आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 732/JP/2018
निर्धारण वर्ष/Assessment Year :2011-12

Shri Kishan Lal S/o Shri Ghasilal Lashkari, Gram Naya Nohara, The: Ladpura, Distt. Kota	बनाम Vs.	ITO, Ward-2(4), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGLPL5647B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 733/JP/2018
निर्धारण वर्ष/Assessment Year :2011-12

Shri Om Prakash S/o Shri Ghasilal Lashkari, Gram Naya Nohara, The: Ladpura, Distt. Kota	बनाम Vs.	ITO, Ward-2(4), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BXMPP3472M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Ms. Chanchal Meena (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 05/08/2020
उदघोषणा की तारीख/Date of Pronouncement: 16/09/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are appeals appeal filed by the aforesaid two assessees against the respective orders of ld. CIT(A), Kota dated 26.10.2016 for A.Y 2011-12. Since common issues are involved, both these appeals were heard together and disposed off by this consolidated order.

ITA No. 732/JP/2018

2. With the consent of both the parties, the appeal of the assessee, Shri Kishan Lal is taken as the lead case for the purposes of present discussion.

3. At the outset, the ld AR submitted that there is a delay in filing the present appeal by 486 days and the assessee has moved an application along with an affidavit seeking condonation of delay so happened in filing the present appeal.

4. In this regard, the ld. AR submitted that the ld. CIT(A) - Kota, Jaipur passed the impugned order on 26.10.2016, which was received by the assessee on 28.11.2016. Accordingly, the appeal was to be filed on/before 27.01.2017 however, the same has been filed on 28.05.2018. Thus, a delay of 486 days has occurred. In this connection, it was submitted the assessee is an illiterate farmer, who sold his ancestral agriculture land (being ½ share) through 2 registered sale deeds of Rs. 40 lakh each, totaling to Rs.80,00,000/-. The Sub-Registrar estimated the sale consideration valued at Rs.85,75,875/- of each sale, totaling to Rs.1,71,51,750/-. Thereafter, the AO issued notice u/s 148 and completed the assessment on 11.09.2015 u/s 144/147 computing long term capital gains of Rs.85,75,874/-. That against the assessment order dated 11.09.2015, the assessee filed first appeal before the ld. CIT(A) which was registered as Appeal No. 211/15-16 dated 26.10.2016 in which ld. CIT(A) confirmed the action of the AO and dismissed the appeal.

5. It was further submitted that against the order of the ld. CIT(A), the Counsel of the assessee, instead of filling second appeal before the Tribunal, has filed an application for revision u/s 264 of the I.T. Act, 1961 on 16.01.2018 before the Pr. CIT-Kota, which was rejected as not maintainable. Thereafter, it is only in the month of May, 2018 when the assessee met the Senior Counsel at

Jaipur, who suggested that the only proper course and remedy against the order of the ld. CIT(A), was to challenge the same before the Tribunal and the application u/s 264 was wrongly filed before the Pr. CIT. Realizing this mistake, immediate efforts were made to hand over documents to the ld. Counsel at Jaipur, who prepared the present appeal documents and the appeal was thereafter filed on 28.05.2018.

6. It was submitted that the assessee completely remained in good faith of his regular tax consultant upon whom he was fully dependent and therefore the delay was not attributable to him. It was only because of some confusion/ wrong impression being carried by the ld. Counsel Shri Arvind Goyal, CA that the remedy against the order passed by the ld CIT(A) lies before the Pr CIT,Kota as against the Tribunal. However this has prejudiced the assessee's valuable rights and despite having a good case in his favour on merits, unfortunately delay has occurred. That by not filing the present appeal or by a delayed filing thereof, the applicant assessee was not going to gain anything. The conduct of the applicant assessee was not therefore, contumacious or dishonest. Hence there was no deliberate intention on his part to delay the filing of the present appeal.

7. It was submitted that the assessee is a layman not very conversant with the complex tax laws and because of the circumstances stated above, the delay so caused was beyond his control but was bonafide and unintended. In the past, as & when occasion arose, mostly the appeals were filed in time without delay. The assessee was not going to gain any benefit because of the delayed filing and his conduct was not contumacious. That in support of the aforesaid facts, affidavits of the assessee and that of the Counsel of the assessee, Shri Arvind Goyal, CA are being placed on record.

8. It was submitted that the Hon'ble Supreme Court in a catena of judicial pronouncements including that of Collector Land Acquisition vs M. Katiji & Others (1987) 167 ITR 471 has held that delay in filing an appeal may be condoned if there is sufficient cause for the delay. The Hon'ble Supreme Court has also held that a liberal view may be taken on this issue since the primary duty of the Courts is to dispense justice and not to dismiss appeals on mere technicalities. Further, reliance was placed on the decisions in case of United Christmas Celebration Committee Charitable Trust vs. ITO (2017) 249 Taxman 372 (Mad), Hosanna Ministries vs. ITO, (2017) 152 DTR (Mad) 8, Mukesh Jesangbhai Patel vs. ITO (2013) 29 taxmann.com 389 (Guj) and Vijay Vishin Meghani vs. DCIT (2017) 398 ITR 250 (Bom). It was accordingly submitted that the prayer of the assessee for condonation of the delay may be accepted and appeal may be admitted for adjudication on merits.

9. Per contra, the ld DR submitted that there is an inordinate delay of 486 days and such delay should not be condoned and that a distinction ought to be drawn between a case where the delay in inordinate, as it is in the case on hand i.e. of 486 days and in cases where the delay is of a few days. The ld DR further contended that the explanation put forward by the assessee for the delay does not amount to reasonable and sufficient cause which were beyond his control and the assessee has certainly not proved beyond doubt that he was diligent and not guilty of negligence in the matter. The ld DR accordingly submitted that the petition for condonation of delay in filing the present appeal be rejected and the appeal being barred by limitation, the same should be dismissed.

10. We have heard the rival contentions and perused the material available on record. There is no dispute that there has been a delay in filing the present appeals and the period of delay as computed by the Registry comes to 489 days as against 486 days as submitted by the ld AR. There is also no dispute

that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there was sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient cause on his part in not presenting the present appeal within the prescribed time. In the instant case, the ld AR has contended that the assessee is an illiterate farmer who has sold his ancestral agriculture land and against the action of the Assessing officer wherein the whole of the sale consideration of his share of ancestral agriculture land has been brought to tax, he had pursued the matter and filed an appeal before the ld CIT(A) wherein he didn't get any relief and thereafter, based on advice of his local Counsel, he filed a revision application u/s 264 of the Act before the ld Pr.CIT, Kota which was also rejected and now, based on advice of another Counsel based out of Jaipur who had advised that the right course of action was filing of appeal before the Tribunal instead of revision application u/s 264, he has moved the present appeal before the Tribunal. From the perusal of records, we also note that the assessee has also moved an application u/s 154 which was also rejected by the AO. We therefore find that the assessee is all along diligent in pursuing his legal remedies against the action taken by the Department and has sought advice from his local Counsel from time to time and thereafter, from another Counsel based out of Jaipur. Basis the advice of the local Counsel, he moved an appeal before the ld CIT(A) and thereafter, against the order of the ld CIT(A), he has moved an application u/s 264 before the Pr. CIT, Kota instead of pursuing further appeal before the Tribunal. To our mind, the said advice of the Counsel seems to be guided by another development which we have noticed from perusal of the records and also the affidavit submitted by the Counsel. We find that there was recovery pressure from the Department and there was an attachment notice dated 15.01.2018 issued by the Tax Recovery officer attaching the immoveable property of the assessee and in order to safeguard his interest, basis the advice

of his Counsel again, the assessee moved the revision application before the ld Pr CIT under whose jurisdiction the TRO functions. We therefore find that there is a close connection between the attachment proceedings which necessarily arise out of the present quantum proceedings and therefore, to safeguard his interest, the assessee has filed the present appeal. We therefore find that the assessee has all along relied on the advice and assistance from his local Counsel. At the same time, we find that where the assessee being of a rural background and being illiterate and unaware of the complexities of law and thus wholly dependent on his Counsel, who is a practicing Chartered Accountant and who carries his brief to represent his tax matter before the tax and appellate authorities, the Counsel needs to be vigilant and should guide the assessee on regular basis on the appropriate course of action to be taken before the appropriate appellate authority. No doubt, the assessee need to follow up on his matters, however, the onus is equally on the Counsel to direct and guide him property timely. There is an error of judgment on part of the Counsel, as we have noted above in terms of pursuing the matter before the different authority, which we can very well understand, however to say that the assessee's appeal papers were misplaced somewhere in his office and suddenly on receiving recovery pressure from the Department, one fine day the papers were discovered, as stated by the Counsel in his affidavit, is something which we donot appreciate and thus, cannot approve. Having said that, we find that the contesting of additions on merits of the case has become critical in view of the subsequent development in terms of attachment proceedings and the Tribunal cannot therefore be oblivious of its duty by denying such right to the assessee on mere technicality of delay in filing the present appeal.

11. In case of Collector, Land Acquisition vs MST Katiji (Supra), the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-

purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that the assessee has all along acted diligently in safeguarding his legal rights and availing the remedies available to him and has acted and taken action basis the advice and assistance sought from his legal Counsels. He was initially advised to file revision petition before the ld Pr CIT, however, due to subsequent developments wherein the assessee runs a serious risk of attachment, he was advised to file the present appeal, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and he does not stand to benefit by resorting to such delay.

12. In case of United Christmas Celebration Committee Charitable Trust vs. ITO (Supra), the Hon'ble Madras High Court has condoned the delay of 1631 days in filing the appeal before the Tribunal against the order of ld. CIT(A) refusing registration u/s 12AA of the Act. In that case, the Hon'ble High Court has held that in dealing with the matter, not only the period of delay has to be taken into account but also the quality of the explanation, the legal assistance, if any, sought and rendered to the litigant, and the detriment that condonation

of delay would cause to the opposing party. These are aspects, if, looked at, closely, will enable the Court to come to a conclusion as to whether the delay was intentional and/or deliberate. Accordingly, the Hon'ble High Court held that even though the period of delay is large, it is inclined to condone the delay especially in the circumstances of the present case for the reason that if the assessee would succeed on merits, it could hardly be said that it would cause detriment to the Revenue in the matter involving grant of registration.

13. Further, we refer to the decision of Hon'ble Madras High Court in case of Hosanna Ministries vs. ITO (Supra) wherein the Hon'ble High Court has condoned the delay of 1902 days in filing the appeal against the ld. CIT(A)'s order refusing the grant of registration u/s 12AA of the Act. In that case, the Hon'ble High Court has held that no doubt, the delay has to be explained with proper reasons but it does not mean that every day's delay must be explained. The Court must take a pragmatic view in appreciating the reasons attributable to the delay caused to the party to approach the Court of law and no pedantic view or approach to be adopted by the Court in considering the reasons given by the parties for delay in approaching the Court.

14. Further, we refer to the decision of Hon'ble Gujarat High Court in case of Mukesh Jesangbhai Patel vs. ITO (Supra) wherein the Hon'ble High Court has condoned the delay of over 600 days in filing the appeal. In that case, the Hon'ble High Court has drawn reference to the decision of Hon'ble Supreme Court in case of N. Balakrishna vs. M. Krishnamuthy [1998] 7 SCC 123 wherein it was held as under:-

> *"6. In N. Balakrishna (supra), it was reiterated that the word 'sufficient cause' should receive liberal construction and acceptability of the explanation is the criteria, and not the length of delay as such by observing as under:*

"In every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

15. Further, we refer to the decision the Hon'ble Bombay High Court in case of Vijay Vishin Meghani vs. DCIT (Supra) wherein it has referred to the decision in case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors. AIR 1979 SC 1666 wherein the Hon'ble Supreme Court has held that a legal advice tendered by a professional and the litigant acting upon it one way or the other could be a sufficient cause to seek condonation of delay and coupled with the other circumstances and factors for applying liberal principles and then said delay can be condoned. Eventually, an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate finds that the litigant has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bona fides. The Hon'ble High Court thereby condoned the delay of 2984 days in filing the appeals holding that the explanation placed on affidavit was not contested nor we find that from such explanation, can we arrived at the conclusion the assessee was at fault, he intentionally and deliberately delayed the matter and has no bona fide or

reasonable explanation for the delay in filing the proceedings and the position is quite otherwise.

16. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the assessee in his averments has made out a clear case that there was sufficient cause which being beyond his control, prevented him from filing the present appeal in time before the Tribunal. The assessee was diligent and has sought advice from his Counsels from time to time and was not guilty of negligence on his part and it cannot be said that the delay was due to the negligence and inaction on the part of the assessee, which could have been avoided by the assessee if he had exercised due care and attention. We find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and he does not stand to benefit by resorting to such delay. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay of 489 days in filing the present appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. Therefore, in exercise of powers under section 253(5) of the Act, we hereby condone the delay of 489 days in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits.

17. Now, coming to the grounds of appeal. In his appeal, the assessee has taken the following grounds of appeal:

"1. The impugned additions and disallowances made in the order dated 11.09.2015 u/s 144/147 of the Act, bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. The very action taken u/s 144 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 144/147 dated 11.09.2015 also kindly be quashed.

3.1 Rs.85,75,875/-: The ld. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs.85,75,875/- as made by the AO by applying DLC rate u/s 50C of the Act as adopted by the Sub Registrar as against Sale Consideration of Rs.40,00,000/- only received by the assessee. The addition so made by the AO and confirmed by the ld. CIT(A) is totally contrary to the provisions of law and facts on the record and hence, the resultant addition kindly be deleted in full.

3.2 The ld. CIT(A) further erred in law as well as on the facts of the case in denying the claim of expenses of Rs.5,00,000/- incurred by the assessee to get the land free from litigation. The expenses incurred but denied by the ld. CIT(A), being totally contrary to the provisions of law and facts on the record and hence, the expenses so claimed kindly be allowed in full.

3.3 The ld. CIT(A) further erred in law as well as on the facts of the case in denying the deduction u/s 54F of the Act of Rs.11,50,920/- [Rs.3,12,280/-, Rs.4,19,320/- and Rs.4,19,320/-] as claimed by the assessee. The denial so made by the ld. CIT(A), being totally contrary to the provisions of law and facts of the case

3.4 The ld. CIT(A) further erred in law as well as on the facts of the case in denying the claim of expenses of Rs.5,00,000/- incurred by the assessee for development of land. The expenses incurred but denied by the ld. CIT(A), being totally contrary to the provisions of law and facts on the record and hence, the expenses so claimed kindly be allowed in full.

4. The ld. AO further erred in law as well as on the facts of the case in charging interest u/s 234A and u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full."

18. Ground no. 1 is general in nature and it doesn't require any separate adjudication.

19. In Ground no. 2, the assessee has challenged the action of the Assessing officer taken u/s 144 r/w 148 without jurisdiction and secondly, passing the assessment order u/s 144 r/w section 148 of the Act *ex-parte qua* the assessee without due application of mind and the said action being confirmed by the ld CIT(A).

20. In this regard, the ld AR submitted that the assessee could not make compliance before the AO because of his illness and ignorance of law. Both the assessee are layman farmers, rustic villagers and do not understand at all of the complexities of the tax laws etc. Therefore, some more opportunity were required but denied by the AO hence, no adequate opportunity of being heard was provided by the AO. It was further submitted that the asseesse, when advised, could not submit some additional evidences going to the root to support his case and therefore, an application u/r 46A was filled before the ld CIT(A). The sufficient cause pleaded before him was the fact that the assessee was undergoing medical treatment at the relevant point of time and in support of the same, medical prescriptions and various documents were submitted. Pertinently, the ld. CIT(A) also admitted the same and his findings, on this aspect, is worth noting and being reproduced here under:

> *"Sh. Arvind Goyal, A/R appeared & filed application for admission of additional evidence u/r 46A (1) (c). It is seen that the order is passed u/s 144/147. The medical condition of the assesse as claimed provided a sufficient cause preventing him to appear before the A.O. In view of the*

above, the application for admittance of additional evidence u/r 46A was admitted and the documents enclosed to be sent to the A.O for necessary verification & report on the same."

Thereafter, the CIT(A) called for the remand report reproduced at pg. 5 to 7 of his order but rejected such objection and admitted the additional evidences in the following words:

"*While admitting the additional evidence filed u/r 46A(1) in view of the stipulated conditions therein and following the principles of natural justice, I am of the opinion that it is clear from the various documents and submissions, report etc. that though the asseesse was intermittently being treated for illness but as per his own admission, he acknowledge the receipt of notices from the Income Tax department. He also has a son who is stated to be working somewhere."*

21. It was submitted by the ld AR that the approach of the ld. CIT(A) is contradictory in as much as on one hand he has admitted the additional evidences on the ground of medical illness but at the same time he confirmed the *ex-parte* order simply saying that son was there to take care and several opportunities were given. It is submitted that mere fact that the son is there does not mean that he would be attending all the hearings on behalf of the father and in this materialistic world one otherwise cannot expect much. It is a hard fact of life. He was not engaged for this purpose. Son doing own job and does not understand. On the other hand the brother of the appellant, Shri Om Prakash and his wife both were also going under medical treatment suffering from serious life threatening disease as per the medical papers and the ld. CIT(A) felt satisfied in their case also. Needless to say that the same grounds provided under 46A also furnish sufficient cause behind non-appearance before the AO justifying the recalling/ setting aside of the assessment order.

22. It was further submitted that it is also a clear case of non-application of mind. The impugned assessment was framed u/s 144/147, which obliges the

ld. AO to make a best judgment assessment. However, a bare reading of the impugned order shall reveal that the order was passed to penalize the assessee in as much as he considered the entire amount of the value adopted by the Sub-Registrar of Rs.85,75,875/- on account of Long Term Capital Gain and even no benefit of Cost of Acquisition or other cost of improvement has been given and in support, reliance was placed on the Hon'ble Karnataka High Court decision in case of Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669.

23. It was further submitted that in the case of Om Prakash, despite filing all the supporting evidences to show that construction was done, there is no whisper in the order of the lower authorities. On the other hand, the CIT(A) though admitted the additional evidences so filed and forwarded the same for the AO comment yet however, no categorical finding has been given by him on the merits of additional evidences. Moreover there was no whisper by the ld. CIT(A) w.r.t. the contention that dispute between the parties, it was a case of distress sale. Thus, it is a clear case of violation of the principals of natural justice hence, the impugned assessment kindly be restored to the file of the AO for providing an effective and adequate opportunity of being heard and to decide all the issues judiciously.

24. Per contra, the ld DR submitted that adequate opportunity was provided by the Assessing officer, however, the assessee had choosen to ignore those notices for reason best known to him and now, has raised the plea regarding lack of adequate opportunity which cannot be allowed. It was further submitted that there is no contradiction in the findings of the ld CIT(A). It was submitted that the ld CIT(A) has upheld the order passed by the AO u/s 144 r/w 147 given that the assessee having received the notices, had chosen not to file any return of income or any submissions during the assessment proceedings. Further, taking into consideration the ground of medical conditions of the assessee, the application seeking permission to submit additional evidence u/s 46A was admitted and thereafter, the ld CIT(A) has

infact given a finding on the additional evidence so submitted by the assessee in terms of investment made in the name of his wife. It was accordingly submitted that there is no contradiction in the findings of the ld CIT(A) and the contention so advanced by the assessee should be rejected. The ld DR accordingly supported the findings of the lower authorities.

25. We have heard the rival contentions and purused the material available on record. In this case, notice u/s 148 was issued on 7.04.2014 after recording reasons that the assessee has sold two pieces of agriculture land situated at gram Naya Nohra, Tehsil- Ladpura, kota for a consideration of Rs 40 lacs each and which has been valued by the Sub- Registrar, Kota for stamp duty purposes at Rs 85,75,875/- each. It was further stated in the reasons that since the assessee has not filed his return of income and consequently, gains on sale of land has not been offered to tax, income to the extent of Rs 1,71,51,750/- has escaped taxation. During the course of hearing, no contentions were raised challenging the jurisdiction of the AO u/s 147 and hence, in absence of the same and considering the facts and circumstances of the case, we donot see any infirmity in the action of the AO in acquiring jurisdiction u/s 147 where the assessee has sold his agriculture land and which has not been reported to the tax department in absence of any return of income filed by the assessee. The AO was in possession of tangible information that the assessee has sold his agriculture land and thus, basis such tangible information, where he forms an opinion that the income has escaped taxation, we donot see any infirmity in issue of notice u/s 148 and acquisition of jurisdiction u/s 147 by the Assessing officer. Therefore, as far as first part of the ground of appeal is concerned, where the assessee has challenged the jurisdiction of the AO u/s 147, the same is hereby dismissed.

26. Now, coming to the second part of ground of appeal where the assessee has challenged the action of the AO in passing the order u/s 144 without

providing adequate opportunity to the assessee and without due application of mind and the said action being confirmed by the ld CIT(A). In this regard, it is noted that in response to the notice u/s 148, no return of income was filed by the assessee. Thereafter, notice u/s 142(1) was issued on 14.10.2014, then again on 8.5.2018 and 5.08.2015 and the last notice was issued on 24.08.2015 and all these notices were duly served on the assessee, however, remain uncomplied with and thereafter, the assessment was completed u/s 144 r/w 147 vide order dated 11.09.2015. It is not the case of the assessee that these notices were not served on him. Therefore, as far as passing of the order u/s 144 *ex-parte qua* the assessee is concerned, we donot see any infirmity in the action of the AO in view of non-filing of the return of income and non-compliance to various notices issued during the course of assessment proceedings.

27. At the same time, where the AO decide to pass the best judgment order u/s 144 and where such order is confirmed by the ld CIT(A), the order so passed must have a reasonable nexus to the available material and the facts and the circumstance of the case. In this regard, we refer to the contention of the assessee regarding non-application of mind by the AO while passing the assessment order where the value as determined by the stamp duty authority has been brought to tax instead of actual sale consideration and that too, without even allowing deduction for cost of acquisition and cost of improvement. In this regard, we refer to the substantive findings of the AO which reads as under:

"इस प्रकार निर्धारिती द्वारा श्री परमानन्द बोहरा को बेची गई भूमि का विक्रय मूल्य उपपंजीयक द्वारा मानी गई (मूल्यांकन स्टांप एक्ट के तहत रूपये 85,75,875/– मानी है) राशि रूपये 85,75,875/– को पूंजीगत आय मानी जाती है। जिस पर बनने वाले दीर्घकालीन पूंजीगत लाभ रूपये 85,75,875/– को करदाता द्वारा अपनी आयकर विवरणी में दर्शाया जाना था, किन्तु करदाता के द्वारा कोई आयकर विवरणी दाखिल नहीं की गई है। इस प्रकार निर्धारिती द्वारा बेची गई भूमि का प्रतिफल राशि रूपये 85,75,875/– को आलोच्य वर्ष की दीर्घकालीन पूंजीगत लाभ से आय मानते हुए आयकर अधिनियम 1961 की धारा 147/144 के तहत् निर्धारण आदेश पारित किया जाता है।"

28. On perusal of the aforesaid findings of the AO, we find that the AO has brought to tax the value as determined by the Sub-Registrar, Stamps in respect of one of the transactions of sale of land entered into by the assessee with Shri Parmanand Bohra treating the same as full value of consideration and the value so determined has been treated as income from long term capital gains on sale of land. The reason as to why the AO has adopted the value as determined by the stamp duty authority instead of actual sale consideration is not discernable from the order. Presumably, where the AO had intended to invoke the provisions of section 50C, he was required to atleast issue a show-cause to the assessee in this regard and given an opportunity to the assessee as to why such value should not be substituted for actual sale consideration. It is unclear whether any of the notices issued by the AO u/s 142(1) contains such a specific show-cause to the assessee to this effect. Further, being a transaction of sale of land which has been brought to tax under the head "Income from capital gains", it necessitates determination of cost of acquisition as well as cost of improvement, if any and only the net consideration after giving allowance for cost of acquisition and improvement can be legimately brought to tax. Given the facts of the present case where the assessee didn't file his return of income or attended to the assessment proceedings, the AO may not have the precise and exact details of year of acquisition and related costs, however, the fact remains that the AO, having access to the copy of the sale agreement/Registry pursuant to which the matter was reopened and notice was issued u/s 148 of the Act, which will have a reference to ownership details of such property, he could have possibly determined the year of acquisition of such property and could have estimated the cost of acquisition. However, we find that no such efforts were made by the AO as there is nothing to this effect recorded in the assessment order or brought to our notice during the course of hearing and no benefit of cost of acquisition/improvement has thus been given to the assessee.

29. During the appellate proceedings, where the assessee pleaded that due to his ill-health, he couldn't attend to the assessment proceedings and wanted to submit the additional evidence in support of his claim of cost of acquisition/improvement, expense in connection with transfer and investment by way of purchase of agriculture land in name of his wife, the additional evidence were admitted by the ld CIT(A) and there is no dispute in this regard. However, we again find that there is no finding given by the ld CIT(A) regarding the cost of acquisition and the contention of the assessee that being an ancestral land acquired prior to 1.4.1981, the estimated cost as on 1.04.1981 may be allowed to him has not been disposed off. Similar, no finding has been given regarding development expenditure and amount given to assessee's sister to avoid litigation which the assessee claims to be a cost in connection with transfer. Further, the assessee has contended that under compelling circumstances, he has sold the ancestral agriculture land and in this regard, the ld CIT(A) has held that the land apparently is an urban land and the valuation adopted by the stamp duty authority appears to be reasonable and justified, however, the basis of such reasonableness is not borne out of records. To our mind, the issue is regarding determination of fair market value of land which is claimed to be sold under compelling circumstances by the assessee as per declared sale consideration and where the Revenue intends substituting stamp duty value for actual sale consideration, the right course of action would have been to refer the matter to the DVO, however, no such action was taken by the ld CIT(A). Regarding investment by way of purchase of agriculture land in the name of assessee's wife, we find that the ld CIT(A) has apparently not considered the Hon'ble Rajasthan High Court decision in case of Sh. Mahadev Balai vs. ITO *(D.B. ITA No. 136/2017 & others dated 07.11.2017)* wherein in the context of section 54B, it was held that where the investment is made in the name of the wife, the assessee shall be eligible for claim of deduction u/s 54B of the Act. We therefore find that it would be in fitness of things that all these critical aspects of the matter require a fresh

examination and the matter is accordingly set-aside to the file of the AO to examine the same afresh as per law after providing reasonable opportunity to the assessee. The ground is thus partly allowed for statistical purposes.

30. In light of above, Ground no. 3 and 4 are also set-aside to the file of the AO and thus allowed for statistical purposes.

ITA No. 733/JP/18

31. Both the parties fairly submitted that the facts and circumstances of the present appeal are identical to facts and circumstances in ITA No. 732/JP/18 and thus, similar contentions as raised in aforesaid matter may be considered. Therefore, considering that there are no changes in facts and circumstances as so submitted by both the parties, our findings and directions contained in ITA No. 732/JP/18 shall apply *mutatis mutandis* to the present appeal and the same is disposed off accordingly.

Both the appeals are disposed off in light of aforesaid directions.

Order pronounced in the open Court on /09/2020.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- /09/2020
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:
1. अपीलार्थी/The Appellant- Sh. Kishan Lal, Kota
Sh. Om Prakash, Kota
2. प्रत्यर्थी/ The Respondent- ITO, Ward 2(4), Kota
3. आयकर आयुक्त/ CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 732 & 733/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar