IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3933/Del/2017
Assessment Year: 2012-13

Ramotar Singh, HUF, Rewari C/o Naresh Singh Chauhan, Advocate, 1035-P, Sector-3, Part II, Near Ganeshi Lal Dharmshala, Rewari, Haryana. PAN: AASHR5279J	Vs	ITO, Ward-2, Rewari.
(Appellant)		(Respondent)

Assessee by	:	Shri Gautam Jain, Advocate.
Revenue by	:	Ms Rakhi Vimal, Sr. DR
Date of Hearing	:	16.07.2020
Date of Pronouncement	:	21.08.2020

ORDER

PER R.K. PANDA, AM:

This is an appeal filed by the assessee against the order dated 13th April, 2017 passed by the CIT(A), Rohtak, relating to the A.Y. 2009-10.

2. Facts of the case, in brief, are that the assessee is an HUF. Original assessment in this case was completed u/s 143(3)/147, vide order dated 26th March,

2014 at an income of Rs.3,580/- and agricultural income of Rs.5,000/-. The AO had given a brief history of the case of the assessee which is as under:-

õSmt. Asharfi Devi w/o of late shri Ramotar Singh, with other co-owners sold the agricultural land measuring 108 Kanals 1 Marla for a consideration of Rs. 13,50,62,509/- to M/s Milestone Mega City (P) Ltd. on 23.07.2008. Share of Smt Asharfi Devi in the said deal was measured at 11 Kanal 3 Marla for Rs. 1,39,65,209/-. The said land was situated in village Kapriwas PO Dharuhera Distt. Rewari. At the time of assessment framed u/s 143(3) on 14.12.2011 in the case of Smt. Asharfi Devi, it was held by the then AO that the land in question (Sold) covered under the definition of capital asset u/s 2(14) of the I.T. Act, 1961 and therefore, liable for capital gain u/s 45 of the I.T. Act, 1961 after gathering distance certificate from the different state Authorities. During the course of assessment proceedings in the case of Asharfi Devi, it was submitted that the land sold belongs to HUF. The then AO asked the assessee to furnish documentary evidence that the land belongs to HUF. After considering her reply and the documents produced at that time, the AO denied the claim of the assessee that the land in question belongs to HUF.

Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A), Rohtak in his appellate order in appeal No. 526 & 527/RWR/2011-12 date 21.01.2013 by accepting the ground of the assessee set aside/cancelled the assessment made by the AO in the status of Individual. He further directed that since the land was inherited by the assessee from forefathers, it belongs to HUF. Therefore, the capital gain should be assessed in the hands of HUF only.

Against the order of the Ld. CIT(A), the revenue filed an appeal before the Honøble ITAT, New Delhi. The Honøble ITAT in ITA No. 1802/1801/1869/Del/2013 dated 26.09.2014 directed the AO to verify the claim of the assessee and in case it is found that HUF has been taxed for capital gain on the land in question, then AO shall delete the same levied on the Individual assessee. The order of the Ld. CIT(A) was set aside and the matter was remitted back to the file of AO with the direction to verify whether the HUF has been taxed on the capital gain on the land in question and if so the addition made in individual status needs to be deleted.

3. In the above background, the AO initiated reassessment proceedings u/s 147 of the Act by recording the following reasons:-

õAssessment u/s 147/143(3) of the Act was made vide order dated 26.03.2014 at an income of Rs. 3, 580/- + agriculture income of Rs. 5,000/- wherein the

Capital Loss on sale of land was determined, at Rs. 3,489/- by adopting the cost of acquisition of land at Rs.24,00,120/- as on 01.04.1981 as per calculation given below:

Assesseeøs share in sale consideration of agricultural land.	Rs:	1,39,65,209/-
Less: Cost of acquisition 24,00,120x582/100	Rs.	1,39,68,.698/-
Capital Loss:	Rs.	3,489/-

Later on, perusal of the Honøble I.T.A.T, New Delhiøs Order dated 26.09.2014 in appeal No. ITA No. 1869/Del/2013 in the case of Smt. Asharfi Devi in individual Status for the A. Y 2009-2010 it is revealed that she has submitted before the I.T.A.T. that Capital gains on the land in question has been, brought to tax in the hands of HUF and the Honøble ITAT has directed the undersigned to verify the issue. Smt.Asharfi Devi has not challenged the cost of acquisition the land in question as on 01.04.1981 and calculation of Capital gains at Rs. 1,38,39,917/- in Individual Status before the Honøble ITAT. During assessment proceedings u/s 143(3) dated 14.12.2011 in the Individual case of Smt Asharfi Devi the cost of acquisition was determined at Rs.97/- per Marla at the rate of Rs. 15,520/- per acre as on 01.04.1981 and the total cost of acquisition of the land 11 Kanal 3 Marla (223 Marla) was determined at Rs. 21,631/- (223*97-21,631/-) and the indexed cost of acquisition of the-land in question was determined at Rs. 1,25,892/- (21,631*582/100 =1,25,892/-). The Long-term Capital gain was worked out at Rs. 1,38,39,317/-(1,39,65,209-1,25,892=1,38,39,317/-) in the case of Smt. Asharf, Devi in Individual status. Therefore, in compliance of Honøble ITATøs Order the Capital Gain is to be Charged to tax in HUF Status of Smt.Asharfi Devi by applying the same cost of acquisition of the land in question as determined in the case of Individual status for the same assessment year. Thus, by taking the cost of acquisition of the land as on 01.04.1981 as that determined in the individual status of Smt. Asharfi Devi, the Long-term Capital gains in HUF Status of the assessee is worked out as under:

Sale consideration of 11 Kanal 03 Marla (223 Marla)	Rs. 1,39,65,209/-
Less: Cost of acquisition 21,631x582/100	Rs. 1,25,892/-
Long term, capital gain.	Rs. 1,38,39,317/-

As the Long-term Capital Gain has been assessed at Capital Loss of Rs.3,489/- vide order u/s 147/143(3) of the Act dated 26.03.2014, therefore, Long-term Capital Gain to the extent of Rs. 1,38,42,806/- has escaped assessment.

I, therefore, have reason to believe that income of the assessee from Long-term Capital gains to the extent of Rs. 1,38,42,806/- as discussed above and any other income which subsequently comes to the notice of the undersigned has escaped assessment within the meaning of section 147 of the Income tax Act, 1961

Sd/-

(Pawan Kumar)
Income tax Officer,
Ward-2, Rewariö

4. In response to the notice u/s 148, the assessee filed return of income on 27th April, 2015 declaring an income of Rs.3,580/- under the head ÷Income from other sourcesø, and ÷long-term capital lossø at Rs.4,32,239/-. The assessee filed certain objections against such reopening u/s 147/148 which the AO rejected by passing a speaking order on 4th February, 2016.

5. Subsequently, rejecting various explanations given by the assessee, the AO computed the long-term capital gain of the assessee at Rs.1,38,39,317/- the computation of which is as under:-

õSale consideration of11 Kanal 03 Marla (223 Marla)	Rs. 1,39,65,209/-
Less: Cost of acquisition 21,631x582/100	Rs. 1,25,892/-
Long term, capital gain.	Rs. 1,38,39,317/-õ

6. While computing the long-term capital gain, the AO also rejected the claim of deduction u/s 54F/54B since the same was not claimed in the return of income and the assessee failed to furnish copies of bills in respect of labour, purchase of construction material, etc. Accordingly, the AO determined the total income of the assessee at Rs.1,38,42,900/-.

7. Before the CIT(A), the assessee, apart from challenging the computation of such long-term capital gain, also challenged the validity of such reassessment proceedings. However, the ld.CIT(A) upheld the validity of reassessment

proceedings and also sustained the computation of long-term capital gain determined by the AO. The ld.CIT(A) also rejected the claim of deduction u/s 54F/54B on the ground that the assessee did not make claim for the deduction in its return of income and also the assessee failed to furnish the bills and vouchers for claiming the construction expenses so as to claim the deduction.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

> õ1. That the learned Commissioner of Income Tax (Appeals), Rohtak has erred both in law and on facts in sustaining the initiation of proceedings u/s 147 of the Act and, completion of assessment u/s 147/143(3) of the Act which were without jurisdiction and deserved to be quashed as such.
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> 1.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no tangible and relevant material on record on the basis of which it could be held that, there was any õreasons to believeö with the learned Income Tax Officer the income of the appellant had escaped assessment and, in view thereof, the proceedings initiated were illegal, untenable and therefore, unsustainable.
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> 1.2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in failure to appreciate that, issuance of notice u/s 148 merely amounted to change of opinion as original assessment was completed u/s 143(3) and, no tangible material surfaced after the completion of assessment and, therefore notice was illegal and, without jurisdiction.
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> 1.3. That the basis adopted in the reasons recorded that action u/s 148 of the Act in compliance of order of Honøble Tribunal dated 26.9.2014 in ITA No. 1869/D/2013 is based on misinterpretation and misconstruction of the findings of the Honøble Tribunal and hence the action is without jurisdiction.
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> 2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an addition of Rs. 1,38,39,317/- representing alleged long term capital gain on sale of agricultural land located at village Kapriwas PO Dharuhera Distt. Rewari.

2.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the alleged long term capital gain was not taxable in the hands of the appellant since addition made in the hands of the individual had been though deleted by the Honøble Income Tax Appellate Tribunal but since the aforesaid order was challenged in appeal before the Honøble High Court by revenue and as such it is a case of double taxation which is not permissible.

2.2. That even otherwise that since the land sold was an agricultural land no addition was tenable in the hands of the appellant u/s 45 read with section 2(14) of the Act.

3. That without prejudice to the above, the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming the incorrect computation of long term capital gain by restricting the indexed cost of acquisition to Rs. 1,25,892/- as against claimed indexed cost of acquisition of Rs. 1,39,68,698/- and thus even otherwise the addition sustained is invalid.

4. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the denial of exemption claimed u/s 54F/54B of the Act.

4.1 That various adverse findings and conclusion recorded by the learned Commissioner of Income Tax (Appeals) while upholding the denial of exemption are also factually incorrect, contrary to record, legally misconceived and untenable.

5. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 26,03,544/- under section 234B of the Act which is not leviable on the facts and circumstances of the case of the appellant.

It is therefore, prayed that, it be held that assessment made by the learned Income Tax Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed and, further addition so upheld by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant be allowed.ö

9. The ld. Counsel for the assessee strongly challenged the order of the CIT(A) in upholding the validity of the reassessment proceedings. The ld. Counsel submitted that in the first round of proceedings in case of Ramotar Singh, HUF, the

AO, vide letter dated 15th March, 2013, wrote a letter to Smt. Asharfi Devi, copy of which is placed at page 1 and 2 of the paper book to furnish certain documents such as copy of PAN of HUF, copy of return of income, if any, of HUF and the calculation of such long-term capital gain on sale of land in question along with supporting documents. Referring to page 3 of the paper book, he submitted that the assessee, vide letter dated 20th May, 2013, responded that the assessee has not filed any income-tax return for the impugned assessment year. Referring to page 5 of the paper book, the ld. Counsel drew the attention of the Bench to the notice issued u/s 148 of the Act to the assessee HUF. Referring to page 6-13 of the paper book, he submitted that the assessee furnished the return of income declaring an income of Rs.3,580/- on 10th October, 2013 in response to such notice u/s 148 of the Act. Referring to page 39 and 40 of the paper book, the ld. Counsel for the assessee submitted that the AO passed the order u/s 143(3)/148 on 26th March, 2014 accepting the return of income of Rs.3,580/-. Referring to page 44 of the paper book, the ld. Counsel drew the attention of the Bench to the notice issued by the AO u/s 148 of the Act on 25th May, 2015. He submitted that the assessee filed a letter in response to such notice u/s 148 on 27th April, 2015, copy of which is placed at pages 46-53 of the paper book. Referring to the reasons recorded for reopening of the assessment, he submitted that there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 147. Therefore, the notice issued u/s 148 after a period of four

years from the end of the relevant assessment year in a case where original assessment has been framed u/s 143(3) is illegal and invalid.

9.1 Referring to the decision of the Honøble Delhi High Court in the case of Haryana Acrylic Manufacturing Company Ltd. vs. CIT, 308 ITR 38; the decisions of Punjab & Haryana High Court in the case of Duli Chand Singhania vs. ACIT, 269 ITR 192; in the case of Mahavir Spinning Mills Ltd. vs. CIT, 270 ITR 290; Winsome Textile Industries Ltd. vs. UOI, 278 ITR 470 and various other decisions, he submitted that when the original assessment was completed u/s 143(3), reopening of the assessment u/s 147/148 of the Act beyond a period of four years from the end of the relevant assessment year is not permissible since there is no allegation by the AO of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

9.2 Referring to various decisions, he submitted that even mere statement that there is failure to disclose fully and truly all material facts necessary for completion of the assessment does not satisfy the statutory pre-conditions provided in proviso to section 147 of the Act, i.e., reasons must indicate why and how the assessee had failed to make full and true disclosure of the material facts. Mere repetition or quoting any of the proviso is not sufficient.

9.3 Referring to various decisions, he submitted that in a case where the primary facts have been truly disclosed and the issue is only with respect to the inference drawn, the AO would not have the jurisdiction to reopen the assessment. But, in

case where the primary facts as asserted by the assessee for framing of assessment are specifically discovered as false, the reopening of the assessment may be justified. For the above proposition, he relied on the decision of the Honøble Delhi High Court in the case of CIT vs. Multiplex Trading and Industrial Co. Ltd., 378 ITR 351, the decision of the Honøble Supreme Court in the case of CIT vs. Burlop Dealers Ltd., 79 ITR 609 (SC) and various other decisions as mentioned in the synopsis. He submitted that the duty of the assessee is only to ÷fully and trulyø disclose all primary facts and there is no duty cast by law on the assessee to indicate to AO or draw his intention to what factual, legal or other inferences can be drawn from already available primary facts disclosed by assessee. For the above proposition, he relied on the decision of the Honøble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. DCIT, 351 ITR 23 and various other decisions.

9.4 Referring to the decision of the Tribunal in the case of Smt. Ashrafi Devi in individual status for A.Y. 2009-10, vide ITA No.1869/Del/2013, order dated 26th September, 2014, he submitted that the Tribunal had only directed the AO to verify as to whether such long-term capital gain has been declared in the return of the HUF or not. However, in the instant case, the AO, instead of verifying that such long-term capital gain arisen on transfer of the land has already been disclosed, proceeded to reopen the assessment again on the same set of facts which is nothing, but, a mere change of opinion.

9.5 Referring to the decision of the Honøble Supreme Court in the case of CIT vs. Kelvinator of India Ltd., 320 ITR 561, he submitted that the Honøble Supreme Court has dismissed the Civil Appeal filed by the Department against the Full Bench judgement of the Honøble Delhi High Court in the case of CIT vs. Kelvinator India Ltd., 256 ITR 01 where it was held that the reassessment proceedings are not valid where the same is based on mere change of opinion. Referring to the recent decision of the Honøble Supreme Court in the case of ACIT vs. Marico Ltd. in SLP (Civil) No.7367/2020, order dated 1st June, 2020, he submitted that the Honøble Supreme Court has dismissed the SLP filed by the Department on account of reopening u/s 148 on the basis of change of opinion. Relying on various decisions which are mentioned in the synopsis filed by the assessee, the ld. Counsel for the assessee submitted that the reopening of the assessment in the instant case on the same sets of facts is invalid and illegal since the same is based on mere change of opinion.

10. The ld. Counsel submitted that the case cannot be reopened again for the same reasons. He submitted that in the instant case, the reasons for reopening u/s 148, vide notice dated 25th March, 2015 and notice dated 29.07.2013, copies of which are placed at pages 44 and 5 of the paper book, respectively are same in substance. He submitted that the first round of reassessment proceedings, reopened u/s 148 of the Act, vide notice dated 25th March, 2015, were post passing of the order of the CIT(A) in the case of Smt. Ashrafi Devi in individual capacity,

vide order dated 21st January, 2013, copy of which is placed at pages 114-121 of the paper book. Referring to page 63-65 of the paper book, he submitted that the AO while passing the order disposing of objections during second round of proceedings also admitted the same. Referring to pages 31 and 32 of the paper book, he submitted that the AO, in the show cause notice dated 21st March, 2014 issued during the first round of reassessment proceedings in the case of the assessee has sought explanation in respect of cost of acquisition of agricultural land sold in the sale deed dated 12th June, 2008. Referring to pages 57 and 58 of the paper book which is the copy of reasons recorded for issue of notice u/s 148 in the second round, he submitted that the AO has once again disputed the cost of acquisition as determined/reported by the assessee in respect of land sold by the assessee during the period under consideration and, as such, initiated proceedings once against u/s 148 after the order of the Tribunal.

10.1 Referring to the decision of the Honøble Delhi High Court in the case of Le Passage To India Tours & Travels (P) Ltd. vs. ACIT, 232 Taxman 277, he submitted that the Honøble High Court has held that a virtual assertion of same reasons in different words in second reassessment does not clothe reassessment notice with any more sanctity. Referring to the decision of the Honøble Calcutta High Court in the case of Berger Paints India Ltd. vs. ACIT, 322 ITR 369, he submitted that the Honøble High Court has held that where rectification proceedings had been dropped, reassessment proceedings could not have been

started on the basis of same materials. Further, it is the settled proposition of law that a particular case cannot be heard twice by the same authority on same facts and issue as it gets hit by the principle of res judicata. He submitted that in the instant case, the AO had conducted proper enquiries at the time of first round of assessment and had accepted the cost of acquisition of land sold during the period under consideration. Therefore, under no circumstances it could be alleged that the order of assessment dated 26th March, 2014 framed by the AO has escaped assessment to the extent of Rs.1,95,29,511/- in respect of long-term capital gain on sale of land to initiate second round of proceedings for same reasons. He accordingly submitted that the proceedings initiated by the AO u/s 147/148 of the Act and the subsequent assessment framed u/s 147/143(3) are *nonest* in the eyes of the law and should be quashed.

11. So far as the computation of long-term capital gain at Rs.1,38,39,317/- is concerned, the ld. Counsel submitted that the AO is factually incorrect in observing that in the appeal proceedings in individual capacity, i.e., in the case of Smt. Ashrafi Devi, the assessee had neither objected to the distance certificate nor objected to the fair market value adopted by the AO on the basis of sale instance in the locality during the period either before the CIT(A) or before the Tribunal. He submitted that there was no occasion on their part because they had decided the issue in favour of the assessee on alternative ground for which no decision was passed in respect of the grounds raised on merits. Therefore, the observation of the

AO that the assessee has, during the appellate proceedings in individual capacity neither objected to the distance certificate nor objected to the fair market value adopted by the AO on the basis of sale instance in the locality during the period is factually incorrect and, thus, untenable. So far as the denial of exemption u/s 54F/54B of the Act is concerned, he submitted that the assessee had not claimed such deduction in the return filed since there was a long-term capital loss in respect of sale of agricultural land treating the same as capital asset and, as such, there was no occasion to claim the deduction. However, it was submitted during the assessment proceedings that even otherwise in case any long-term capital gain being assessed in the hands of the assessee, the assessee has made due investment eligible for deduction u/s 54F/54B of the Act. He submitted that even otherwise also there is no estopple against the statute and the assessee can make a fresh claim in appellate proceedings. For the above proposition, he relied on the decision of the Honøble Madras High Court in the case of CIT vs. Abhinitha Foundation Pvt. Ltd., 396 ITR 251; decision of the Honøble Bombay High Court in the case of Sanchit Software and Solutions (P) Ltd. vs. CIT, 349 ITR 404; decision of the Honøble Bombay High Court in the case of CIT vs. Pruthvi Brokers and Shareholders (P) Ltd., 349 ITR 136 and various other decisions. Referring to the decision of the coordinate Bench of the Tribunal in the case of Narayan Singh, HUF vs. ITO, vide ITA No.3935/Del/2017, order dated 11th June, 2020, he submitted that under identical circumstances the reopening of assessment by the AO was quashed on the ground that the AO has totally misinterpreted the

directions of the Tribunal and grossly erred in once again reopening the assessment on the same set of facts which have already been considered while framing the assessment order dated 20th March, 2014 in the hands of the HUF. He accordingly submitted that the reassessment proceedings ought to be quashed and also the addition made by the AO on account of long-term capital gain has to be deleted.

12. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the ld.CIT(A) has given justifiable reasons while upholding the validity of reassessment proceedings. He submitted that the CIT(A) has given a categorical finding that this is not a simple case of change of opinion by the AO as mentioned by the assessee. According to the CIT(A), if certain facts were ignored by the AO at the time of assessment, the AO is entitled to re-examine the issue afresh. Further, the AO has clearly and painstakingly brought out how the assessee HUF is liable to be taxed for long-term capital gain and the deduction u/s 54B/54F cannot be allowed. He accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee should be dismissed.

13. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assesseee. We have also considered the various decisions cited before us. We find, in the instant case, the original assessment was completed u/s 147/143(3) of the Act on 26th March, 2014, determining the total income of the assessee at Rs.3,580/-. The case was re-opened basically to assess the long-term capital gain

arising on the sale of land in question. We find, while deciding the case of Smt. Ashrafi Devi in individual capacity, the AO held that the sale of agricultural land was taxable u/s 45 of the Act. The ld. CIT(A) quashed the order of assessment framed in the case of Smt. Ashrafi Devi in individual capacity and had held that the capital gain should be assessed in the hands of the assessee, HUF. The Tribunal, in the case of Smt. Ashrafi Devi, vide ITA No.1869/Del/2013 and batch of other appeals, vide order dated 26th September, 2014, has observed as under:-

> õ10. We have heard both the parties and have carefully perused the records of the case. We find that the ld. CIT(A) has clearly made a finding that the land in question belong to the HUF and therefore tax on capital gain can be levied only on HUF and not the individual assessee. It has been brought to our notice by the Id AR that the capital gain in respect to the land in question has been brought to tax in the hands of HUF. In the light of the aforesaid submission of the Id AR, it would be fair and reasonable to direct the AO to verify the said claim of the ld. AR. And in case it is found that the HUF has been taxed for the capital gain on the land in question; then the AO shall delete the same levied on the individual assessee. Therefore we set-aside the order of the Id CIT(A) and remit the matter back to the file of the AO and direct him to verify whether the HUF has been taxed on the capital gain on the land in question, and if so, the addition made on the individual assesseeøs need to be deleted. Needless to say, sufficient opportunity may be granted to all the three assessees.ö

14. Thus, we find merit in the argument of the ld. Counsel for the assessee that the Tribunal had merely directed the AO to verify as to whether the long-term capital gain on sale of such land was offered in the hands of the HUF or not. However, we find, the AO, in the instant case, issued notice u/s 148 to the assessee copy of which is placed at page 5 of the paper book. A perusal of the reasons recorded nowhere shows that there is any allegation by the AO of any failure on the part of the assessee to disclose fully and truly all material facts necessary for

completion of the assessment. In the instant case, the assessment year involved is A.Y. 2009-10 and the second reassessment notice was issued on 25th March, 2015. Thus, the assessment has been reopened after a period of four years from the end of the relevant assessment year and the provisions of first proviso to section 147 is clearly applicable to the facts of the present case. Recently, the Honøble Supreme Court in the case of NDTV vs. DCIT, vide Civil Appeal No.1008 of 2020, order dated 3rd April, 2020, has quashed the reassessment proceedings for not mentioning the first proviso neither in the reasons recorded nor in the notice issued u/s 148. In the instant case, we find the very same fact was examined by the AO in the first round of reassessment proceedings. Therefore, again issuing the notice u/s 148 of the Act by recording reasons for escapement of income on the same set of facts, in our opinion, amounts to change of opinion. Therefore, we find merit in the submission of the ld. Counsel that the reassessment proceedings initiated by the AO are merely on account of change of opinion and, therefore, is not sustainable. The Honøble Delhi High Court in the case of BPTP Ltd. vs. PCIT, vide Writ Petition No.13803/2018, order dated 28.11.2019,has held that if the AO has failed to perform his statutory duty, he cannot review his decision and reopen on a change of opinion. It has been held that reopening is not an empty formality. There has to be tangible material for the AO to come to the conclusion that there is escapement of income and there must be a live link with such material for the formation of the belief. Merely using the expression ÷failure on the part of the assessee to disclose fully and truly all material factsø is not enough. The reason

must specify as to what is the nature of default or failure on the part of the assessee. As mentioned earlier, the Tribunal, in the instant case, while deciding the case of Smt. Ashrafi Devi, had merely directed the AO to verify as to whether the HUF has filed the return disclosing the capital gain arising from transfer of such land. However, in the instant case, the AO, instead of verifying the same, reopened the assessment on wrong appreciation of facts which is nothing, but, mere change of opinion.

15. We find, the Hon⌀be Delhi High Court in the case of Haryana Acrylic Manufacturing Company vs. CIT, 308 ITR 38, order dated 1st July, 2020, has held as under:-

> õ19. Examining the proviso [set out above], we find that no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year if the following conditions are satisfied:
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> (a) an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year; and
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> (b) unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee:
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> (i) to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148; or
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> (ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year.
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> Condition (a) is admittedly satisfied inasmuch as the original assessment was completed under section 143(3) of the said Act. Condition (b) deals with a special kind of escapement of income chargeable to tax. The escapement must arise out of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. This is clearly not the case here because the petitioner did file the return. Since there was no failure to make the return, the escapement of income cannot be attributed to such failure. This leaves us with the escapement of income chargeable to tax which arises out of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. If it is also found that the petitioner

had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 could have been taken after the four year period indicated above. So, the key question is whether or not the petitioner had made a full and true disclosure of all material facts.

20. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade (P.) Ltd.øs we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our viewpoint, we hold that the notice dated 29-3-2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 2-3-2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.ö

16. The various decisions relied on by the ld. Counsel to the proposition that where there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment u/s 143(3), the notice issued u/s 148 after a period of four years from the end of the relevant assessment year in a case where the original assessment has been framed u/s 143(3) is illegal and invalid since the proceedings are without jurisdiction. Since, in the instant case, the original assessment was framed u/s

147/143(3) on 26th March, 2014 accepting the returned income at Rs.3,580/- wherein the issue of capital gain on transfer of such land was duly considered and accepted on the basis of various supporting documents filed at the time of such reassessment proceedings and since there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, therefore, the notice issued u/s 148 after a period of four years from the end of the relevant assessment year in the instant case is illegal and invalid being without jurisdiction.

17. We further find, identical issue had come up before the Tribunal in the case of Shri Narayan Singh, HUF (supra) and the Tribunal quashed the reassessment proceedings by observing as under:-

> õ7. As mentioned elsewhere, earlier also, a notice u/s 148 was issued and served upon the assessee and assessment was completed vide order dated 26.03.2014. The order of the Tribunal is 26.09.2014 and the directions of the Tribunal are very clear that the Assessing Officer had to verify whether the capital gains have been taxed in the hands of the HUF or not and assessment order dated 26,03,2014 clearly shows that assessment has been completed in the hands of the HUF.
>
> 8. In our considered opinion, once assessment has been reopened to tax capital gain in the hands of the HUF, to avoid double taxation the Tribunal in the hands of the individual has simply directed the Assessing Officer to very whether the HUF has been assessed or not. The Tribunal nowhere directed the Assessing Officer to reopen the assessment and make the impugned additions. In our humble opinion, the Assessing Officer has totally misinterpreted the directions of the Tribunal and grossly erred in once again reopening the assessment on the same set of facts which have already been considered while framing assessment order dated 26.03.2014 in the hands of the HUF. Therefore, we have no hesitation to set aside the notice u/s 148 of the Act, thereby quashing the assessment order framed pursuant to the said notice. Accordingly, Ground Nos. 1 to 1.3 taken together are allowed.ö

18. In view of the above discussion, we hold that the reassessment proceedings initiated by the AO are illegal and *void ab initio*. We, therefore, quash the reassessment proceedings initiated by the AO and upheld by the CIT(A). Since the assessee succeeds on this legal ground, the other grounds challenging the addition on merit are not being adjudicated being academic in nature.

19. In the result, the appeal filed by the assesee is allowed.

The Order pronounced in the open court on 21.08.2020.

Sd/-	Sd/-
(SUCHITRA KAMBLE) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 21st August, 2020.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi