IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No.332/Agra/2018
(ASSESSMENT YEAR: 2009-10)

Shri. Pushpendra Singh. M-22, Phase-I, Mahavidhya Colony. Mathura. PAN: DLDPS6755P **(Appellant)**	**Vs..**	Income tax Officer- 1(2)(3), Agra. **(Respondent)**

ITA No.333/Agra/2018
(ASSESSMENT YEAR: 2009-10)

Smt. Pushpa M-22, Phase-I, Mahavidhya Colony. Mathura. PAN: BCOPD0484L **(Appellant)**	**Vs..**	Income tax Officer- 1(2)(3), Agra. **(Respondent)**

Appellant by	**Shri Anurag Sinha, AR**
Respondent by	**Shri Waseem Arshad, Sr. DR.**

Date of Hearing	**21.02.2019**
Date of Pronouncement	**22.03.2019**

ORDER

Per Dr.Mitha Lal Meena, A. M.:

Both these appeals, filed by the respective assessee, call into question correctness of order dated 27.03.2018 passed separately by

the learned CIT(A)-I, Agra in the matter of assessments framed vide orders dated 19.12.2016 under section 147/143(3) of the Income Tax Act, 1961 for Assessment Year 2009-10 passed by the ITO-1(2)(3), Agra.

2. Since, ITA No.322/Ag/2018 and ITA No. 323/Ag/2018are for same Assessment Year i.e. 2009-10 in the cases of Shri. PushpendraSingh(the Son) and Smt. Pushpa(the Mother),and the assessee's therein have raised common grounds in appeal regarding the validity of reasons recorded, which too are recorded by the same Assessing officer in respect of cash deposited in bank accounts in both the cases with the only variation in amount therefore, in order to have consistency in our decision both the appeals are heard together and adjudicated accordingly, by this common order.

3. Brief facts are taken from ITA No.332/Agra/2018 in the case of Shri. Pushpendra Singh Vs ITO- 1(2)(3), Mathura,as a lead case. An information was received that assessee had deposited cash amounting to Rs. 12,50,000/- in his bank account bearing number 09490110001288 and remained unexplained to prove the source thereof in enquiry proceedings initiated vide Letters dated 26.04.2011 and 03.09.2015 which led to notice under section 148 of the Act, issued on

31.03.2016after recording reasons. In response to the notice return of income was filed showing only interest income of Rs.6,170/-,and during the course of assessment proceedings evidences filed to explain the sources of cash deposits stating to be from sale of agriculture produce grown on agriculture land held in the name of Father,did not favour with the view held by the learned Assessing officer who framed assessment vide order dated 19.12.2016 passed under section 147/143(3) of the Act determining total income at Rs. 12,56,170/-

4. Before the learnedCIT(A) assessee raised various grounds regarding validity of re-opening and also submitted that the addition on merits has wrongly been made, furnished affidavits of self and his Father explaining that cash deposits in bank accounts represents cash realization from sale of agriculture produce, and which was deposited in bank account held jointly with the appellant. However, the learnedCIT(A) rejected the appeal both on legal grounds as well on merits and confirmed the assessment order as such.

5. The learnedCIT(A) has sustained re-opening on the ground observing as under:

> *7.1 "I find that the appellant has challenged the legal validity of the notice issued u/s 148 by stating that the A.O. failed to*

take cognizance of the evidences and his replies dated 20.05.2011 and 02.02.2016 which were given by his in response to the query letters issued by the Department prior to the issue of notice u/s 148. He has alleged that the reasons for escapement of taxable income have been recorded by the A.O. without application of mind and just for the purpose of verification.

On a perusal of the assessment folder and the appellant's reply, it is observed that the two replies given by the appellant did contain evidence in the form of Khasra/Khatuni of land allegedly owned by the appellant's father, Shri Jaypal Singh. However, no other evidencehas been found enclosed with those letters, The A.O. has recorded this fact in the `reasons' by stating that not a single evidence of sale of agriculture product was submitted by the appellant to him. The appellant's contention that the A.O. should have conducted further enquiry in this matter before issuing the notice u/s 148, in my opinion, is not mandated by the provisions of law. The provision of incomplete and insufficient evidences by the appellant in response to two query letters of the Department, was a valid reason to infer that the appellant, a non-filer of return of income, was not in a position to properly explain the source of his cash deposits of Rs. 12,50,000/- in his bank account. Further, at the stage of formation of belief that taxable income has escaped assessment, the law does not mandate that final and clinching evidences should be collected before issuance of

the notice u/s 148. Hence, I am convinced that the reasons recorded by the A.O. were after due application of mind and after due consideration of the replies of the appellant. With due respect to the judicial precedents cited by the appellant, I am of the opinion that the facts of this case are distinguishable and hence none of those are of any help to the appellant. Grounds no. 1 and 2 are accordingly dismissed."

6. Being aggrieved, assessee has filed this appeal raising the following grounds:

1. ***"BECAUSE**, upon due consideration of facts and in the overall circumstances of the case **'appellant'** denies its liability to be assessed in terms of Notice dated 31.03.2016 said to be issued under section 148 of the 'Act'**.***
2. ***BECAUSE**, the purported 'Reasons' are no 'Reasons' in the eyes of Law. The so called 'Reasons' do not show any 'intelligible nexus' to show that 'Cash Deposit' as made by the assessee represents her 'Income' which too is liable for Income Tax and had escaped Assessment warranting recourse to Notice under section 148 of the Act.*
3. ***BEACUSE,** alleged lack of evidence may be a cause for further enquiry or may be a ground prompting 'reasons to suspect' for escapement of income but that alone does not give any valid foundation for reaching to 'reasons to believe' and thereafter arriving at the 'satisfaction' for escapement' of*

Income warranting recourse to Notice under section 148 of the Act.

WITHOUT PREJUDICE TO THE ABOVE

4. ***BECAUSE,*** *while confirming the addition the Ld CIT(A) failed to appreciate that amount of Rs. 12,50,000/- as was deposited in the joint Bank Account represented sale proceeds of agricultural produce in respect of which due explanation supported by evidences were duly filed explaining the deposits which explanation has been rejected purely on presumptions and surmises without any process of cross verification by the AO proving that the evidences filed by the 'appellant' are not genuine.*

5. ***BECAUSE****, while confirming the addition the Ld CIT(A) failed to appreciate that undisputedly 'appellant' had no source of Income and therefore, presumption of having any 'undisclosed income' in the hands of the* ***'appellant'*** *do not arise at all.*

6. ***BECAUSE,*** *while confirming the addition Ld CIT(A) has not ignored the statement of the* ***'appellant'*** *alongwith statement of ShriJaipal Singh and has disbelieved the Affidavits without any iota of evidence brought on records to prove the contents of Affidavits to be false.*

7. ***BECAUSE,*** *in any case and in any view of the matter impugned additions/disallowances and impugned assessment order is bad in law, illegal, unjustified barred by limitation, contrary to facts and law based upon incorrect assumption of facts and further without allowing adequate*

opportunity of hearing in violation of principals of natural justice and therefore, the additions made deserves to be quashed.

8. ***BECAUSE,*** *the assessment order to the extent making addition is bad in law and against the facts of the case.*
The ***'appellant'*** *craves leave to add, alter or vary the grounds of appeal before or at the time of hearing.*

9. ***BECAUSE,*** *in any view of the matter Assessment Order dated 19.12.2016 is bad on facts and in law. "*

7. The learned A.R of the assessee ShriAnuragSinha, Advocate submitted that the case of the authorities below rests on enquiry conducted vide Letters dated 26.04.2011 (APB-9) and 03.09.2015 (APB-16) which undisputedly were complied with on both the occasion vide reply dated 20.05.2011 (APB-10-14) and reply dated 02.02.2016 (APB-17-19) and the alleged ground that no evidence of agriculture produce was filed was never conveyed to the assessee with any further notice and therefore, such ground cannot be used detrimental to the interest of the assessee and lay a legal foundation for reopening of assessment. He also submitted that since the letters were non-statutory in nature, issued without any express or implied authority under the law therefore, even if such Letters were insufficiently complied with, novalid and legal proceedings can be initiated on the basis of such unauthorized Letters.

He referred to certain case laws which shall be discussed at appropriate places in this order.

8. He invited our attention to the reasons recorded as placed in paper book (APB-22) which is being reproduced as under:

> "The undersigned is in possession an information that the assessee has deposited cash amounting to Rs. 12,50,000/- in SB a/c in UCO Bank, Mathura during the year under consideration i.e. in the F.Y.2008-09 relevant to the A.Y.2009-10.
>
> The assessee did not file ITR for A.Y.2009-10. In compliance to notice u/s 133(6), the assessee filed reply and stated that 'my father own 52 Bighas of agricultural land and sold agricultural products. The amount so "received from sales consideration is being deposited in bank account. The assessee also stated that there is no source of income except agriculture." Whereas, on perusal of reply filed by the assessee, it is found that not a single evidence of sale of agricultural product is submitted by the assessee. In view of the above facts, I have reasons to believe that the amount of cash deposit Rs. 12,50,000/-as above is chargeable to tax, has escaped assessment and notice u/s 148 may be issued to the assessee after prior approval of the Ld. Principal Commissioner of Income Tax-I, Agra."

9. Per contra, the learned D.R.ShriWaseemArshad, at the outset objected to the submissions made by the learnedA.R and stated that since assessee had not challenged the validity of notice under section 148 of the Act before the authorities below therefore, it cannot be

allowed to raise this objection at this belated stage and thereby taking the revenue by surprise. For this he placed reliance to Hon'ble Supreme Court Judgment in the case of "GKN Driveshafts (India) Ltd. v. ITO", 125 Taxman 963(S.C) and "CIT vs. Safetag International India Pvt. Ltd.", ITA No. 355, 412 of 2010 (Delhi High Court). He thereafter, submitted that the proceedings are validly initiated on the basis of credible report indicating suspicious transaction and therefore, the learned Assessing officer was well within his jurisdiction to issue notice under section 148 of the Act. He further submitted that no return of income was originally filed and therefore, this being a case of deemed escapement of income under clause (a) to section 147 of the Act, the learned Assessing officer was well within his right to issue notice under section 148 of the Act. Reliance was placed to Hon'ble Jurisdictional High Court Judgment in the case of M/s GinniFilaments vs. CIT, Agra in Writ Tax No. 1402 of 2014.

10. We have considered rival submissions, material on records and the case laws relied up by both the parties. It was made clear to the parties that as the case is being heard in respect of ground No. 1 to 3, pertaining to validity of proceedings under section 147 of the Act based on reasons recorded and therefore, if such grounds do not find favour with the view held by the Bench in such an eventually the case will be

re-fixed for hearing in respect of other grounds raised in the memo of appeal to such a proposal the parties have readily agreed. First, we would deal with the objection raised by the learned Sr. D.R regarding the admissibly and maintainability of ground challenging the validity of notice under section 148 of the Act. The learned Sr. D.R has objected that assessee having raised no objection with regard to the proprietary of reasons recorded cannot at this stage of proceedings raise this issue. We hold that such an objection raised by the learnedSr. D.R cannot be approved either under law or on facts.

11. As the objection raised by the assessee is a purely legal objection going to the root of the matter to adjudicate upon the question of jurisdictionand in view of the Hon'ble Apex Court judgment in the case of "NTPC Vs CIT", 229 ITR 383 it can be raised at this stage even for the first time. The Hon'ble Supreme Court while dealing with ground raisedbefore the ITAT for the first time relating to legal issue has held that Tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier. It was also held that under section 254 of the Act that the Tribunal has jurisdiction to examine a question of law which though not arose before

lower authorities but arose before it from facts as found by lower authorities and having a bearing on tax liability of assessee.

12. In the case of “Shri Abdul MajidVsCIT”, 153 Taxman 131 (All) the Hon’ble Allahabad High Court framed following question of Law for its consideration at the instance of appeal preferred by the assessee:

> "1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT, was in law justified in rejecting the additional grounds challenging the validity of assessment order on the basis of illegal initiation of proceedings u/s 148 without complying the provision of Section 148 (2)”

The Hon’ble High Court held that:

> “Further, it has been held that the plea with regard to the jurisdiction of the Officer goes into the root of the matter, therefore, even if not raised at the first instance before the Assessing Authority, it can be raised before the Appellate Authority at a later stage. In this view of the matter, we are of the opinion that the Tribunal has erred in not allowing the additional ground challenging the validity of the assessment order on the basis of illegal initiations of the proceedings under Section 148 of the Act.”

13. In the case of “Km.Teena Gupta Vs. CIT”, (2017) 4 TMI 114 (All.) the Hon’ble Allahabad High Court set-aside the order passed by the ITAT wherein the ITAT refused to entertain the ground regarding the validity of re-assessment proceedings on the ground that assessee having raised no objection against validity of re-assessment proceedings

itself, it had conceded the same and the assessee did not have any grievance at that time. Upon appeal by the assessee before the Hon'ble Allahabad High Court, the Hon'ble High Court held that it is settled law that the reassessment notice is a jurisdictional notice and it is equally settled law that ground of lack of jurisdiction may be raised at a subsequent stage as well. In the case, before the Hon'ble High Court the reassessment order was admittedly an ex-parte order and, therefore, the Hon'ble Court found that there was no occasion for the assessee to have conceded to their assessment proceedings. Further, the assessee therein had demonstrated that he had raised specific ground both before the learned CIT (Appeals) and also before the Tribunal, challenging the jurisdiction of the Assessing Officer. The Hon'ble High Court thus found the approach of the Tribunal to be not in accordance with the law and thus, held that the issue of validity of reassessment proceedings is a jurisdictional issue. It goes to the root of the matter. The Tribunal ought to have examined the ground no.3 raised in the assessee's appeal on its merit without being prejudiced by the facts that the reassessment order has been passed on the ex-parte basis, in the proceedings the assessee has not objected to the initiation of the reassessment. Accordingly,

question no.1 is answered in favour of assessee and against the department.

14. The learned Sr. D.R placed heavy reliance to the Judgment of Hon'ble Delhi High Court in the case of"CIT vs. SafetagInternational India Pvt. Ltd.", (supra). On perusal of the case it reveals that it nowhere lays down any proposition of law for which the learned Sr. D.R has sought to rely upon it. In this case assessee did not ask for the reasons recorded, participated in the assessment proceedings and raised objection before the learned CIT(A) about the validity of notice under section 148 of the Act. However, the Hon'ble High Court directed the Revenue to supply copy of reasons to the assessee within four weeks and upon receipt of reasons assessee was required to make submission before learned CIT(A) based upon such reasons challenging the validity of re-assessment proceedings and learned CIT(A) shall decide this issue on merits after hearing the parties. From the reading of the Judgment it is not understood as to how reference to this case help the cause of the revenue in the case on hands. Therefore, the case is distinguishable on facts.

15. Further reliance on the Hon'ble Supreme Court in the case of "GKN Driveshafts (India) Ltd. v. ITO", (Supra) for the proposition that the

Hon'ble Supreme Court has required that immediately after receipt of notice under section 148 of the Act assessee has to furnish return of income and seek reasons recorded and thereafter file objection. Thus as per his submission since assessee did not file return of income in compliance to notice under section 148 of the Act and also has not filed objection he is precluded from challenging the validity of reasons at this belated stage. We are afraid to approve this submission too. In the case of GKN Driveshafts (India) Ltd. (supra) the Hon'ble Supreme Court has only provided step wise procedure and nowhere it has been held that if objections are not filed before learned Assessing officer such objection cannot be taken up at any further stage or the legal right of assessee would stands waived. It would be reading or making us to read something which is not there in the Judgment of the Hon'ble Supreme Court. No inference against the assessee is possible as far as substantive right is concerned. Thus, the reliance is misplaced.

16. We are alive of the settled position in law that the question of Jurisdiction is not a matter of acquiescence. The proprietary of notice under section 148, based upon reasons recorded is not dependent upon the objection or no objection by the assessee at the stage of assessment. If the reasons recorded, independently can withstand the

test of judicial scrutiny, only such reasons will confer jurisdiction to issue notice and frame assessment in pursuance thereto. However, if the reasons recorded, upon being challenged at any stage of proceedings fails to withstand the test of judicial scrutiny, in that eventuality, upon such recorded reason no valid notice can be issued and any assessment framed consequent thereto even taking shelter of 'No objection' from the assessee could save the assessment from being held to be declared void-ab-intio. In this background of the matter, the objection raised by the learnedSr. D.R is rejected being devoid of substance and based on incorrect reading of the law.

17. Even ifthe assessee raised no challenge at the stage of the learned Assessing officer, however, perusal of the appellate order passed by thelearnedCIT(A) reveals that assessee challenged the action of re-opening before the learned CIT(A)by taking specific grounds. LearnedCIT(A) extensively and elaborately discussed the issue and held re-opening to be valid in law as per his own understanding of the issue. Therefore, it cannot be said that assessee is challenging the legality of reopening for the first time before the ITAT. Thus, the objection raised by the learned Sr. D.R is rejected also on the ground, being based on

without consideration of fact available on record as emerging from the impugned order itself.

18. Now coming to the validity of reopening of assessment based on reasons recorded. From the perusal of the reasons recorded it is evident that the reason for issuing notice dated 31.03.2016 under section 148, as evident from reasons recorded on 18.03.2016, no evidence of agriculture income was furnished vide replies furnished in compliance to letters dated 26.01.2011 & 03.09.2015 and that no return was filed by the assessee.

19. However, the objection of the learned A.R that Letters dated 26.04.2011 and 03.09.2015 were not authorized under any provision of the Act remained undisputed. It also remained undisputed that no query, of the nature alleged in the reasons recorded was given to the assessee after he furnished replies on two occasions before two different Assessing officers, dated 20.05.2011 and dated 02.02.2016 in compliance to above Letters explaining that source of cash deposits was sourced from sale of agriculture produce held and possessed by his Father and in evidence thereof proof of ownership of agriculture land was also filed. In above circumstances, it is an undisputed position that escapement is assumed for the alleged failure to prove the source of

cash deposit as called upon vide Letters dated 26.04.2011 & 03.09.2015. Now, the question that arises for our determination is that whether escapement of income can be presumed on the basis of non-compliance or lack of compliance or even no compliance of the above Letters. This issue already stood adjudicated by the Amritsar Bench in the case of “Amrik Singh Vs ITO”, (2016) 70 taxmann.com 26 wherein the Tribunal in identical circumstances quashed the assessment holding that:

> “*The letter itself makes no mention of the provision under which it has been issued. So the provisions have to be examined to ascertain as to under which provision it was issued; As per section 133(6), the concerned income tax authority may require any person, inter alia, to furnish information in relation to such points or matters, as in their opinion would be useful for, or relevant to, any enquiry or proceeding under the Act; Section 133(6) corresponds to section 38, of the Income-tax Act, 1922. It was amended in 1995 and the words 'enquiry or' were inserted before the word 'proceedings' and the second proviso was also inserted, by the Finance Act, 1995, with effect from 1-7-*

1995; The scope and effect of this amendment brought about in 1995 was explained by the CBDT in its Circular No. 717, dated 14-8-1995. It was mentioned therein that the provisions of section 133(6) empower income-tax authorities to call for information which is useful for, or relevant to, any proceeding under the Act which means that these provisions can be invoked only in cases where the proceedings are pending and not otherwise. This acts as a limitation or restraint on the capability of the revenue to tackle evasion effectively. It is, therefore, thought necessary to have the power to gather information which after proper enquiry, will result in initiation of proceedings under the Act. With a view to having a clear legal sanction, the existing provisions to call for information have been empowered to requisition information which will be useful for or relevant to any enquiry or proceedings under the Income-tax Act in the case of any persons. The Assessing Officer, would, however, continue to have power to requisition information in specific cases in respect of which any proceeding is pending as at present. However, an

income-tax authority below the rank of Director or Commissioner can exercise this power in respect of an inquiry in a case where no proceeding is pending, only with the prior approval of the Director or the Commissioner; It is, therefore, evident that the pre-1995 amendment, section 133(6) could be invoked only in cases where some proceedings were pending, and not otherwise; The 1995 amendment brought in power to the revenue to gather information which, after proper inquiry, would result in initiation of proceedings under the Act. However, by virtue of the second proviso to the section, an income-tax authority below the rank of Commissioner can exercise this power in respect of an enquiry, in a case where no proceeding is pending, only with the prior approval of the Director or Commissioner; In the present case, the enquiry letter was issued by the Income-tax Officer, i.e., an officer below the rank of the income-tax authorities referred to in the second proviso to section 133(6). Thus, prior approval was required to be obtained from the competent authority before exercising power under section 133(6); There is

nothing on record to suggest that any such prior approval was obtained herein. The letter, per se, also does not make mention of any such approval. Hence, the power exercised by the Income-tax Officer, without compliance with the second proviso to section 133(6), would tantamount to an illegal exercise of power; However, be that as it may, this is not detrimental to the cause of the revenue. In the present case, the Income-tax Officer did not merely ask for information from the assessee. This takes the case out of the ken of section 133(6); The letter of enquiry being illegal, it was not obligatory on the assessee to respond to the same. Hence, non-response by the assessee to the enquiry letter cannot be said to constitute material before the Assessing Officer which could lead him to form any belief of escapement of income; Thus, the only material left with the Assessing Officer to enable him to form a belief that income had escaped assessment was the information regarding the cash deposits. Now, whether this information can be said to constitute material which could lead to such a belief? ; In BirBahadur Singh Sijwali v. ITO [2015] 53

taxmann.com 366/68 SOT 197 (URO) (Delhi - Trib.), it has been held that where the Assessing Officer issued a notice under section 148 on the ground that there was an escapement of income and the belief regarding such escapement of income was formed on the fallacious assumption of the Assessing Officer that bank deposits constituted undisclosed income, overlooking the fact that the source of the deposits need not necessarily be the income of the assessee, the reassessment proceedings cannot be sustained. In the present case, similarly, the basis of initiation of the assessment proceedings under section 147 was the information with the revenue, of the deposits made by the assessee in his bank account; In BirBahadur Singh Sijwali (supra), it was held that the reasons recorded for reopening the assessment are to be examined on a standalone basis and nothing can be added to the reasons. It was also observed that the reasons must point out to an income escaping assessment and not merely need of an enquiry which may result in detection of an income escaping assessment. It was observed that it is

necessary that there must be something which indicates, even if it does not establish, the escapement of income from assessment; that it is only on that basis that the Assessing Officer can form a prima facie belief that an income has escaped assessment; that merely because some further investigations have not been carried out, which, if made, could have led to detection of an income escaping assessment, this cannot be reason enough to hold the view that the income has escaped assessment; and that there has to be some kind of cause and effect of relationship between the reasons recorded and the income escaping assessment; Now, in keeping with BirBahadur Singh Sijwali (supra), this information cannot form a valid basis for initiating assessment proceedings under section 147. The mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income which has escaped assessment; Thus, it was a mere suspicion of the Assessing Officer, that prompted him to initiate assessment proceedings under section 147, which is neither countenanced, nor

sustainable in law. The Assessing Officer proceeded on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee. That being so, the reasons recorded to initiate assessment proceedings under section 147 and all proceedings pursuant thereto, culminating in the impugned order, are cancelled."

Finding our self in complete agreement with the view adopted by the Amritsar Bench, we find that in the present case notice under section 148 was wrongly issued on the basis of insufficient compliance to Letters dated 20.05.2011 and dated 02.02.2016 which were wholly unauthorized in law.

20. The last part of reasons recorded mentions the fact that assessee had not filed return of income, which according to learned D.R was itself a sufficient ground for issuing notice under section 148 of the Act as this is a case of deemed escapement in view of clause (a) of section 147 of the Act.

21. The learnedAR contended that such an argument as raised by learned Sr. D.R is in the teeth of judgment of Hon'ble Bombay High Court in the case of Ingram Micro (India) Exports (P) Limited Vs DCIT (2017) 178 taxman.com140 (Bom.) wherein the Hon'ble High Court while dealing with the argument of the revenue that the assessee therein had not filed return of income thus there is a deemed reasons to believe in view of Explanation 2(a) that income chargeable to tax has escaped assessment. The Hon'ble High Court rejecting such a contention held that Explanation 2(a) to apply, the income chargeable to tax which is deemed to have escaped assessment does not arise simpliciter on not filing return of income but must also be coupled with the prima-facie satisfaction of the assessing officer that the income of a person concerned is chargeable to income tax even if it exceeds the maximum amount not exigible to tax. Therefore, prima-facie for Explanation 2(a) of Section 147 of the Act to be invoked, the reasons must indicate that the Assessing officer has applied his mind to the fact that income is chargeable to tax under the Act and it has exceeded maximum amount not chargeable to income Tax. The Hon'ble Court found notice to be without jurisdiction as the satisfaction was not found in the reasons recorded. Thus, the argument of the learned Sr. D.R that mere non-filing

of Return is sufficient ground for assuming escapement of income is based on incorrect understanding of law and therefore, rejected.

22. During the course of hearing an objection was raised by the learned D.R that before the learned Assessing officer assessee raised no objection regarding its claim that Letters dated 26.04.2011 & 03.09.2015 are unauthorized in law. In such circumstances the issue may be remitted back to the file of Assessing officer where assessee will have due opportunity.

23. Learned A.R of the assessee strongly opposed to such a suggestion by the Sr. D.R stating that assessee is under no obligation to guide the Assessing officer on law, his duty is limited upto instructing the Assessing officer on facts of his case, applying the law to the facts of the case is the duty of the AO. He referred to Judgment of Hon'ble Supreme Court in the case of"Parsuram Pottery Works Co. Ltd. vs. ITO",106 ITR 1. (S.C) wherethe Hon'ble Court held that "It has been said that the taxes are the price that we pay for civilization**.** If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-versed with the law on the subject. Any remission on their part can only be at the cost of the national exchequer and must

necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. In this view of the matter and particularly keeping in mind the Hon'ble Supreme Court Judgement in the case of Parsuram Pottery Works Co. Ltd (supra) request of the learned Sr. D.R for setting aside the case is rejected.

24. Reliance by learned Sr. D.R to M/s GinniFilaments vs. CIT in Writ Tax No. 1402 of 2014- Allahabad HC is misplaced as in this case assessee had not valued its Closing Stock as per provisions of Section 145A of the Act. Notice under section 148 was issued which was challenged in Writ Jurisdiction. The Hon’ble High Court while sustaining notice under section 148 held that at this stage, it can be said that there is relevant material on the record to form a reasonable belief that the taxable income of the assessee has escaped assessment, in view of section 145A of the Act. From the reading of the Judgment it is not understood that what proposition of law laid down in the referred case matches with the controversy involved in the case on hands. Further in

the referred case return of income was duly filed before being served with notice under section 148 of the Act as is evident from para-2of the Judgment which reads that *"The petitioner is a public limited company registered under the Companies Act. It is engaged in the business of manufacturing of yarn and knitted fabrics from its industrial undertaking situate in District Mathura. The petitioner claims that it is a 100% Export Oriented Unit,(the EOU) and its income is exempt under section 10 B of the Act. For the relevant assessment years, the assessments were completed under section 143(1). Along with the Income Tax Return, audited statement of account for the relevant assessment years along with the report of the statutory auditors under the Companies Act, Tax Audit Report under section 44-AB of the Act and statement showing computation of income were filed by the petitioner. Subsequent thereto, notices for reassessment for these two years were issued by the learned Assessing Officer on the ground that the income has escaped assessment to tax……..".* Therefore, the case is distinguishable on facts.

25. Learned Sr. D.R has placed reliance to Sri Banarsi Prasad vs CIT decided on 29 February, 2008, wherein no question of reopening was involved and the Hon'ble High Court , context of section 68 of the Act

concluded its findings holding *that "In the circumstances, the question referred is answered as above by holding that on the facts and circumstances of the present case, when the credits were received by the assessee from close relatives like his non-earning wife and minor son, the explanation to be furnished under Section 68 in order to qualify as "satisfactory" would require to disclose the source of the depositor for establishing the "capacity" of the creditor as above."*

26. Further reliance to "CIT Vs G.S Tiwari", ITA No.5 of 2008 by the Hon'ble Allahabad High Court is misplaced as in the relied upon case no question of reopening was available for the valuable consideration of the Hon'ble High Court. In this case the Hon'ble High Court has held that in the instant case, the consistent plea of the assessee was that the sundry creditors are genuine but at any point of time the assessee take the stand that the sundry creditors are referable to the income of the business which has been determined on estimate basis. Hence, the assessee must be held to have failed to establish that the unexplained sundry creditors were referable to the business income. The addition of the unexplained sundry creditors as income from other sources by the AO, therefore, was held valid.

27. Reliance to “CIT VsNipun Builders & Developers (P) Ltd”,(Supra) delivered by the Hon’ble Delhi High Court has also wrongly been relied upon as the case again pertains to section 68 of the Act, wherein the Hon’ble Delhi High Court held that there has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68.

28. Further reliance to “A. GovindarajuluMudaliarVs CIT”,(Supra) reported in (1958) 34 ITR 0807(S.C) is misplaced as in this case also no question of reopening was considered by the Hon’ble Supreme Court.

29. In view of the above discussion and the reasons set out as above, we are of the considered opinion that the reasons recorded by the Assessing officer, are no reasons in the eye of law for assuming jurisdiction in this case.

30. We, therefore, quash the assessment orders u/s 144 read with 147 of the Act both dated 19.12.2016 passed in consequence to notices dated 31.03.2016forAssessment Years 2009-10 in ITA No. 332/Agra/2018 and 333/Agra/2018 in the cases of Shri. Pushpendra Singh Vs ITO 1(2)(3), Agra and Smt. Pushpa Vs ITO 1(2)(3), Agra.Since, the assessment orders itself are quashed being void-ab-intio,hence, all other issues on legal and on merits of the addition, in the impugned assessment proceedings, are rendered to be academic and infructuous.

31. In the result,both appeals are allowed.

Order pronounced in the open court on 22/03/2019

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	**(DR. MITHA LAL MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

A.K.V./DOC
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Assistant Registrar