IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER

AND

MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

ITA. 2724/DEL/2015 (A.Y 2008-09) [By Department]

ACIT Circle-45 (1) New Delhi. **(APPELLANTS)**	Vs.	M/s. K. S. Chawla & Sons [HUF] C–4, Rajouri Garden, New Delhi – 110 027. **PIN : ASDHK7622M** **(RESPONDENTS)**

A N D

C. O. No. 456/Del/2015 [By Assessee]
[in ITA. 2724/DEL/2015 (A.Y 2008-09)

M/s. K. S. Chawla & Sons [HUF] C–4, Rajouri Garden, New Delhi – 110 027. **PIN : ASDHK7622M** **(APPELLANTS)**	Vs.	ACIT Circle-45 (1) New Delhi. **(RESPONDENTS)**

Assessee by :	**Shri Rajesh Arora, C.A.;**
Department by:	**Shri Mahesh Thakur, Sr.DR**

Date of Hearing	**4.05.2021**
Date of Pronouncement	**18.05.2021**

O R D E R

PER SUCHITRA KAMBLE, JM :

The I.T. Appeal is filed by the Department and the Cross Objection is filed by the assessee against the order dated 3/02/2015 passed by CIT (Appeals)-15, New Delhi, for assessment year 2008-09. These were heard together and are being disposed of, for the sake of convenience, by this consolidated order.

ITA. 2724/DEL/2015 (A.Y 2008-09) [By Department]

2. The only ground of appeal raised is as under :-

" Whether on the facts and circumstances of the case and in law Ld. CIT (Appeals) has erred in restricting addition of Rs.2,18,88,000/- to Rs.8,02,993/- based on the valuation report received in the AO's office on 8.07.2013 after completion of assessment proceedings without calling for AO's comments on such report? "

C. O. No. 456/Del/2015 [By Assessee]

3. The grounds of appeal raised in the Cross Objection are as under :-

1. The Ld. CIT(A) has erred both in law and facts of the case in holding the reopening of assessment proceedings under section 147 r.w.s. 148 of the Income Tax Act, 1961 ("the Act") as valid and fiirther erred in rejecting the submissions of the appellant HUF against the said reopening by holding them to be academic in nature which is highly arbitrary, unjustified, unlawfid and against the principles of natural justice.
2. The Ld. CIT(A) has erred in law and facts of the case in sustaining the legality of assessment proceedings under section 147 r.w.s 148 of the Act, which was completed by the Ld. A.O without passing any speaking order, which is against the principles for disposal of objections to reopening assessment as laid down by the Hon'ble Apex Court in GKN Driveshafis (India) Ltd. vs. DCIT: 259ITR 19 (SC).
3. The Ld. CIT(A) has erred in law and facts of the case in holding the sales consideration of property of the appellant HUF as Rs. 85,52,993 under section 50C of the Act as against Rs. 77,50,000 declared by the appellant HUF and further erred in sustaining the above difference of Rs. 8,02,993 as alleged on-money for the purpose of computing capital gains in the hands of the appellant HUF which is highly arbitrary, uncalled for, unjustified and bad in law.
4. The Ld. CIT(A) has erred in law and facts of the case in confirming the action of the Ld. Assessing Officer to make reference for valuation under section 55A of the Act for the purposes of making addition on account of alleged undisclosed income under section 69A of the Act, which is highly arbitrary, unjustified and bad in law.
4.1 The Ld. CIT(A) has erred in law and facts of the case in relying upon the valuation report under section 55A of the Act which was received after the completion of reassessment proceedings, which is highly arbitrary, unjustified and bad in law.
5. The Ld. CIT(A) has erred in law and facts of the case in confirming the act of the Ld. Assessing Officer to convert the reassessment proceedings made on

protective into substantive proceedings through passing a rectification order under section 154 of the Act to assume fresh jurisdiction over the appellant company, which is highly arbitrary, unjustified, uncalled for and bad in law. "

Additional Ground:

"Notwithstanding to Ground no.1 & 2 raised by the respondent, the Assessing Officer has erred in law and facts of the case in making assessment under section 147 of the Income Tax Act, 1961 ("The Act") without appreciating that assessment could be made only under section 153C of the Act based upon documents/ information found during the course of search of the third party".

3. The assessee is Hindu Undivided Family. The return declaring income of Rs.6,38,800/- was filed by the assessee on 28.03.2010. During the year under consideration, the assessee sold its ½ share in residential property situated at DLF Gurgaon to Mr. Abhinav Arora and Mrs. Ranju Arora for a sale consideration of Rs.77,50,000/-. The capital gain on this transfer had been declared in the Income Tax Return, after claiming indexed cost of acquisition at Rs.8,88,590/-. During the search and seizure operation u/s 132 of the Income Tax Act, 1961 in the case of the buyers, viz. Mr. Abhinav Arora and Mrs. Ranju Arora, some incriminating documents were found and seized. The assessment u/s 153A of the Act in their case was completed after making addition of unexplained on-money payments in hands of purchaser Shri Abhinav Arora and Smt. Ranju Arora. The Assessing Officer observed that the addition made in case of the buyer has a direct bearing on the seller as well as they were the recipient of the on-money. Consequently, notice u/s 148 of the Act was issued in the assessee's case. The Assessing Officer in his order u/s 147/143(3) made an addition of Rs.*2,*18,88,000/- being half share as alleged 'on money' received by the assessee and not declared as part of sales consideration. The Assessing Officer enhanced the assessee's income under the head capital gains by Rs.2,92,044/- by reducing the cost of acquisition and disallowed the assessee's claim of exemption on account of capital gain on sale of shares amounting to Rs.9,47,957/-. The assessment was completed at an income of Rs.2,15,34,140/-/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that though the appeal is filed by the Revenue, the cross objection be taken up first as the assessee is challenging the validity of the assessment order itself. The Ld. AR submitted that the assessee is registered as a HUF and is assessed to tax vide PAN: ASDHK7622M. The assessee filed its return of income for the year under consideration on 28.03.2010 declaring total income of Rs. 6,38,800/-. Original assessment proceedings under Section 143(3) was completed at return income declared by the assessee vide order dated 22.12.2010. During the year under reference, the assessee has sold its ½ share in residential property situated at 8, Kachnar Marg, DLF Gurgaon, Haryana to Mr. Abhinav Arora and Mrs. Ranju Arora at a total consideration of Rs.77,50,000/- having index cost of acquisition of Rs. 8,88,590/-. However, during the course of search at Dawat Group of Companies dated 15.10.2009, a valuation report marked as "Pg 13-15/Annexure A-2/AR-1" was found. On the basis of the alleged document an addition of unexplained investment under Section 69 of the Act of Rs. 2,18,88,000/- each was made in the hands of Mr. Abhinav Arora and Mrs. Ranju Arora i.e. purchaser of the property sold by the assessee. On further appeal by the purchasers before the CIT(A)-33, the CIT(A)-33 informed the Assessing Officer of the assessee about the valuation report found during the course of search vide letter dated 22.03.2012. However, the CIT(A)-33, in the appeal of purchaser of properties, later deleted the additions made on the basis of valuation report after holding that 'valuation report cannot be taken as a yardstick for unaccounted investment' vide order dated 28.03.2013. Thereafter, in the mean time the Jurisdictional Assessing Officer of the assessee, on the basis of information received from the CIT(A)-33 reopened the case of assessee for the year under consideration and a notice under Section 148 of the Act was served vide notice dated 31.03.2012. In response thereof, the assessee

submitted that the return of income filed on 28.03.2010 to be considered as return filed under Section 148. Thereafter, the Assessing Officer provided the assessee an unstamped copy of reasons to believe on which neither the date of signing of notice nor the satisfaction of appropriate authority has been recorded. In response to the reasons for reopening, the assessee filed the above objections vide letter dated 05.03.2013 and dated 26.03.2013. Meanwhile, the Assessing Officer, before disposing the reassessment proceedings, had also referred the property in question for valuation before the valuation officer. However, the Assessing Officer without disposing the objections filed by the assessee and without waiting for the valuation report of the DVO passed an order under Section 147 of the Act dated 30.03.2013 at an assessed income of Rs. 2,15,34,135/-. The addition of Rs. 2,18,88,000/- has been made on account of Unexplained Money under Section 69A of the Act wherein the Assessing Officer held that the additions made in the hands of buyer purportedly establishes that the assessee received the alleged money over and above the declared sale consideration of Rs. 77,50,000/-. However, on further appeal before the CIT(A), the CIT(A) on the basis of valuation report of the DVO assessed the total sale consideration to Rs. 85,52,993/- by restricting the additions under Section 69A of the Act to Rs. 8,02,993/-. With respect to the disallowance of Rs. 9,47,957/- made on account of 54F of the Act, the same was allowed by the CIT(A) during the appeal proceedings. On being aggrieved by the CIT(A) order, revenue preferred an appeal before the Tribunal vide appeal no. 2724/Del/2015. In response to this, the assessee filed cross objections vide c/o no. 456/Del/2015. The Ld. AR submitted that on perusal of the reasons to believe provided by the Assessing Officer, it can be observed that the Assessing Officer has not provided approval of appropriate authority for reopening the case. The assessee during the course of proceedings vide letter dated 05.11.2012 requested the Assessing Officer to provide the copy of sanction from appropriate authority. However, the same has yet not being provided to the assessee. The Ld. AR pointed out the provisions of Section 151

of the Act. Applying the provisions of sub-section 2 of Section 151 in the instant case, it can be concluded that the Assessing Officer cannot issue notice under Section 148 of the Act unless approval of JCIT or officers of above rank was obtained by the Assessing Officer. Since, in the instant case, the Assessing Officer even after reminder of the assessee did not provide the approval of appropriate authority, therefore, in the absence of approval, notice for reopening the case issued by the Assessing Officer is bad in law and thus deserves to be quashed. The Ld. AR further submitted that on bare reading of reasons to believe, it can be observed that the Assessing Officer reopened the case in hand on the basis of letter received from the CIT(A)-13, New Delhi vide letter F. No. CIT (Appeals)/11-12/312 dated 22.03.2012 who informed that additions have been made in the hands of buyers for the property in question by the ACIT, CC-19 New Delhi. The Assessing Officer in the case at hand solely relied on the additions made by the ACIT, CC-19 and failed to apply his own mind and to give his independent findings. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in the case of Sarthak Securities Co. (P.) Ltd. vs. ITO (2010) 329 ITR 110. The Ld. AR also submitted that reopening of a case u/s 148 is not permissible on borrowed satisfaction of another officer. The pre-requisite condition required for the Assessing Officer is to give his own findings for reopening the case in hand and not to rely upon the findings given by any other officer. The Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC) analyzed the phrase "reason to believe" and observed that:

> *"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else to tell the assessing authority what inferences, whether of facts or law, should be drawn."*

In the instant case, the reasons recorded by the Assessing Officer are simply based upon the information passed on by the CIT(A)–13 and the addition made by the respective jurisdictional officer in the hands of the buyer. The Assessing

Officer in the case of assessee, simply relied on the seized document relied upon by the Assessing Officer of the buyers and reopened the case. The same is also evident from the fact that additions have been made by the Assessing Officer without giving any specific finding to the case and passing a protective order based on the additions made by the Assessing Officer at CC-19. In absence of any specific finding of the Assessing Officer, the reasons for reopening recorded by the assessee is mechanical in nature and thus the reopening deserves to be annulled. The Ld. AR submitted that the assessee during the course of proceedings, filed objections in response to the reasons for reopening provided by the Assessing Officer vide letter dated 05.03.2013. However, the Assessing Officer without disposing the objections raised by the assessee adjudicated the matter, thus denying the assessee to prove with the matter in accordance with the law. The Ld. AR pointed out the decision of Hon'ble Apex Court in the case of Home Finders Housing Ltd. v. ITO [2018] 94 taxmann.com 84 (SC)(Supra), wherein the Hon'ble Apex Court upheld the decision of Hon'ble Madras High Court remanding the matter back to the Assessing Officer wherein the Assessing Officer did not dispose off the objections filed by the assessee. During the course of petition, the Hon'ble High Court noticed that the assessee filed its objections on 26.03.2016. Thereafter, the assessee filed another letter dated 28.11.2016 wherein it resisted the fresh assessment proceedings. On perusal of the letters, the Hon'ble Court noticed that the assessee during the assessment proceedings did not cite the attention of the Assessing Officer to dispose off the objections and pass a speaking order as per the procedure laid down in another decision of Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd. On the basis of this fact, the Hon'ble High Court held that the assessee in order to take advantage of the irregularity committed by the assessing officer did not point out the procedure laid down by the Hon'ble Apex Court and consequently while adjudicating the matter the Hon'ble High Court set-aside the case of the assessee to the Assessing Officer for the disposal of objections. In this respect, the Ld. AR submitted that the

aforesaid decision of the Hon'ble Apex Court (Supra) is not applicable on the assessee. The justification for non-applicability of the decision of the Hon'ble Apex Court on the case of assessee is that the assessee filed the objections against reasons for reopening vide its letter dated 05.03.2013. However, the Assessing Officer passed an order under Section 147/ 143(3) of the Act vide order dated 20.03.2013 without disposing off the objections filed by the assessee. In this manner, the statutory obligation caste by the law has not been discharged by the Assessing Officer and thus, it does not warrant the remand to the Assessing Officer for curing the inherent defect in the order which makes the order invalid and void. Henceforth, the facts observed by the Hon'ble High Court in supra that since, the assessee in order to take advantage of the procedural defect did not point out the Assessing Officer to dispose off the objections, therefore, the matter deserves to be remanded back to the file of Assessing Officer for disposal of objections, are not present in the case of assessee. Therefore, in view to this, the decision of Hon'ble Apex Court is not applicable to the assessee and the assessee is still guarded by the legislation laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. It is pertinent to mention that the Assessing Officer did not deal in with the objections filed by the assessee and without considering the objections filed by the assessee stated that the reply is unacceptable and dealt in with the merits of the case. The Assessing Officer had never disposed off the objections filed by the assessee which is a statutory requirement for the Assessing Officer to vest in with powers to complete the assessment in lawful manner. Henceforth, the pre-requite finding of Hon'ble Apex Court is not present in the case of assessee and therefore, the said decision is not applicable on the assessee. The Ld. AR further submitted that the Assessing Officer received the information in respect of the valuation report from the CIT(A)-13, before whom the appeal of the purchaser was pending for adjudication. The Assessing Officer who assessed the case of the buyer did not find it worth passing on and thus did not record his satisfaction in this respect. The CIT(A)-13 who passed the information to

the Assessing Officer, while adjudicating the matter in case of buyer of property granted substantial relief to the buyer and held that the "valuation report of the valuer cannot be taken as yardstick for unaccounted investment". Hence, the basis for reopening the case, i.e., the copy of valuation report, was held to be invalid for the purpose of making any addition in the hands of the buyer by the CIT(A) and hence the reasons to believe ceased to exist in case of the assessee. In the case of Balakrishna H. Wani vs. ITO (2010) 321 ITR 519 (Bom) it was held that:

> *"Once it is clear that the basis and foundation for the formation of the reasons to believe that income has escaped assessment ceased to exist, the jurisdictional condition precedent to exercise of power to reopen the assessment was not fulfilled. The impugned notice and order are quashed."*

Henceforth, in view to the above judgement, the impugned notice and order deserves to be quashed.

6. As regards to Ground No. 3 of the cross objections, the Ld. AR submitted that the Assessing Officer made an addition of Rs. 2,18,88,000/- to the income of the assessee u/s 69A of the Act alleging unexplained money received by the assessee in respect of sale of property at "8, Kachnar Marg, DLF Gurgaon" to Mr. Abhinav Arora and Mrs. Ranju Arora. The Assessing Officer while adjudicating the matter held that since the additions were made in the hands of the buyers, it establishes that the assessee had received alleged on-money in respect of the property in question. During the course of appellate proceedings before the first appellate authority, the CIT(A) observed that the Assessing Officer had referred the property for valuation to the DVO during the pendency of re-assessment proceedings. However, the said report of the DVO was received on 08.07.2013 i.e. after the completion of the assessment proceedings. The DVO in its report valued the property at Rs. 1,71,05,985/- and thus, the share of the assessee was calculated and comes to Rs. 85,52,993/-. The CIT(A) on the basis of the said report of the DVO restricted the total consideration for

computing the capital gains in the hands of the assessee to Rs. 85,52,993/- as against Rs. 77,50,000/- declared by the assessee. Thus, addition to the extent of Rs. 8,02,993/- was confirmed. In this respect, the Ld. AR relied upon the provisions of Section 69A of the Income Tax Act, 1961 and submitted that the provisions of this Section is attracted only when following conditions are satisfied:

(a) The assessee is found to be the owner of any money, bullion, jewellery or other valuable article,

(b) The same is not recorded in the books of account, if any, maintained by assessee for any source of income; and

(c) No satisfactory explanation is offered by the assessee as regards such money, bullion or other valuable article.

If the aforesaid conditions are satisfied then the money or value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of the financial year in which it is so found. However, the Assessing Officer is bound to make enquiries and gather sufficient material before proceeding to make addition on this count. The Ld. AR relied upon the decision of CIT vs. N. Sowbhagmull Mahavirchand (1983) 142 ITR 747 (Mad). Although the Assessing Officer, in the order made additions under Section 69A of the Act, however, he had nowhere mentioned in the order that how the assessee was found to be the owner of alleged money. Moreover, the question of ownership does not arise since no money as alleged by the Assessing Officer has been found either from the possession of the assessee or the buyers of the property. The Assessing Officer in order to make the alleged additions, solely relied upon the copy of valuation report obtained by the buyers for the purpose of raising bank loan. The Ld. AR further submitted that the CIT(A)-13 has held that the valuation report obtained for the purpose of raising bank loan cannot be taken as yardstick for unaccounted investments. The same is evident from the copy of order dated 28.03.2013 placed at Pages 25-34 of paper book. Hence, where the basis for making the addition in the hands of the buyer has

been held as inadmissible and unsustainable, the addition made in the hands of the assessee HUF solely relying on the additions in the hands of the buyer deserves to be deleted, more particularly, in view of the fact that the impugned valuation report has not been found from the possession of the assessee. Moreover, the report of the valuation officer found during search does not ispo-facto imply that differential amount has been received by the assessee. Therefore, relying on the above, it can be clearly established that the addition made on the basis of valuation report deserves to be deleted. As regards to Ground No. 4 & 4.1 of the cross objection, the Ld. AR submitted that these grounds are not pressed by the asseseee. As regards the additional grounds filed by the assessee relating to cross objections, the Ld. AR submitted that hence the order passed is bad in law, void ab initio and deserve to be quashed. The Ld. AR further submitted that in the instant case, search & seizure action u/s 132 of the Act was carried out on 15.10.2009 in the premises of Mr. Abhinav Arora and Mrs. Ranju Arora. Consequently, the Assessing Officer initiated re-assessment proceedings u/s 147 of the Act relying upon the information received based on the alleged incriminating documents found during the course of search from the premises of a 3rd party i.e. Mr. Abhinav Arora and Mrs. Ranju Arora. At this juncture, it is pertinent to mention that assessment based upon the documents found during the course of search of 3rd party premises can be made only u/s 153C of the Act. Thus, the provision of Section 153C of the Act covers situation wherein any alleged incriminating documents pertaining to the assessee is found during the search of 3rd party premises. Furthermore, the provisions of Section 153C of the Act are non-obstantive provisions and the same specifically excludes the operation of Sec. 147 of the Act, therefore, the Assessing Officer in the present case has grossly erred in invoking the provisions of Sec. 147, instead of 153C of the Act. If the alleged action of the Assessing Officer under Sec. 147 is permitted on the basis of documents found in the course of search of 3rd party premises, then the provisions of Sec. 153C of the Act would become redundant. Further, to

support the aforesaid contention reliance is sought to be placed on the decisions of the Amritsar Tribunal in the case of ACIT vs. Arun Kumar Kapoor (140 TTJ 249) wherein also the case of the assessee was re-opened u/s 147 of the Act based upon the documents found during the course of search of 3rd party premises. The Tribunal categorically held that Assessing Officer has erred in re-opening the case of the assessee u/s 147 of the Act as the assessment based upon alleged incriminating documents found during the course of search at the 3rd party premises could only be made u/s 153C of the Act. The said order was referred in the very recent judgment of Tribunal, Delhi Bench in case of Shelly Aggarwal, New Delhi vs. ITO, Ghaziabad (ITA 1501/Del/2017) dated 08.08.2017 wherein also, the case of the assessee was re-opened u/s 147 of the Act based upon alleged incriminating documents found during the course of search at Mr. Abhinav Arora and Mrs. Ranju Arora. The Tribunal while adjudicating the afore-said case, categorically held that the notice issued u/s 148 of the Act and the consequent assessment framed u/s 147 of the Act is void-ab-initio as in the instant case, assessment based upon incriminating documents found during the course of search of 3rd party premises can be made u/s 153C of the Act. The relevant extracts of the same are re-iterated as under:-

"8. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which

excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kumar Kapoor - 140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds."

Thus, the Ld. AR pointed out that the present case of the assessee is squarely covered by the decision of the Tribunal itself in the case Shelly Aggarwal, New Delhi vs. ITO, Ghaziabad (ITA 1501/Del/2017) dated 08.08.2017 on account of identical facts. Also similar decision was taken by the Tribunal in the case of Sushil Gaur vs. ITO (1500/Del/2017). Therefore, in the instant case also, the issue of notice u/s 148 of the Act and consequent re-assessment proceedings u/s 147 of the Act deserve to be quashed.

7. As regards the Revenue's appeal, the Ld. AR submitted that in the assessment order, the Assessing Officer has made an addition under section 69A of the Act inspite of the fact that the Assessing Officer did not have any evidence regarding actual receipt of money by the assessee. Therefore, on the basis of this fact the CIT(A) ought to have deleted whole of the addition made by the Assessing Officer. However, the CIT(A) instead of deleting the addition, restricted it to Rs. 8,88,590/- by invoking the provisions of Section 50C of the Act. The Ld. AR pointed out that the assessee has filed an appeal before the CIT(A) against addition under Section 69A. Thus, the addition by the CIT(A) under Section 50C of the Act was not called for. Moreover, the Ld. AR further pointed out that the assessee has not filed any additional evidence during the first appellate proceedings wherein assessing officer's comments are pre-requisite before passing of CIT(A)'s order. (Sub-rule 3 of Rule 46A). Therefore, the grounds raised by the revenue that the report of the DVO has been considered by the CIT(A) without obtaining assessing officer's comments is uncalled for. Without prejudice to above, the Ld. AR further submitted that assessment was completed on 30.03.2013 and the same was to get time barred on 31.03.2013. Therefore, is the valuation report was not received before 31.03.2013, it cannot be considered after the case has been either completed or is time barred. The Assessing Officer has no jurisdiction to consider any report if received after the time barring date. In this respect, reliance is sought to be placed on the decision of Hon'ble Delhi High Court, the writ petition of Acc Ltd. vs. District Valuation Officer W.P. (C) 3795/2011. In this petition, the Hon'ble Delhi High Court vide Para 12 of its order held that once the assessment is time barred and the valuation report for such year is received after the completion of the assessment proceedings then it is open for income tax authorities to take action as permissible. Accordingly, when valuation report was received, it was beyond the jurisdiction of the Assessing Officer, therefore, the grievance of the Revenue that the CIT(A) passed the order

without the Assessing Officer's comment does not deserve to be considered. Hence appeal of the revenue deserves to be rejected.

8. The Ld. DR submitted that the reasons were recorded before issuance of notice under Section 148 which was issued within time. Further, the objections raised by the assessee were disposed of by a speaking order which clearly shows application of mind on the part of the Assessing Officer. The Ld. DR submitted that as a result of a search and seizure action under Section 132 of the Income Tax Act, 1961 in the Dawat Group of cases, some incriminating documents showing payment of on-money by Sh Abhinav Arora and Mrs. Ranju Arora for sale of property at 8, Kachnar Marg, DLF, Gurgaon to the assessee along with M/s P S Chawla and Sons was found. The Assessing Officer of Sh Abhinav Arora and Mrs. Ranju Arora passed on the information to the Assessing Officer of the assessee herein. Since, the information contained fresh material, the Assessing Officer rightly re-opened the case under Section 148. As the incriminating material seized did not belong to the assessee but only contained material regarding undisclosed income of the assessee, provisions of Section 153C need not be invoked and notice under Section 148 was rightly issued. The Assessing Officer, thereafter proceeded to add the on money based on valuation report seized to the income of the assessee. The CIT(A) has restricted the addition from 2,18,88,000/- to Rs. 8,02,993/- based on valuation report received after the completion of assessment without referring it to the Assessing Officer. The action of the CIT(A) is in violation of Rule 46A of the Income tax Rules and also the decision of the Hon'ble Delhi High Court in case of Manish Buildwell Pvt. Ltd. vs. CIT in ITA No. 938/2011. Therefore, the Ld. DR prayed that the matter may be remanded back to the file of the Assessing Officer and the Cross objection as well as additional grounds raised by the assessee be dismissed.

9. We have heard both the parties and perused all the relevant material available on record. Since the validity of the reopening is challenged by the assessee in cross objection and the grounds raised in the cross objections as well as the additional grounds are pivotal, therefore we are allowing the additional grounds and taking up the cross objections of the assessee first. As regards the additional grounds filed by the assessee relating to cross objections, in the present assessee's case, search & seizure action u/s 132 of the Act was carried out on 15.10.2009 in the premises of Mr. Abhinav Arora and Mrs. Ranju Arora. Consequently, the Assessing Officer initiated re-assessment proceedings u/s 147 of the Act relying upon the information received based on the certain documents found during the course of search from the premises of a 3rd party i.e. Mr. Abhinav Arora and Mrs. Ranju Arora. Thus, the assessment is based upon the documents found during the course of search of 3rd party premises, but that can be made only u/s 153C of the Act. The provision of Section 153C of the Act is attracted when there are any incriminating documents pertaining to the assessee which are found during the search of 3rd party premises. The contention of the Ld. AR that the provisions of Section 153C of the Act are non-obstantive provisions and the same specifically excludes the operation of Sec. 147 of the Act, therefore, the Assessing Officer in the present case has grossly erred in invoking the provisions of Sec. 147, instead of 153C of the Act appears to be correct in legal parlance. When any incriminating documents are found Section 153C is invoked and the same has to be applied by the Revenue authorities as Section 147 has its own separate footing for invoking the provisions. If Sec. 147 is permitted on the basis of documents found in the course of search of 3rd party premises, then the provisions of Sec. 153C of the Act would become redundant. This is also supported by the decisions of the Amritsar Tribunal in the case of ACIT vs. Arun Kumar Kapoor (140 TTJ 249) relied by the Ld. AR during the hearing wherein also the case of the assessee was re-opened u/s 147 of the Act based upon the documents found during the course of search of 3rd party

premises. The Tribunal categorically held that Assessing Officer has erred in re-opening the case of the assessee u/s 147 of the Act as the assessment based upon alleged incriminating documents found during the course of search at the 3rd party premises could only be made u/s 153C of the Act. The said order was referred in the very recent judgment of Tribunal, Delhi Bench in case of Shelly Aggarwal, New Delhi vs. ITO, Ghaziabad (ITA 1501/Del/2017) dated 08.08.2017 wherein also, the case of the assessee was re-opened u/s 147 of the Act based upon alleged incriminating documents found during the course of search at Mr. Abhinav Arora and Mrs. Ranju Arora. The Tribunal while adjudicating the afore-said case, categorically held that the notice issued u/s 148 of the Act and the consequent assessment framed u/s 147 of the Act is void-ab-initio as in the instant case, assessment based upon incriminating documents found during the course of search of 3rd party premises can be made u/s 153C of the Act. Thus, the assessment in the present case itself becomes null and void. Besides this, on the other grounds of the cross objections, it is pertinent to note that original assessment proceedings under Section 143(3) was completed at return income declared by the assessee vide order dated 22.12.2010. During the year under reference, the assessee has sold its ½ share in residential property situated at 8, Kachnar Marg, DLF Gurgaon, Haryana to Mr. Abhinav Arora and Mrs. Ranju Arora at a total consideration of Rs.77,50,000/- having index cost of acquisition of Rs. 8,88,590/-. However, during the course of search at Dawat Group of Companies dated 15.10.2009, a valuation report marked as "Pg 13-15/Annexure A-2/AR-1" was found. On the basis of the said document an addition of unexplained investment under Section 69 of the Act of Rs. 2,18,88,000/- each was made in the hands of Mr. Abhinav Arora and Mrs. Ranju Arora i.e. purchaser of the property sold by the assessee. On further appeal by the purchasers before the CIT(A)-33, the CIT(A)-33 informed the Assessing Officer of the assessee about the valuation report found during the course of search vide letter dated 22.03.2012. However, the CIT(A)-33, in the

appeal of purchaser of properties, later deleted the additions made on the basis of valuation report after holding that 'valuation report cannot be taken as a yardstick for unaccounted investment' vide order dated 28.03.2013. The said decision of the CIT(A) was later confirmed by the Tribunal in purchaser Abhinav Arora and Ranju Arora in ITA Nos. 4039 & 4040/Del/2013 and 4113 & 4114/Del/2013 order dated ..October, 2019. These facts were not disputed by the Ld. DR at the time of hearing. In the present assessee's case, the Assessing Officer provided the assessee an unstamped copy of reasons to believe on which neither the date of signing of notice nor the satisfaction of appropriate authority has been recorded. In response to the reasons for reopening, the assessee filed the above objections vide letter dated 05.03.2013 and dated 26.03.2013. Meanwhile, the Assessing Officer, before disposing the reassessment proceedings, had also referred the property in question for valuation before the valuation officer. However, the Assessing Officer without disposing the objections filed by the assessee and without waiting for the valuation report of the DVO passed an order under Section 147 of the Act dated 30.03.2013 at an assessed income of Rs. 2,15,34,135/-. The addition of Rs. 2,18,88,000/- has been made on account of Unexplained Money under Section 69A of the Act wherein the Assessing Officer held that the additions made in the hands of buyer purportedly establishes that the assessee received the alleged money over and above the declared sale consideration of Rs. 77,50,000/-. Though the Ld. DR in the submissions stated that the objections were disposed of but the Assessment Order does not reveal the same. Further, on perusal of the reasons to believe provided by the Assessing Officer, it can be observed that the Assessing Officer has not provided approval of appropriate authority for reopening the case. From the reasons also we can observe that the Assessing Officer reopened the case only on the basis of letter received from the CIT(A)-13, New Delhi dated 22.03.2012 who informed that additions have been made in the hands of buyers for the property in question by the ACIT, CC-19 New Delhi. But the Assessing Officer in the present assessee's case solely

relied on the additions made by the ACIT, CC-19 and not given any separate reasons of satisfaction. Thus, the Assessing Officer failed to give independent findings. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in the case of Sarthak Securities Co. (P.) Ltd. vs. ITO (2010) 329 ITR 110 is apt in the present case. The reopening of a case u/s 148 is not permissible on borrowed satisfaction of another officer. The pre-requisite condition required for the Assessing Officer is to give his own findings for reopening the case in hand and not to rely upon the findings given by any other officer. The reliance of the decision of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC) regarding the phrase "reason to believe" has to be taken into account. In the instant case, the reasons recorded by the Assessing Officer are simply based upon the information passed on by the CIT(A)–13 and the addition made by the respective jurisdictional officer in the hands of the buyer. The Assessing Officer in the case of assessee, simply relied on the seized document relied upon by the Assessing Officer of the buyers and reopened the case which is evident from the additions that have been made by the Assessing Officer without giving any specific finding to the case and passing a protective order based on the additions made by the Assessing Officer at CC-19. In absence of any specific finding of the Assessing Officer, the reasons for reopening recorded by the assessee is mechanical in nature and thus the reopening itself is bad in law. The Ld. AR pointed out the distinguishing facts of the decision of Hon'ble Apex Court in the case of Home Finders Housing Ltd. v. ITO [2018] 94 taxmann.com 84 (SC)(Supra), and is not applicable on the assessee. As in the present assessee has filed the objections against reasons for reopening vide its letter dated 05.03.2013, but the Assessing Officer passed an order under Section 147/ 143(3) of the Act vide order dated 20.03.2013 without disposing off the objections filed by the assessee. Thus, it is a binding provision by the law and the Assessing Officer cannot overlook the same. Thus, there is inherent defect in the order which makes the order invalid and void. Therefore, in view to this, the decision of

Hon'ble Apex Court is not applicable to the assessee and the assessee is still guarded by the legislation laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Further, the Assessing Officer received the information in respect of the valuation report from the CIT(A)-13, before whom the appeal of the purchaser was pending for adjudication. The CIT(A)-13 who passed the information to the Assessing Officer, while adjudicating the matter in case of buyer of property granted substantial relief to the buyer and held that the "valuation report of the valuer cannot be taken as yardstick for unaccounted investment". Hence, the basis for reopening the case, i.e., the copy of valuation report, was held to be invalid for the purpose of making any addition in the hands of the buyer by the CIT(A) and hence the reasons to believe ceased to exist in case of the assessee. Thus, on this aspect also the assessment becomes void-ab-initio. As regards to Ground No. 3 of the cross objections, the CIT(A) observed that the Assessing Officer had referred the property for valuation to the DVO during the pendency of re-assessment proceedings. However, the said report of the DVO was received on 08.07.2013 i.e. after the completion of the assessment proceedings. The DVO in its report valued the property at Rs. 1,71,05,985/- and thus, the share of the assessee was calculated and comes to Rs. 85,52,993/-. The CIT(A) on the basis of the said report of the DVO restricted the total consideration for computing the capital gains in the hands of the assessee to Rs. 85,52,993/- as against Rs. 77,50,000/- declared by the assessee. Thus, addition to the extent of Rs. 8,02,993/- was confirmed. The Ld. AR relied upon the decision of CIT vs. N. Sowbhagmull Mahavirchand (1983) 142 ITR 747 (Mad). The CIT(A)-13 has held that the valuation report obtained for the purpose of raising bank loan cannot be taken as yardstick for unaccounted investments. Hence, where the basis for making the addition in the hands of the buyer has been held as inadmissible and unsustainable, the addition made in the hands of the assessee HUF solely relying on the additions in the hands of the buyer does not sustain and the same has to be deleted, particularly, in view of the fact that the said valuation

report has not been found from the possession of the assessee. Besides this, the report of the valuation officer found during search does not specifically set out that differential amount has been received by the assessee. Thus, it can be clearly established that the addition made on the basis of valuation report does not sustain and deserved to be deleted. Therefore, we are allowing the cross objections of the assessee.

10. Since we have allowed the additional grounds of the cross objections and held that the assessment itself is null and void, the appeal of the revenue which is on the merit of the addition does not sustain. Hence, appeal of the Revenue is dismissed.

11. In result, appeal of the Revenue is dismissed and the cross objection of the assessee is allowed.

Order pronounced in the Open Court on this 18th Day of May, 2021

Sd/-	**Sd/-**
(N. K. BILLAIYA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 18/05/2021

MEHTA