld. Assessing Officer failed to obtain a mandatory valuation report from the Technical Unit, which should have been on record at the conclusion of the assessment.

**Over-reliance on Stamp Duty Valuation:**

The Assessing Officer relied solely on stamp duty valuation and improperly considered the guideline value as definitive without accounting for other relevant factors affecting property valuation.

**Mechanical Application of Section 56(2)(vii)(b):**

The provisions of Section 56(2)(vii)(b) of the Income Tax Act, 1961 were applied mechanically, disregarding the case's unique facts and circumstances.

**Mischaracterization of Valuation Difference:**

The difference between stamp duty value and agreement value was incorrectly treated as unexplained investment, contrary to legal provisions.

*This has also been held by the Hon’ble High Court of Madras in the case of Commissioner of Income Tax, Chennai v. Vummudi Amarendran [2020] 120 taxmann.com 171 (Madras). An entire copy of the judgment is enclosed herewith at page no. \_\_\_\_\_\_\_\_\_\_\_ of this paper book.*

**Ground No. 8**

**Assessee crave liberty to modify, add, delete any ground(s) of appeal with the prior permission of appellate authority.**

Appellant raised additional grounds which emerged from the facts and circumstances of the case. These grounds have been already presented at suitable places in this submission. Appellant request for admission and adjudication of these additional grounds of appeal.