

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपीलसं./ITA No. 917/JPR/2025
निर्धारणवर्ष/AssessmentYear : 2015-16

Smt. Saroj Devi Haldiya E-65, Siddarth Nagar, Malviya Nagar Jaipur – 302 017	बनाम Vs.	The ITO Ward -6 (1) Jaipur
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No.: AACPH 6564Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओरसे/Assesseeby : Shri S.B. Natani, CA
राजस्व की ओरसे/Revenue by: Mrs.Anita Rinesh, JCIT-DR

सुनवाई की तारीख/Date of Hearing : 23/09/2025
उद्घोषणा की तारीख/Date of Pronouncement: 13/10/2025

आदेश /ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi[for short CIT(A)] dated 24.04.2025 for the assessment year 2015-16 raising therein following grounds of appeal.

"1. That in the facts and circumstances of the case and in law the order passed the learned CIT (A) confirming the order of the learned AO is not in accordance with law.

2. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the order of the learned AO, which has been passed by the learned AO without considering the facts of the case in correct perspective.

3. That in the facts and circumstances of the case and in law the order passed by the learned AO and confirmed by the CIT (A) is against the principles of natural justice and ab initio void

4. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the addition of Rs. 75,00,000/- illegally made by the learned AO under section 56(2)(ix) of the income tax Act 1961.

5. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the action of the learned AO that the assessee accepted Rs. 75,00,000/- as an advance from M/s Jagdish health care P Limited in relation to transfer of a capital asset which was not returned.

6. That in the facts and circumstances of the case and in law the learned CIT(A) has erred in holding that assessee accepted Rs, 75,00,000/- as an advance in relation of transfer of capital assets.

7. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the addition made by the learned AO in disallowing the right full claim of the assessee of Rs. 34,647/- under section 57 of the income Tax out of income disclosed under the head income from other sources.

8. That in the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the addition made by the learned AO in disallowing the right full claim of the assessee of Rs. 83,453/- (income from Capital gain)

9. That in the facts and circumstances of the case and in law the learned CIT(A) has erred in confirming the order of the learned AO determining the total income at Rs, 88,72,047/- against the returned income of Rs. 13,37,400/-

10. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the order of the learned AO for initiating penalty proceedings under section 271(1)(c) of the Income Tax Act 1961.”

2.1 Apropos grounds of appeal of the assessee, it is noticed that the Id. CIT(A) has passed an ex-parte order by dismissing the appeal in the case of the assessee for the reason that the assessee had not furnished any substantial written submission or documents evidence in support of her

grounds of appeal challenging the addition. The narration so made by the

Id. CIT(A) in his order at para 5.1 to 6 are produced as under:-

“5.1 Decision: I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order. During the assessment proceedings the assessing officer had reasons to believe that the assessee had falsely claimed deduction u/s 57 of Rs. 34,647/- in the head income from other sources, the assessee was involved in a transaction of sale of immovable property during the year and the same resulted in short term loss of Rs. 1,46,543/- the difference of the cost of purchase and the sale consideration was Rs. 63,000/- so the short term loss was restricted to Rs. 63,000/-. Hence, 83,453/- was disallowed The assessee also accepted Rs. 75,00,000 as an advance in relation of transfer of capital asset. The assessee failed to give a satisfactory reply and provide any required details. Hence, the A.O. completed the assessment and passed order u/s 147/1448 of the Income-tax Act dated 13.12.2019 Assessing total Income at Rs 90,97,047/-.

5.2. It is further noted and as detailed in preceding para above that during the appellate proceedings, the appellant has not furnished any substantial written submission or documentary evidence in support of its grounds of appeal challenging the addition. The onus lies on the appellant to support any claim by bringing in cogent documentary evidence. In absence of any substantial written submission or documentary evidence in support of its grounds of appeal, I have no basis to take a contrary view in the appellate proceedings as I have no reason to interfere with the assessment order. As such, I do not find any infirmity in the order of Assessing Officer. Therefore, Addition of Rs. 83,453/-, Rs. 34,647/- and Rs. 75,00,000/- is hereby sustained on merits.

6. In the result, the appeal is Dismissed.

2.2 During the course of hearing, the Id.AR of the submitted that lower authorities were not justified in confirming the above additions for which the Id. AR of the assessee has filed the following written submission.

“Brief Facts of the case

The assessee is an Individual and has filed his return of income under section 139 for the A Y 2015-2016 on 31.03.2016 declaring total income at Rs 13,37,400/-. During the year under consideration the assessee derives

income, from income from house property, income from capital Gain and income from other sources. **A copy of the return of income filed by the assessee is available on paper book page No...1.**

Subsequently enquiries were conducted in the case of assessee by DDIT (Inv) wing-2 Jaipur. In the matter detailed statements of husband of the assessee Shri Mahendra Kumar Haldiya were recorded on 16.05.2017. **A copy of the statement recorded by the investigation wing is available on paper book page No... 2 to 8.** The facts regarding the issue involved are enumerated hereunder chronologically.

1. Medical Design India Pvt. limited was allotted a Plot F 28, Malviya RIICO Industrial area, Jaipur on 16.09.1987.
2. The above allotment by RIICO of Plot No. F 28, Malviya RIICO Industrial area, Jaipur to Medical Design India Pvt. limited was cancelled on 10.03.2006. M/s Medical Design India Pvt. limited went before the Hon'ble Rajasthan High Court against the cancellation of plot. The Hon'ble Rajasthan High Court directed M/s Medical Design India Pvt. Limited to appeal before the RIICO. M/s Medical Design India Pvt. Limited accordingly filed appeal before RIICO which was pending when assessee started negotiations.
3. It so happened that Dr Anil Tambi approached the assessee for getting the above plot at F 28, Malviya RIICO Industrial area, Jaipur from M/s Medical Design India Pvt. Limited as he was confident of getting the hurdles removed regarding allotment/cancellation of plot to M/s Medical Design India Pvt. Limited, and subsequently getting the same to himself from RIICO.
4. In such a situation the assessee approached M/s Medical Design India Pvt. Limited through Director Smt. Saroj Dhawan and executed an agreement on 10.12.2014. The assessee paid Rs. 75,00,000/- as under to M/s Medical Design India Pvt. Limited for agreeing to purchase the plot for a total sum of Rs, 3,94,38,675/-. **A copy of agreement dated 10.12.2014**

executed between assessee Smt. Saroj Haldiya and Smt. Saroj Dhawan of M/s Medical Design India Pvt. Limited is available on paper book page No... 9 to 14.

S No	Date	Cheque No.	Drawn on	Amount
1	18.10.2014	047309	ICICI Bank	25,00,000/-
2	25.10.2014	047310	ICICI Bank	25,00,000/-
3	30.10.2014	047311	ICICI Bank	25,00,000/-
		Total		75,00,000/-

A copy of relevant bank account of the assessee reflecting the above payment is available on paper book page No. 15 to 16. It is relevant to add that as on this date of agreement on 10.12.2014 M/s Medical Design India Pvt. Limited was also not owning the aforesaid plot No. F 28, Malviya RIICO Industrial area, Jaipur, as the same stood cancelled/de-alloted on 10.03.2006 by RIICO and the issue of appeal was pending before the RIICO.

5. Keeping in tandem the aforesaid affairs, a Power of Attorney was also executed in favour of Dr. Anil Tambi by M/s Medical Design India Pvt. Limited through Shri Saroj Dhawan so that he (Dr. Anil Tambi) could pursue the matter with concerned authorities of RICCO for removing the hurdles and getting the plot allotted again to M/s Medical Design India Pvt. Limited so that it could be purchased for Dr Anil Tambi .

6. However the fortunes did not favour, as mentioned in the agreement executed by the assessee with M/s Medical Design India Pvt. Limited on 10.12.2014 the time limit for getting clearance and removing the hurdles was only of three months failing which the advance of Rs, 75,00,000/- was to be forfeited and ultimately the same stood forfeited.

7. Meanwhile the assessee also received payment from Dr Anil Tambi as under

- i. Rs. 22,00,000/- vide cheque No. 144015 dated 16.12.2014 from the account of Tanushri Tambi
- ii. Rs. 23,00,000/- vide cheque No. 566002 dated 24.12.2014 from the account of Dr. Anil Tambi

S No	Date	Ch No.	Name of payer	Amount
1	16.12.2014	144015	From Tanu shri Tambi	22,00,000/-
2	24.12.2014	566002	From Dr. Anil Tambi	23,00,000/-
		Total		45,00,000/-

Later on Dr Anil Tambi changed his mind to purchase the property in the name of M/s Jagdish Health Care Pvt. Limited his company, instead of in individual name(s). Hence the amount received from Tanu Shri Tambi and Dr Anil Tambi was returned on 16.02.2015 through banking channel as under –

S No	Date	Ch No.	Beneficiary Name	Amount
1	16.02.2015	63026	Dr. Anil Tambi	23,00,000/-
2	24.12.2014	63030	Tanu shri Tambi	22,00,222/-
		Total		45,00,000/-

Further Dr. Anil Tambi/ Jagdish Health care Pvt. Limited paid Rs. 75,00,000/- on 24.02.2015 vide cheque No. 447451 for purchase of this plot situated at F-28, Malviya Nagar RIICO industrial Area, Jaipur for his company Jagdish Health care Pvt. Limited. Thus the facts indicate that in the account of this property the assessee did not earn anything at all. This amount was paid as reimbursement of amount of Rs, 75,00,000/-

paid by the assessee to medical design India P limited as detailed in the forgoing para No. 4

8. From the aforesaid afore said scenario of the case it is crystal clear that entire matter of money paid to M/s Medical Design India Pvt. Limited and in the last money received from M/s Jagdish Health Care Pvt. Limited has taken place within a short period of time from 10.12.2014 to 24.02.2015 i. e. three months .

9. It is submitted that at no stage of time the assessee was owning plot No. F 28, Malviya RIICo Industrial area, Jaipur and secondly she was acting on behalf of Dr Anil Tambi. These facts are evidenced and corroborated by (i) in the statements of the assessee recorded by investigation wind on 16.05.2017. (ii) by the agreement executed by the assessee on 10.12.2014 with Medical design India p limited through Smt,. Saroj Dhawan (iii) by power of Attorney executed by Medical Design India P limited in favour of Dr. Anil Tambi. **(Copies of all these documents are available on paper book page No. cited supra and copy of Power of attorney in favour of Dr. Anil Tambi is available on paper book page No.17 to 19.**

10. The facts indicate that in the case assessee was not a beneficiary even for a single rupee. The beneficiary in this case is M/s Medical Design India Pvt. Limited who did not return the amount of Rs. 75,00,000/- to the assessee and assessee had to forfeit the same. If any action at all is required w r to section 56(2)(ix) the same is required to be considered in the case of M/s Medical Design India Pvt. Limited. The learned AO was wrong in training the guns against the assessee instead of at M/s Medical Design India Pvt. Limited. In the facts and circumstances of the case there was no case with the learned AO for proposing action under section 148. Similarly the learned JCIT also erred in granting approval for issuing notice under section 148 which was issued on 23.04.2019. In view of this the very basis and origin of assessment proceedings is not in accordance with law.

11. The learned AO completed assessment under section 147/144B on 14.09.2021 determining total income at Rs, 88,72,047/-, Inter-alia making

major addition of Rs, 75,00,000/- under section 56(2)(ix) of the income Tax Act. The addition made by the learned AO is patently wrong because the assessee was never owing the plot, the assessee never received advance and further the action of the assessee was that of a middle man for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited and in the last the facts stated above indicate that assessee was not a beneficiary in any manner

Aggrieved with the order of the learned AO the assessee went in Appeal before the learned CIT(A). The appeal of the assessee was also dismissed by the learned CIT(A), NFAC vide order dated 24.04.2025. The learned CIT (A) also erred in giving a finding that assessee accepted Rs. 75,00,000/- as advance in relation to transfer of capital asset. Aggrieved with the order of the learned CIT (A) the assessee is in appeal before the Hon'ble Tribunal and the individual grounds of appeal are discussed asunder:-

Ground No. 1

That in the facts and circumstances of the case and in law the order passed the learned CIT(A) confirming the order of the learned AO is not in accordance with law.

In this case the learned AO has completed assessment under section 147/144B on 14.09.2021. The same is not in accordance with law as under –

A. 'There were no reasons for initiating proceeding under section 148.

In the above regard, it is submitted that on the request of the assessee the learned AO was kind enough in providing the copy of reasons recorded which is scanned below-

The perusal of the aforesaid reasons reveals that the learned AO was mislead by the report of the DDIT inv unit – 2 jaipur received under letter No. 1953 dated 28.12.2017 wrongly informed that assessee received advance of Rs. 75,00,000/- from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited for sale of land situated at F-28 Malviya RIICO Industrial area, Jaipur. The learned AO has followed the report of the investigation wing as

a thumb rule without application of mind. Before recording reasons the learned AO did not make any enquiry worth the name so as to have his satisfaction of recording reasons that there was escapement of Income. It is submitted that report received from the investigation wing may be a starting point of reason to doubt, but it cannot be the basis for reason to believe. No action should have been taken by the learned AO simply on the basis of report of DDIT investigation wing. **In point No. 4 of the reasons recorded, the learned AO has admitted that since enquiry been made by the investigation wing no further enquiry were made.** Thus the action of the learned AO is based on borrowed satisfaction which is unlawful. It is submitted that from this note in the reasons recorded by the learned AO it is crystal clear that the proceedings under section 148 was initiated without framing reasons to believe. The provisions of section 147 as on the date of issue of notice under section 148 are as under -

[Income escaping assessment.

⁸⁸**147.** If the ⁸⁹[Assessing] Officer ⁹⁰[has reason to believe⁹¹] that any income chargeable to has escaped assessment⁹¹ for any assessment year, he may, subject to the provisions of [sections 148 to 153](#), assess or reassess⁹¹ such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings⁹¹ under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148 to 153](#) referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year⁹², unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure⁹² 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](#) or to disclose fully and truly all material facts⁹² necessary for his assessment, for that assessment year:

[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

⁹⁴**[Provided ⁹⁵[also]** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material⁹⁶ evidence could with due diligence have been discovered by the Assessing Officer will not necessarily⁹⁶ amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

⁹²[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under [section 92E](#);

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

⁹³[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

⁹²[*Explanation 3.*—For the purpose of assessment or reassessment¹ under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of [section 148](#).]

² [Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

The perusal of the above section reveals that the section starts with the word “If the [Assessing] Officer has reason to believe. Therefore the learned AO before initiating proceeding under section 147/148 must have reasons to believe that there is escapement of income. It is submitted that the issue of notice under section 148 being based on borrowed satisfaction is unlawful, illegal and unjust. The following case laws are quoted in support.

I. CIT Vs SFIL Stock broking limited 2010 41 DTR 98 (Del)

ii. Pr. CIT Vs G & G Pharma India Ltd (Delhi High Court) dated 08.10.2015

iii. Signature Hotels P limited Vs ITO 2011 60 DTR 30 (Del)

- iv. Sarthak securities P limited Vs ITO 2010 329 ITR 110 (Del)
- v. Ganga saran & sons P. Ltd. V. ITO (1981) 130 ITR 1 (SC)
- vi. Charanjiv Agarwal vs. Income Tax Officer. I. T. A. No. 598/Asr/2015

Section 147 & 148 of the Income Tax Act, 1961 — Reassessment — Reassessment proceedings were invalid and bad in law as the reasons recorded were undated which itself proved that the AO had not applied his mind and nothing appeared in the reasons recorded suggested that the AO had made any positive enquiry before coming to the conclusion that the Income chargeable to tax has escaped assessment and the AO has reopened the case on the basis of borrowed satisfaction

- vii. **ACIT Vs Dinesh kumar (ITAT Delhi) dated 31.10.2014**
- viii. **Unique Metal Industries Vs ITO (ITAT Delhi) dated 28.10.2015**

The ratio of the afore said decisions is fully applicable to the facts of the case. Thus the notice issued under section 148 deserves to be quashed

b. Approval under section 151 was granted mechanically by the Sanctioning authority.

It is further submitted that not only the learned AO acted mechanically in following the information from DDIT inv wing unit-2 Jaipur as directions, even the sanctioning authority namely JCIT also erred in granting approval without appreciating the facts of the case which have been discussed above and are repeated again.

The facts regarding the issue involved are enumerated hereunder chronologically.

1. Medical Design India Pvt. limited was allotted a Plot F 28, Malviya RIICo Industrial area, Jaipur on 16.09.1987.

2. The above allotment by RIICO of Plot No. F 28, Malviya RIICo Industrial area, Jaipur to Medical Design India Pvt. limited was cancelled on 10.03.2006. M/s Medical Design India Pvt. limited went before the Hon'ble Rajasthan High Court against the cancellation of plot. The Hon'ble Rajasthan High Court directed M/s Medical Design India Pvt. Limited to appeal before the RIICO. M/s Medical Design India Pvt. Limited accordingly filed appeal before RIICO which was pending when assessee started negotiations.

3. It so happened that Dr Anil Tambi approached the assessee for getting the above plot at F 28, Malviya RIICO Industrial area, Jaipur from M/s Medical Design India Pvt. Limited as he was confident of getting the hurdles removed regarding allotment/cancellation of plot to M/s Medical Design India Pvt. Limited, and subsequently getting the same to himself from RIICO.

4. In such a situation the assessee approached M/s Medical Design India Pvt. Limited through Director Smt. Saroj Dhawan and executed an agreement on 10.12.2014. The assessee paid Rs. 75,00,000/- as under to M/s Medical Design India Pvt. Limited for agreeing to purchase the plot for a total sum of Rs, 3,94,38,675/-. **A copy of agreement dated 10.12.2014 executed between assessee Smt. Saroj Haldiya& Smt. Saroj Dhawan of M/s Medical Design India Pvt. Limited is available on paper book page No cited supra.**

S No	Date	Cheque No.	Drawn on	Amount
1	18.10.2014	047309	ICICI Bank	25,00,000/-
2	25.10.2014	047310	ICICI Bank	25,00,000/-
3	30.10.2014	047311	ICICI Bank	25,00,000/-

		Total		75,00,000/-
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A copy of relevant bank account of the assessee reflecting the above payment is available on paper book page No. cited supra. It is relevant to add that as on this date of agreement on 10.12.2014 M/s Medical Design India Pvt. Limited was also not owning the aforesaid plot No. F 28, Malviya RIICO Industrial area, Jaipur, as the same stood cancelled/de-allotted on 10.03.2006 by RIICO and the issue of appeal was pending before the RIICO.

5. Keeping in tandem the aforesaid affairs, a Power of Attorney was also executed in favour of Dr. Anil Tambi by M/s Medical Design India Pvt. Limited through Shri Saroj Dhawan so that he (Dr. Anil Tambi) could pursue the matter with concerned authorities of RIICO for removing the hurdles and getting the plot allotted again to M/s Medical Design India Pvt. Limited so that it could be purchased for Dr Anil Tambi .

6. However the fortunes did not favour, as mentioned in the agreement executed by the assessee with M/s Medical Design India Pvt. Limited on 10.12.2014 the time limit for getting clearance and removing the hurdles was only of three months failing which the advance of Rs, 75,00,000/- was to be forfeited and ultimately the same stood forfeited.

7. Meanwhile the assessee also received payment from Dr Anil Tambi as under

i. Rs. 22,00,000/- vide cheque No. 144015 dated 16.12.2014 from the account of Tanushri Tambi

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		Total		45,00,000/-

Later on Dr Anil Tambi changed his mind to purchase the property in the name of M/s Jagdish Health Care Pvt. Limited his company, instead of in individual name(s). Hence the amount received from Tanu Shri Tambi and Dr Anil Tambi was returned on 16.02.2015 through banking channel as under –

S No	Date	Ch No.	Beneficiary Name	Amount
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Further Dr. Anil Tambi/ Jagdish Health care Pvt. Limited paid Rs. 75,00,000/- on 24.02.2015 vide cheque No. 447451 for purchase of this plot situated at F-28, Malviya Nagar RIICO industrial Area, Jaipur for his company Jagdish Health care Pvt. Limited. Thus the facts indicate that in the account of this property the assessee did not earn anything at all. This amount was paid as reimbursement of amount of Rs, 75,00,000/- paid by the assessee to medical design India P limited as detailed in the forgoing para No. 4

8. From the aforesaid afore said scenario of the case it is crystal clear that entire matter of money paid to M/s Medical Design India Pvt. Limited and in the last money received from M/s Jagdish Health Care Pvt. Limited has taken place within a short period of time from 10.12.2014 to 24.02.2015 i. e. three months .

9. It is submitted that at no stage of time the assessee was owning plot No. F 28, Malviya RII Co Industrial area, Jaipur and secondly she was acting on behalf of Dr Anil Tambi. These facts are evidenced and corroborated by (i) in the statements of the assessee recorded by investigation wing on 16.05.2017. (ii) by the agreement executed by the assessee on 10.12.2014 with Medical design India p limited through Smt,. Saroj Dhawan (iii) by power of Attorney executed by Medical Design India P limited in favour of Dr. Anil Tambi. **(copies of all these documents are available on paper book page No. cited supra and copy of Power of attorney in favour of Dr. Anil Tambi is available on paper book page No. cited supra.**

10. The facts indicate that in the case assessee was not a beneficiary even for a single rupee. The beneficiary in this case is M/s Medical Design India Pvt. Limited who did not return the amount of Rs. 75,00,000/- to the assessee and assessee had to forfeit the same. If any action at all is required w r to section 56(2)(ix) the same is required to be considered in the case of M/s Medical Design India Pvt. Limited. The learned AO was wrong in training the guns against the assessee instead of at M/s Medical Design India Pvt. Limited. In the facts and circumstances of the case there was no case with the learned AO for proposing action under section 148. Similarly the learned JCIT also erred in granting approval for issuing notice under section 148 which was issued on 23.04.2019. In view of this the very basis and origin of assessment proceedings is not in accordance with law.

11. The learned AO completed assessment under section 147/144B on 14.09.2021 determining total income at Rs, 88,72,047/-, Inter-alia making major addition of Rs, 75,00,000/- under section 56(2)(ix) of the income Tax Act. The addition made by the learned AO is patently wrong because the assessee was never owing the plot, the assessee never received advance and further the action of the assessee was that of a middle man for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited and in the last the facts stated above indicate that assessee was not a beneficiary in any manner

In view of the aforesaid facts the learned JCIT should have considered that

a. The assessee at no point of time was owing/holding plot No F-28, Malviya Nagar RIICO industrial Area, Jaipur as such there could not be any occasion for putting the same to sale or getting advance for the sale of the same.

b. The assessee was acting as a middle man and plot No. F-28, Malviya Nagar RIICO industrial Area, Jaipur was being bargained with M/s Medical Design India Pvt. Limited only and only for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. These facts have been very clearly stated in his statement recorded before the investigation wing on 16.05.2017. The relevant part of the statement Question No. 9 &10 and answer thereof

A copy of complete statement is also available on paper book page No cited supra.

In the above statements the husband of the assessee Shri Mahendra Kumar Haldiya has very specifically deposed that the plot No. F-28, Malviya Nagar RIICO industrial Area, Jaipur was being bargained for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited and in this regard Rs. 75,00,000/- were paid to Smt. Saroj Dawan/M/s Medical design India Pvt. limited. The same amount was later on received from M/s Jagdish Health care Pvt Limited.

The learned JCIT also did not appreciate the fact that although an agreement was executed with Smt. Saroj Dhawan/ M/s medical Design India Pvt. Limited on 10.12.2014 but even on that date M/s medical Design India Pvt. Limited were neither in the possession of the plot F-28, Malviya Nagar RIICO industrial Area, Jaipur or owing the same. An appeal was pending before RIICO in this regard. These facts were also not considered by the learned JCIT before granting Approval. The fact that the property was being bargained for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited is also apparent and is also supported by the fact of Power of Attorney in favour of Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. All these facts combined together establish beyond doubt that assessee did not receive any amount in advance nor the assessee was

owning any plot at that point of time so the provision of section 56(2)(ix) were not all applicable. The learned JCIT unlawfully granted sanction for issue of notice under section 148. Therefore the issuance of notice under section is unlawful, illegal and unjust. The Hon'ble ITAT is requested to quash the very issuance of notice under section 148/order of the learned CIT (A) confirming the assessment order of the learned AO.

c. Objection to issuance of notice under section 148 Not settled.

It is submitted that against the issuance of notice under section the assessee raised various objections under letter dated 05.12.2019. **A copy of this letter raising objection is available on paper book page No...20 to 30..** The objection raised by the assessee are briefly summarized as under

i. The learned AO should not have followed the information received from DDIT wing as direction of DDIT Investigation wing.

ii. The learned AO failed to make any independent enquiry after receipt of information from DDIT inv unit -2 Jaipur, so as to independently apply his mind for reaching to a conclusion that there were reasons to believe for escapement of income.

iii. There is no material brought on record by the learned AO for application of section 56(2)(ix) in as much as that advance was not received and there was no property for sale.

iv. The learned AO failed to appreciate that the amount paid by Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited was not an advance to the assessee but was reimbursement of the amount paid by assessee to Smt. Saroj Dhawan/Medical design India P limited.

v. That the assessee was not a beneficiary in any manner.

vi. That beneficiary in this case was M/s medical Design India Pvt. Limited who confiscated the amount of Rs, 75,00,000/-.

All these objection have not been settled by the learned AO in the spirit of Hon'ble Supreme court decision in the case of **GKN Driveshaft (India) Ltd. (2003) 259 ITR 19 (SC)**. Vide his order dated 17.12.2020 the learned AO has summarily dismissed and rejected the objections raised by the assessee against issuance of notice under section 148. The learned AO has been blind to the major facts of the case which were stated by the husband of the assessee Shri Mahendra Kumar Haldiya during his statement under section 131 before the investigation wing on 16.05.2017. In his statement Shri Haldiya, divulged the basic facts that the plot in question was being bargained for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. The assessee paid Rs. 75,00,000/- to M/s Medical Design India Pvt. Limited for purchase of the plot for Dr Anil Tambi/M/s Jagdish Health Care Pvt. Limited, who later on reimbursed the amount of Rs. 75,00,000/- . The assessed never owned any plot so the question of receiving any advance from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited did not arise. The assessee received payment of Rs. 75,00,000/- from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited against the equal amount of Rs, 75,00,000/- paid earlier by the assessee to M/s Medical Design India Pvt. Limited for purchase of plot for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. It means the assessee had already passed the amount to M/s Medical design Pvt. limited on 18.10.2014 to 30.10.2014 .which was subsequently received from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited on 24.02.2015. These facts have not been dealt and appreciated in the order passed on 17.12.2020 wherein the learned AO has dealt the issue on surface level without going into deep. Thus the objection have not been settled in the spirit of the guidelines issued by the Hon'ble Supreme court in the Case of **GKN Driveshaft (India) Ltd. (2003) 259 ITR 19 (SC)** The following case laws also quoted in support

i. **GKN Driveshaft (India) Ltd. (2003) 259 ITR 19 (SC)**

AO has to dispose of the objection by passing a speaking order before proceeding with the assessment.

ii. CIT Vs Pentafor software Employees welfare foundation (Mad) (2019) 418 ITR 0427

iii. Kirti P Chidambaram (2018) 402 ITR 488 (Mad)

iv. Jayanti Natrajan Vs ACIT (2018) 161 DTR 281 (Mad), 300 CTR 225

v. Cenvo Publisher services India Ltd. v. UOI (2019) 180 DTR 244(Bom)

S. 147 : Reassessment –Delay in filing objections- -If the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints Ltd v. Dy. CIT (2008) 296 ITR 90 (Bom) that the AO should not pass the assessment order for 4 weeks- A writ petition to challenge the reopening is not entertained [S.148]

The Petitioner has raised the objections before the Assessing Officer to the notice of reopening of the assessment on 14.12.2018. Objections were disposed of by the Assessing Officer on 28.12.2018. Since the last date for framing the assessment was fast approaching and the assessment would get time barred on 31stDecember, 2018, the Assessing Officer passed the order of assessment on 28.12.2018. The Petitioner has approached the Court challenging very notice of reopening of the assessment and also including the challenge to the order of reassessment as consequential to the main challenge to reopening of the assessment. Dismissing the petition the Court held that reasons for reopening of the assessment by the Assessing Officer was supplied to the assessee on 14.9.2018. Without filing the objection the assessee approached the Court by filing the Writ Petition in November, 2018 After withdrawing the petition on 13 -11-2018 the objection was filed on 14-12-2018 .Dismissing the petition , considering the facts of the case the Court held that ; **if the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints Ltd v. Dy. CIT (2008) 296 ITR 90 (Bom) that the AO should not pass the assessment order for 4**

weeks. Accordingly the writ petition was not entertained . (WP No. 284 of 2019, dt. 01.02.2019)(AY.2011-12)

In view of the aforesaid facts having not settled the objection in the right spirit the assessment proceedings stand vitiated.

(d) Principles of Natural justice violated

It is submitted that the learned AO issued show cause notice on 03.09.2021 seeking compliance by 08.09.2021. **Copy of show cause notice dated 03.09.2021 is available on paper book page No. 31 to 36** Although the show cause notice runs into 5 pages involving issues running into several lacs. Further 04th September and 5th September happened to be Saturday and Sunday. Thus only and virtually two days time was given which being too short violates the principles of natural justice. The working of two days time is as under-

The days granted for compliance work out as under

S No	Date	Day	Remarks
1	03.09.2021	Friday	To be excluded being date of notice
2	04.09.2021	Saturday	To be excluded being non working day
3	05.09.2021	Sunday	To be excluded being non working day
4	06.09.2021	Monday	Day allowed No. 2
5	07.09.2021	Tuesday	Day allowed No. 3
6	08.09.2021	Wednesday	To be excluded being date of compliance

It is submitted that in the office manual procedure issued by the CBDT, the CBDT has issued guidelines of granting of minimum of 7 days time. The courts have also held that in a show cause notice minimum time should be of 7 days excluding holidays, the day of issue of the notice and the date on which the rely is sought. In these circumstances the learned AO has acted against the Principles of Natural Justice. This has vitiated the assessment

proceedings. The Hon'ble ITAT is requested to quash the assessment order on this ground alone. The following caselaws are quoted in Support.

1. **Smt. Ritu Devi v. CIT [2004] 141 Taxman 559 (Mad.), time of just one day was given to the assessee to furnish reply. This was held as denial of opportunity.** Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable.

2. **Tinbox Company Vs CIT (2001) 249 ITR 216 (SC)**

The principle of natural justice is so fundamental that failure to observe the principle of natural justice cannot be made good in appeal. Lack of opportunity before the A O cannot be rectified by the appellate authority by giving such opportunity.

3. **CCE Vs ITC Ltd (1995) 2 SCC 38 (SC)**

Before an assessee is made liable for higher or enhanced tax he must be told on what ground he is sought to be made liable for additional tax and must be given an opportunity of meeting those grounds. This is the minimum requirement of the principles of natural justice.

4. **C.B. Gautam v. Union of India and others (1993) 1 SCC78 (SC)**

5. **Shri ram Durga Prasad Vs settlement commission (1989) 176 ITR 169 (SC)**

6. **S L Kapoor Vs Jagmohan AIR 1981 SC 136, 145**

7. **Maneka Gandhi Vs Union of India AIR 1978 SC 597**

8. **A K Kraipak Vs. Union of India AIR 1970 SC 150**

9. C Vasanntlal& Co. Vs CIT (1962) 45 ITR 206

10. Dhakeshwari Cotton Mills Ltd Vs CIT (1954) 26 ITR 775 (SC)

11. Swedeshi cotton Mills Limited Vs. Union of India 51 Comp Das 210 (SC)

12. Sutherland Global Services (P) Ltd Vs union of India (Mad) (2016) 143 DTR 0179

13. Vodafone India Limited Vs Union of India & Other (Bom) (2014) 97 DTR 0441

14. An opportunity of being heard is the most important component of the principle of Natural Justice. It implies a proper opportunity of hearing. The Courts have consistently held that where a Show Cause Notice has been issued requiring the assessee to reply within a short period (say 1-3 days), such a notice is against the principles of natural justice, equity & good conscience. Undue haste is against the principle of fairness and such a conduct of the assessing officer deserves to be deprecated. Adequate & proper opportunity of hearing should be provided to ensure fair hearing and fair deal to the assessee. **Ramrshwaram Paper Mills (P) Ltd. v. State of U.P. & others, (2009) 11VLJ 33 (All); Padam Traders & others v. State of U.P. & others, (2009) 47 STJ 392 (All).**

15. Kellog India P Limited Vs Union of India (2006) 193 ELT 385

16. Nedunchezian (Dr K) Vs DCIT (2005) 274 ITR 37 (Mad)

Opportunity should be a reasonable one , reasonable time should be given to the assessee to furnish his reply.

17. Bhagat Dharam chand Prem Sagar Cheritable Trust (2005) 274 ITR 443 (P&H)

18. Dwijendra Kumar Bhattacharjee Vs Superintendent of Taxes (1990) 78 STC 593 (Gau)

Opportunity must be real and effective :

19. Jawala Prasad vs. State AIR 1977 (Raj) 187 etc.

20. CIT v. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.).

The opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity. This was so held in

21. Dhanlakshmi Pictures V CIT (1983) 144 ITR 452 (Mad.)

22. TCN Menon Vs ITO (1974) 96 ITR 148 (ker.)

Opportunity must be given to assessee: These assessee will have to be given an opportunity of being heard and a right to question the correctness or the relevancy of materials on the basis of which the ITO proposes to make the judgment assessment._

23. Gargi Din jwala Prasad Vs CIT (1974) 96 ITR 97 (All.)

24. M/s Munnalalmurlidhar Vs CIT 79 ITR 540 (All)

Assessment – Production of Books etc. – Under section 23(2) of 1922 Act assessing officer is bound to give reasonable time and opportunity to produce evidence- Failure on the part of the officer to do so would vitiate entire proceedings of assessment

25. Padam Chand V CST (1986) 62 STC 195 (All) ; (makhali Winde Store V CST(1987) 67 STC 416 (All)

Conclusion

The ratio of the aforesaid cases is fully applicable to the facts of the case of the assessee. In the case of the assessee a lengthy show cause notice was issued by the learned AO and time granted to the assessee for reply was just

of 2 day. It was just denial of natural justice, the assessment deserves to be quashed. It is prayed that assessment order be quashed

In view of the afore said decisions of the various courts including the hon'ble Apex court it is established beyond doubt that an order passed against the principles of natural justice deserves to be quashed. Therefore on this count alone the order passed by the learned Assessing officer deserves to be quashed. It is reiterated that in the case of the assessee the cardinal principle of the natural justice that no man should be condemned without being heard has been violated. The doctrine of natural justice consists of reasonableness and fair play which are absent in the assessment order passed by the learned Assessing officer. Therefore, it is prayed that the order passed by the Learned Assessing Officer may be held a nullity.

Ground No 2

That in the facts and circumstances of the case and in law the order passed by the learned AO and confirmed by the CIT (A) is against the principles of natural justice and ab initio void

It is submitted that the learned AO issued show cause notice on 03.09.2021 seeking compliance by 08.09.2021. **Copy of show cause notice dated 03.09.2021 is available on paper book page No. cited supra** Although the show cause notice runs into 5 pages involving issues running into several lacs. Further 04th September and 5th September happen to be Saturday and Sunday. Thus only and virtually two days time was given which being too short and violates the principles of natural justice. The working of two days time is as under-

The days granted for compliance work out as under

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4	06.09.2021	Monday	Day allowed No. 1
5	07.09.2021	Tuesday	Day allowed No. 2
6	08.09.2021	Wednesday	To be excluded being date of compliance

It is submitted that in the office manual procedure issued by the CBDT, the CBDT has issued guidelines of granting of mining of 7 days time. The courts have also held that in a show cause notice minimum time should be of 7 days excluding holidays, the day of issue of the notice and the date on which the rely is sought. In these circumstances the learned AO has acted against the Principles of Natural Justice. This has vitiated the assessment proceedings. The Hon'ble ITAT is requested to quash the assessment order on this ground alone. The following case laws are quoted in Support.

1. **Smt. Ritu Devi v. CIT [2004] 141 Taxman 559 (Mad.), time of just one day was given to the assessee to furnish reply. This was held as denial of opportunity.** Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable.

2. **Tinbox Company Vs CIT (2001) 249 ITR 216 (SC)**

The principle of natural justice is so fundamental that failure to observe the principle of natural justice cannot be made good in appeal. Lack of opportunity before the A O cannot be rectified by the appellate authority by giving such opportunity.

3. **CCE Vs ITC Ltd (1995) 2 SCC 38 (SC)**

Before an assessee is made liable for higher or enhanced tax he must be told on what ground he is sought to be made liable for additional tax and must be given an opportunity of meeting those grounds. This is the minimum requirement of the principles of natural justice.

4. **C.B. Gautam v. Union of India and others (1993) 1 SCC78 (SC)**

Hon'ble Supreme Court in this case also invoked the same principle and held that even though it was not statutorily required, yet the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, namely, the compulsory purchase of the property. It was observed that though the time frame within which an order for compulsory purchase has to be made is fairly tightone but urgency is not such that it would preclude a reasonable opportunity of being heard. A presumption of an attempt to evade tax may be raised in case of significant under- valuation of the property but it would be rebuttable presumption, which necessarily implies that a party must have an opportunity to show cause and rebut the presumption.

5. **Shri ram Durga Prasad Vs settlement commission (1989) 176 ITR 169 (SC)**

House of Lords : The order made in violation of principle of natural justice is void and a nullity

6. **S L Kapoor Vs Jagmohan AIR 1981 SC 136, 145**

The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demand of natural justice are not met even if the veryproceeded against as furnished the information on which the action is based, if it is furnished in a casual way. The person proceeded against must know that he being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met

It is opened to an income tax authority to collect material to facilitate assessments even by private enquiry, But if he desired to use the materials so collected, the assessee must be informed of the materials collected and must be given an adequate opportunity of explaining it.

7. **Maneka Gandhi Vs Union of India AIR 1978 SC 597**

A quasi Judicial order made in violation of principles of natural justice is null and void

8. **A K Kraipak Vs. Union of India AIR 1970 SC 150**

The aim of natural justice is to secure justice and to prevent miscarriage of justice.

9. C Vasanntlal& Co. Vs CIT (1962) 45 ITR 206

10. Dhakeshwari Cotton Mills Ltd Vs CIT (1954) 26 ITR 775 (SC)

The powers given to the Income-tax Officer under [s. 23\(3\)](#) of the Indian Income-tax Act, 1922, however wide, do not entitle him to base the assessment on pure guess without reference to any evidence or material. An assessment under :

9.23(3) of the Act cannot be made only on bare suspicion. An assessment so made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assessee wanted to produce in support of his case constitutes a violation of the fundamental rules of justice and calls for the powers under [Art. 136](#) of the Constitution.

11. Swedeshi cotton Mills Limited Vs. Union of India 51 Comp Das 210 (SC)

12. Sutherland Global Services (P) Ltd Vs union of India (Mad) (2016) 143 DTR 0179

Whenever the provisions of an opportunity is actually turned into an empty formality by the officer withholding necessary information or by the officer refusing to consider certain things on the specious plea that there was lack of time or resources, the opportunity provided by the show cause notice become meaningless opportunities

13. Vodafone India Limited Vs Union of India & Other (Bom) (2014) 97 DTR 0441

No order can be sustained passed in breach of principle of natural justice

14. An opportunity of being heard is the most important component of the principle of Natural Justice. It implies a proper opportunity of hearing. The Courts have consistently held that where a Show Cause Notice has been issued requiring the assessee to reply within a short period (say 1-3 days), such a notice is against the principles of natural justice, equity & good conscience. Undue haste is against the principle of fairness and such a conduct of the assessing officer deserves to be deprecated. Adequate & proper opportunity of hearing should be provided to ensure fair hearing and fair deal to the assessee. **Ramrshwaram Paper Mills (P) Ltd. v. State of U.P. & others, (2009) 11VLJ 33 (All); Padam Traders & others v. State of U.P. & others, (2009) 47 STJ 392 (All).**

15. Kellog India P Limited Vs Union of India (2006) 193 ELT 385

The right to fair hearing required that an Individual shall not be penalized by a decision effecting his rights or legitimate expectations; unless he has been given prior notice of the case against him and a fair opportunity to answer the same and to present his own view point.

16. Nedunchezian (Dr K) Vs DCIT (2005) 274 ITR 37 (Mad)

Opportunity should be a reasonable one, reasonable time should be given to the assessee to furnish his reply.

17. Dwijendra Kumar Bhattacharjee Vs Superintendent of Taxes (1990) 78 STC 593 (Gau)

Opportunity must be real and effective : The opportunity given to the assessee to be heard must be real and reasonable. If an assessee, who is asked to furnish certain particular or submit explanations within a specified time, prays for further time stating his difficulties and/or reasons, his prayer should be considered judiciously. Sometime, proceedings for assessment for a number of years are taken up together and the assessee asked to appear and produce evidence in support of his returns,. It might not be possible for the assessee to submit such evidence instantaneously or at short notice,

and may pray for further time to do so. Such prayers cannot be summarily rejected without considering the ground given by the assessee merely because the assessing officer is hear –pressed for time and has to complete the assessment by a specified date or for administrative expediency. Such a rejection would amount to denial of reasonable opportunity of hearing to the assessee and vitiate the assessment.

18. Jawala Prasad vs. State AIR 1977 (Raj) 187 etc.

all the Courts have held that a decision arrived at without following natural justice is void (Suresh vs. State AIR 1970 MP 154);

19. CIT v. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.).

The opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity. This was so held in

20. Dhanlakshmi Pictures V CIT (1983) 144 ITR 452 (Mad.)

21. TCN Menon Vs ITO (1974) 96 ITR 148 (ker.)

Opportunity must be given to assessee: These assessee will have to be given an opportunity of being heard and a right to question the correctness or the relevancy of materials on the basis of which the ITO proposes to make the judgment assessment._

22. M/s Munnalalmurlidhar Vs CIT 79 ITR 540 (All)

Assessment – Production of Books etc. – Under section 23(2) of 1922 Act assessing officer is bound to give reasonable time and opportunity to produce evidence- Failure on the part of the officer to do so would vitiate entire proceedings of assessment

Conclusion

In view of the afore said decisions of the various courts including the hon'ble Apex court it is established beyond doubt that an order passed against the principles of natural justice deserves to be quashed. Therefore on this count alone the order passed by the learned Assessing officer deserves to be quashed. It is reiterated that in the case of the assessee the cardinal principle of the natural justice that no man should be condemned without being heard has been violated. The doctrine of natural justice consists of reasonableness and fair play which are absent in the assessment order passed by the learned Assessing officer. Therefore, it is prayed that the order passed by the Learned Assessing Officer may be held a nullity.

The ratio of the aforesaid cases is fully applicable to the facts of the case of the assessee. In the case of the assessee a lengthy show cause notice was issued by the learned AO and time granted to the assessee for reply was just of 2 day. It was just denial of natural justice, the assessment deserves to be quashed. It is prayed that assessment order be quashed

Ground No. 3, 4 5 & 6

3. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the order of the learned AO, which has been passed by the learned AO without considering the facts of the case in correct perspective.

4. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the addition of Rs. 75,00,000/- illegally made by the learned AO under section 56(2)(ix) of the income tax Act 1961.

5. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the action of the learned AO that the assessee accepted Rs. 75,00,000/- as an advance from M/s Jagdish health care P Limited in relation to transfer of a capital asset which was not returned. AND

6. That in the facts and circumstances of the case and in law the learned CIT(A) has erred in holding that assessee accepted Rs, 75,00,000/- as an advance in relation of transfer of capital assets.

The facts regarding the issue are enumerated as under -

1. Medical Design India Pvt. limited was allotted a Plot F 28, Malviya RIICo Industrial area, Jaipur on 16.09.1987.

2. The above allotment by RIICO of Plot No. F 28, Malviya RIICo Industrial area, Jaipur to Medical Design India Pvt. limited was cancelled on 10.03.2006. M/s Medical Design India Pvt. limited went before the Hon'ble Rajasthan High Court against the cancellation of plot. The Hon'ble Rajasthan High Court directed M/s Medical Design India Pvt. Limited to appeal before the RIICO. M/s Medical Design India Pvt. Limited accordingly filed appeal before RIICO which was pending when assessee started negotiations.

3. It so happened that Dr Anil Tambi approached the assessee for getting the above plot at F 28, Malviya RIICO Industrial area, Jaipur from M/s Medical Design India Pvt. Limited as he was confident of getting the hurdles removed regarding allotment/cancellation of plot to M/s Medical Design India Pvt. Limited, and subsequently getting the same to himself from RIICO.

4. In such a situation the assessee approached M/s Medical Design India Pvt. Limited through Director Smt. Saroj Dhawan and executed an agreement on 10.12.2014. The assessee paid Rs. 75,00,000/- as under to M/s Medical Design India Pvt. Limited for agreeing to purchase the plot for a total sum of Rs, 3,94,38,675/-. **A copy of agreement dated 10.12.2014 executed between assessee Smt. Saroj Haldiya and Smt. Saroj Dhawan of M/s Medical Design India Pvt. Limited is available on paper book page No cited supra.**

S No	Date	Cheque No.	Drawn on	Amount
1	18.10.2014	047309	ICICI Bank	25,00,000/-
2	25.10.2014	047310	ICICI Bank	25,00,000/-
3	30.10.2014	047311	ICICI Bank	25,00,000/-
		Total		75,00,000/-

A copy of relevant bank account of the assessee reflecting the above payment is available on paper book page No. cited supra. It is relevant to add that as on this date of agreement on 10.12.2014 M/s Medical Design India Pvt. Limited was also not owning the aforesaid plot No. F 28, Malviya RIICO Industrial area, Jaipur, as the same stood cancelled/de-allotted on 10.03.2006 by RIICO and the issue of appeal was pending before the RIICO.

5. Keeping in tandem the aforesaid affairs, a Power of Attorney was also executed in favour of Dr. Anil Tambi by M/s Medical Design India Pvt. Limited through Shri Saroj Dhawan so that he (Dr. Anil Tambi) could pursue the matter with concerned authorities of RIICO for removing the hurdles and getting the plot allotted again to M/s Medical Design India Pvt. Limited so that it could be purchased for Dr Anil Tambi .

6. However the fortunes did not favour, as mentioned in the agreement executed by the assessee with M/s Medical Design India Pvt. Limited on 10.12.2014 the time limit for getting clearance and removing the hurdles was only of three months failing which the advance of Rs, 75,00,000/- was to be forfeited and ultimately the same stood forfeited.

7. Meanwhile the assessee also received payment from Dr Anil Tambi as under

i. Rs. 22,00,000/- vide cheque No. 144015 dated 16.12.2014 from the account of Tanushri Tambi

ii. Rs. 23,00,000/- vide cheque No. 566002 dated 24.12.2014 from the account of Dr. Anil Tambi

S No	Date	Ch No.	Name of payer	Amount
1	16.12.2014	144015	From Tanu Shri Tambi	22,00,000/-
2	24.12.2014	566002	From Dr. Anil Tambi	23,00,000/-
		Total		45,00,000/-

Later on Dr Anil Tambi changed his mind to purchase the property in the name of M/s Jagdish Health Care Pvt. Limited his company, instead of in individual name(s). Hence the amount received from Tanu Shri Tambi and Dr Anil Tambi was returned on 16.02.2015 through banking channel as under –

S No	Date	Ch No.	Beneficiary Name	Amount
1	16.02.2015	63026	Dr. Anil Tambi	23,00,000/-
2	24.12.2014	63030	Tanu Shri Tambi	22,00,222/-
		Total		45,00,000/-

Further Dr. Anil Tambi/ Jagdish Health care Pvt. Limited paid Rs. 75,00,000/- on 24.02.2015 vide cheque No. 447451 for purchase of this plot situated at F-28, Malviya Nagar RIICO industrial Area, Jaipur for his company M/s Jagdish Health care Pvt. Limited. Thus the facts indicate that in the account of this property the assessee did not earn anything at all. This amount was paid as reimbursement of amount of Rs, 75,00,000/- paid by the assessee to medical design India P limited as detailed in the forgoing para No. 4

8. From the aforesaid afore said scenario of the case it is crystal clear that entire matter of money paid to M/s Medical Design India Pvt. Limited and in the last money received from M/s Jagdish Health Care Pvt. Limited has taken place within a short period of time from 10.12.2014 to 24.02.2015 i. e. three months .

9. It is submitted that at no stage of time the assessee was owning plot No. F 28, Malviya RII Co Industrial area, Jaipur and secondly she was acting on behalf of Dr Anil Tambi. These facts are evidenced and corroborated by (i) in the statements of the assessee recorded by investigation wind on 16.05.2017. (ii) by the agreement executed by the assessee on 10.12.2014 with Medical design India p limited through Smt. Saroj Dhawan (iii) by power of Attorney executed by Medical Design India Pvt. limited in favour of Dr. Anil Tambi. **(copies of all these documents are available on paper book page No. cited supra**

10. The facts indicate that in the case assessee was not a beneficiary even for a single rupee. The beneficiary in this case is M/s Medical Design India Pvt. Limited who did not return the amount of Rs. 75,00,000/- to the assessee and assessee had to forfeit the same. If any action at all is required w r to section 56(2)(ix) the same is required to be considered in the case of M/s Medical Design India Pvt. Limited. The learned AO was wrong in training the guns against the assessee instead of at M/s Medical Design India Pvt. Limited. In the facts and circumstances of the case there was no case with the learned AO for proposing action under section 148. Similarly the learned JCIT also erred in granting approval for issuing notice under section 148 which was issued on 23.04.2019. In view of this the very basis and origin of assessment proceedings is not in accordance with law.

11. The learned AO completed assessment under section 147/144B on 14.09.2021 determining total income at Rs, 88,72,047/-, Inter-alia making major addition of Rs, 75,00,000/- under section 56(2)(ix) of the income Tax Act. The addition made by the learned AO is patently wrong because the assessee was never owing the plot, the assessee never received advance and further the action of the assessee was that of a middle man for Dr. Anil

Tambi/M/s Jagdish Health Care Pvt. Limited and in the last the facts stated above indicate that assessee was not a beneficiary in any manner

Section 56(2)(ix) is not applicable in the case of the assessee

It is submitted that the learned AO has made the addition under section 56(2)(ix) of the income Tax Act. The provisions of section 56(2)(ix) are as under-

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in [section 14](#), items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

- (i)
- (ii)
- (iii).....
- (iv).....
- (v).....
- (vi)
- (vii)
- (viii)

^u[(ix) any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if,—

- (a) such sum is forfeited; and
- (b) the negotiations do not result in transfer of such capital asset.]

The perusal of the aforesaid section reveals that these provisions of section 56(2)(ix) are applicable when the following facts exits in a case i.e.

- i. Any any sum of money received as an advance or otherwise
- ii. Such money is received in the course negotiations for transfer of a capital asset and
- iii. such sum is forfeited

In the case of the assessee none of the afore said facts existed. The assessee did not receive amount as advance from M/s Jagdish Health care P limited/Anil tambi.

The amount of Rs. 75,00,000/- was received on 24.02.2015 by the assessee from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited in lieu of such payment made earlier by the assessee for bargain of plot for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited to M/s Medical Design India Pvt. Limited from 18.10.2014 to 30.10.2014. Thus it cannot be termed as advance. In fact it is recovery of the amount earlier paid on and for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited to M/s Medical Design India Pvt. Limited,

Thus no advance was received. The first stipulation of section 56(2)(ix) is not fulfilled.

Further it is submitted that the assessee was not owning any capital asset for transfer to Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. The fact rather indicates that the assessee was in the course of negotiation for purchase of plot from Medical Design India Pvt. Limited for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. Obviously the assessee was not having any capital asset for transfer to Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited. Thus this stipulation of section 56(2)(ix) is also not fulfilled.

Further, the assessee is not beneficiary in any manner. There is no case of money received by the assessee being forfeited. The assessee had received money Rs. 75,00,000/- from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited against payment already made to Medical Design India private Limited. The amount paid to M/s Medical Design India Pvt. Limited stood forfeited because Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited failed in getting the plot re-allotted to M/s Medical Design India Pvt. Limited by RIICO, where appeal of M/s Medical Design India Pvt. Limited was pending against cancellation of plot on 10.03.2006 which originally was allotted on 16.09.1987. The entire facts in this case indicate that although Dr Anil Tambi was granted a Power of Attorney by Medical Design India Pvt. Limited for removing the hurdles and getting the appeal (Pending before the RICCO) decided in favour of Medical Design India Pvt. Limited, which he failed to perform. It is because of this failure that money was lost to M/s Medical design India P limited. The facts stated above indicate that the learned AO was not justified in holding as under

“Para 6.3.7 It is clear from the above that the amount accepted Rs. 75 Lakhs as an advance from M/s Jagdish Health care Pvt. Ltd vide cheque 447451 dated 24.02.2015 has been in relation of a transfer of an capital asset. Further the

amount also has not been returned back even as on date by the assessee and a fact agreed by the assessee

Similarly the learned CT (A) also erred in holding that “the assessee also accepted Rs, 75,00,000/- as an advance in relation of transfer of capital assets” (para 5.1 of the appellate order)

Considering the afore said facts and the discussion, the Honourable ITAT is humbly requested to delete the addition.

Ground No.7

1. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the addition made by the learned AO in disallowing the right full claim of the assessee of Rs. 34,647/- under section 57 of the income Tax out of income disclosed under the head income from other sources.

The assessee has disclosed interest income of Rs. 2,71,511/- as per computation of Total income. **a copy of the computation of total income is available on paper book page No. 37 to 53.** The computation of income discloses receipt of bank interest on SB account of Rs. 50,215/- from FDR Rs. 83,582/- and from Recurring deposit Rs. 5,508/- .Thus the assessee was enjoying income from bank through interest on SB account FDR and RD. Therefore the assessee was fully justified to claim transaction charges levied by bank for Rs, 10,945/-, etc. The assessee had submitted a detailed reply under letter dated 06.09.2021 stipulating the complete details of expenses. **A copy of letter dated 06.09.2021 furnished before the learned AO during assessment proceeding is available on paper book page No...54 to 67** The same have not been property appreciated by the learned AO and by the learned CIT (A) . The expenses claimed deserved to be allowed. The Hon’ble ITAT is requested to allow the claim of the assessee.

Ground NO.8

That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the addition made by the learned AO in disallowing the right full claim of the assessee of Rs. 83,453/- (income from Capital gain)

It is submitted that under provisions of income tax Capital gain shall be calculated as under –

Capital Gain = Net Sale Value – Cost of Acquisition:

Cost of acquisition - The cost of acquisition in relation to the transfer of capital assets refers to the expenses made by an assessee to acquire an asset. It includes the asset's purchase price and other costs incurred to get the asset ready to use.

It is submitted that during the year under consideration the assessee has sold a immovable property for Rs, 20,50,000/- . The cost of the acquisition of that property was Rs, 21,96,453/-. The cost of acquisition of that immovable property is calculated as under

S No	Particulars	Amount
1.	Purchase consideration	20,00,000.00
2	Stamp duty paid on transfer	75000.00
3	Registration charges paid on transfer	33,300.00
4	DD issued in favour of Rajasthan Housing Board for Transfer of Name	15,000.00
5	DD issued in favour of Rajasthan Housing Board for one time house tax	4,680.00
6	DD issued in favour of Rajasthan housing board against demand raised	22.473.00
7	DD issued in favour of Rajasthan housing board for brokerage	46,000.00
	Total	21,96,453.00

Therefore It is submitted that the capital gain is shown by the assessee as under -

Sales price	Rs, 20,50,000.00
Cost price as calculated above	Rs. 21,96,453.00
	=====
Capital loss	Rs. 1,46,453.00

Since in the case of the assessee, cost of acquisition is more than the sale value, the assessee has shown a capital loss of Rs, 1,46,453/- in the computation of total income.

However the learned AO without assigning any reasons in the entire assessment order restricted the cost of acquisition of property at Rs, 21,13,000/- . Even the learned AO did not seem it necessary to mention in the assessment order which amount is included in the cost, and why the other are excluded. It is submitted that as per the learned AO cost of acquisition has been taken as under-

Purchase price + stamp duty + registration charges + transfer fee, which are in the case of assessee as under -

Purchase price	20,00,000.00
Stamp duty paid	75,000.00
Registration fee	33,300.00
Name transfer charges	15,000.00
	=====
Total comes to	21,23,300.00
	=====

Whereas the learned AO has taken the cost of acquisition at Rs, 21,13,000/- only which is wrong and there appears to be a totaling mistake. The amount has been taken less by Rs, 10,000/-

Further the learned AO, in the entire assessment order, did not specify the reasons for not including the remaining amount in the cost of acquisition. It is submitted that amount paid to (i) Rajasthan Housing Board of Rs, 4,680/- on account of One time House tax, (ii) amount paid towards demand by Rajasthan housing board of Rs, 22,473/- and (iii) brokerage paid on purchases of immovable property of Rs, 46,000/- all are of capital expenditure and are part of cost of acquisition of capital asset. Surprisingly the learned AO without mentioning the details and reasons for not accepting the right full claim of the assessee has taken the cost of acquisition at Rs, 21,13,000/- only. The action of the learned AO is

unlawful, illegal and unjust. The learned CIT(A) has also erred in confirming the action of the learned AO without even going into the merits of the case. The Hon.ble ITAT is humbly requested to allow the cost of acquisition at Rs, 21,96,453/- consequently capital loss of Rs, 1,46,453/-.

Ground NO. 9

2. That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the order of the learned AO determining the total income at Rs, 88,72,047/- against the returned income of Rs. 1337,400/-.

As discussed above

Ground No. 10

That in the facts and circumstances of the case and in law the learned CIT (A) has erred in confirming the order of the learned AO for initiating penalty proceedings under section 271(1)(c) of the income Tax Act 1961.

It is submitted that the all the addition made by the learned AO are unlawful illegal and unjust and the initiation of penalty proceeding is bad in law. ”

To support his submission, the Id. AR of the assessee has filed following paper book.

S.N.	Particulars	Paper Book Page No(s)
1.	Copy of the return of income filed u/s 139(1)	1
2.	Copy of the statement recorded by the Investigation under section 131 on 16-05-2017 of husband of assessee Shri Mahendra Kumar Halidya	2-8
3.	Copy of agreement dated 10-12-2014 executed between assessee and Smt. Saroj Dhawan/M/s. Medical Design India Pvt. Ltd.	9-14
4.	Copy of relevant bank account of the assessee	15-16

	reflecting the payment made by assessee to Medical Design India Pvt Ltd.	
5.	Copy of Power of Attorney in favour of Shri Anil Tambi	17-19
6.	Copy of this letter dated 05-12-2019 furnished before the AO raising objections to issuance of notice	20-30
7.	Copy of show cause notice dated 03-09-2021	31-36
8.	Copy of the computation of total income	37-53
9.	Copy of letter dated 06-09-2021 furnished before the AO explaining the expenses claimed from other sources.	54-67.

2.3 During the course of hearing, the Id. DR supported the orders of the lower authorities and filed following written submission.

“Written submission on behalf of the Revenue

1. The assessee has submitted various documents before this Hon’ble Bench in the form of a Paper Book. In the certificate attached with the Paper Book, it has been stated that all the pages contained therein were already filed before the Learned Assessing Officer during the course of assessment proceedings. The revenue respectfully submits rejoinder as under-

2. Incorrect Claim of regarding Filing of Return under Section 139

The assessee has claimed in its submissions that the return of income was duly filed under Section 139 of the Income-tax Act, 1961. The Revenue respectfully submits that this claim is factually incorrect. For the Assessment Year 2015-16, the statutory due date for filing of return of income under Section 139(1) was **31st July 2015**. Subsequently, by CBDT Notification, the due date was extended only up to **31st August 2015**. The return filed by assessee falls beyond the above statutory extended due date and therefore cannot be said to be a valid return filed within the meaning of Section 139(1). In view of this, the Revenue respectfully prays that the Hon’ble Bench may kindly take this factual position on record, and consider that the assessee’s contention of filing return under Section 139 is untenable in law and fact.

3. Revenue's Submission on the Statement Recorded under Section 131 of the Husband of the Assessee

The assessee, **Smt. Saroj Haldia**, has placed reliance on a statement recorded by the Investigation Wing under Section 131 of the Income-tax Act, 1961, on **16th May 2017**, of her husband, **Shri Mahindra Kumar Haldia**. It is respectfully submitted that the said statement was duly recorded by the department and has been placed by the assessee herself before this Hon'ble Bench as evidence. In the said statement, Shri Mahindra Kumar Haldia categorically stated that **he has complete knowledge of the transactions carried out by the assessee** and that he was competent to explain the same before the authorities. On **page no. 5 of the statement**, at **Question No. 8**, the Investigating Officer referred to a document pertaining to the bank account of the assessee, wherein an amount of **₹75 lakh was received from Jagdish Ltd.** The officer specifically asked Shri Mahindra Kumar Haldia whether he himself would answer the question or whether his wife (the assessee) would respond. To this, Shri Mahindra Kumar Haldia unambiguously stated that **he has complete knowledge of this entry, and therefore he would give the reply**. It is important to note that:

- a. There has been **no retraction** of this statement at any subsequent stage by Shri Mahindra Kumar Haldia.
- b. The assessee, **Smt. Saroj Haldia**, has also **never objected** to or contradicted the contents of the statement given by her husband. During the course of statement recorded under Section 131, the husband of the assessee, **Shri Mahindra Kumar Haldia**, explained the background of the transaction relating to the receipt of ₹75 lakhs in the bank account of the assessee, **Smt. Saroj Haldia**. Shri Haldia stated that the amount relates to a property situated at **28, Malviya Nagar Industrial Area, Jaipur**, which was to be purchased from **M/s. Medical Design India Pvt. Ltd.** through **Smt. Saroj Dhawan**. For this purpose, an **Ikraar Nama dated 10th December 2014** was executed, under which a sum of **₹75 lakhs was paid to Smt. Saroj Dhawan as advance consideration**. According to Shri Haldia, the ultimate beneficiary of the transaction was **Shri Anil Tambi**, resident of Malviya Nagar, Jaipur, whose company is **M/s. Jagdish Healthcare Pvt. Ltd.** He categorically stated that this property was in fact being purchased on behalf of Shri Tambi. Shri Haldia further clarified that: A payment of **₹75 lakhs was made by Jagdish Healthcare Pvt. Ltd. to Smt. Saroj**

Haldia. This was against the proposed purchase transaction with **M/s. Medical Design India Pvt.Ltd.** According to him, the amount received by his wife, the assessee, was nothing but advance money routed through Jagdish Healthcare Pvt. Ltd. in connection with the said property transaction. In continuation of his statement recorded under Section 131, the Investigation Officer further asked Shri Mahindra Kumar Haldia at **Question No. 10 (page no. 6 of the paper book)** whether there exists any **Ikraar Nama between Jagdish Healthcare Pvt. Ltd. and the assessee**, or whether any other documentation was prepared in this regard. In reply, Shri Haldia stated that:

- An **Ikraar Nama dated 10th December 2014** was executed between his wife, **Smt. Saroj Haldia**, and **M/s. Medical Design India Pvt. Ltd.** through its Director, **Smt. Saroj Dhawan**.
- Thereafter, in **February 2015**, his wife, **Smt. Saroj Haldia**, and **M/s. Jagdish Healthcare Pvt. Ltd.** also entered into an agreement.
- However, he admitted that he was **not in possession of a copy of this Ikraar Nama**, and he assured the department that the same would be submitted.

3.2 Two important aspects arise from this admission:

- Firstly, as per Shri Haldia's own statement, the initial **Ikraar Nama** was between **Saroj Haldia and Saroj Dhawan of Medical Design India Pvt. Ltd. on 10th December 2014**, and the alleged subsequent agreement with Jagdish Healthcare Pvt. Ltd. was only in **February 2015**.
- Secondly, despite his categorical assurance, **no copy of the Ikraar Nama or subsequent agreement has ever been produced by the assessee** either at the stage of assessment, before the Learned CIT(A), or even before this Hon'ble Bench.

3.3 In absence of this crucial documentary evidence, the assessee's contention that the transaction was merely on behalf of **Shri Anil Tambi of Jagdish Healthcare Pvt. Ltd.** and that she was only acting as a broker is **factually unsubstantiated**. The burden to produce this evidence squarely rested upon the assessee, and her failure to do so despite repeated opportunities renders the claim unreliable. Thus, the plea that the assessee was only a

facilitator/broker in the transaction for Shri Anil Tambi has **no evidentiary support**, and the reliance on an unproduced Ikraar Nama cannot be accepted.

3.4. In continuation of the query on the alleged Ikraar Nama, the Investigation Officer, at **Question No. 11**, specifically asked Shri Mahindra Kumar Haldia, husband of the assessee, to clarify **who were the witnesses at the time of execution of the Ikraar Nama** entered into between **Smt. Saroj Haldia** and **M/s. Medical Design India Pvt. Ltd.** through its Director, **Smt. Saroj Dhawan**. In response, Shri Mahindra Kumar Haldia stated that **he was unable to provide the names of any witnesses**, as he did not have the memory of who signed as witnesses on the said document. This response further demonstrates that:

- The assessee has failed to substantiate the **genuineness and authenticity of the Ikraar Nama**, since even the basic detail of witnesses could not be produced by her or her husband.
- No supporting evidence has been placed on record to corroborate the existence of such an Ikraar Nama apart from bare assertions.
- Despite claiming reliance on the document, the assessee has **not produced the Ikraar Nama itself**, nor has she explained why it has not been filed before any authority.

3.4 Accordingly, the Revenue submits that the assessee's explanation lacks credibility and remains **unsupported by verifiable documentary evidence**. The Hon'ble Bench is requested to draw an adverse inference from the failure of the assessee to substantiate the execution of the Ikraar Nama or to even identify its witnesses. As the Revenue was not satisfied with the earlier replies of **Shri Mahindra Kumar Haldia**, husband of the assessee (**Smt. Saroj Haldia**), further questions were put to him by the Investigation Wing. These questions and answers are recorded at **pages 7 to 9 of the paper book filed by the assessee**. In reply to a direct question by the department as to **whether the property transaction had been completed or not**, Shri Haldia clearly admitted that **the property transaction was not completed, as there was a dispute in respect of the said property**. The Revenue further asked him to explain **why the advance of ₹75 lakhs had not been taken back**, if the transaction was never completed. In response, Shri Haldia stated that **the money was still lying with Smt. Saroj Dhawan of M/s. Medical Design India Pvt. Ltd., and that the same had not been**

returned either to him or to his wife, the assessee. This admission is crucial because it shows that:

- The assessee has not been able to establish that the receipt of **₹75 lakhs** had any genuine nexus with Jagdish Healthcare Pvt. Ltd. or Shri Anil Tambi.
- The explanation offered is contradictory, as the assessee claims to have acted merely as a facilitator/broker, yet her husband admits that the advance money continues to remain with the vendor (**Saroj Dhawan**), and no recovery of the same has been effected.
- No supporting evidence has been placed on record to demonstrate steps taken by the assessee or her husband for recovery of this substantial amount. The sequence of replies from Q.8 to pages 7–9 shows a **progressive weakening of the assessee's defence**:
- Admission of knowledge of the ₹75 lakh receipt.
- Assertion of an Ikraar Nama never produced.
- Failure to identify even witnesses.
- Admission that the property deal was never completed and money remains unpaid without recovery action.

3.6 In these circumstances, the Revenue respectfully submits that the alleged explanation of the assessee is **not supported by credible evidence** and only attempts to cover up the unexplained receipt of funds.

4 Legal Position and Judicial Precedents

- **CIT v. Durga Prasad More (82 ITR 540, SC):** The Hon'ble Supreme Court held that taxing authorities are entitled to look into the surrounding circumstances and apply the test of human probabilities. A mere self-serving explanation cannot be accepted without corroborative evidence.
- **CIT v. P. Mohanakala (291 ITR 278, SC):** The Court upheld additions under Section 68 where the assessee's explanation lacked credibility and supporting evidence, observing that the initial onus lies on the assessee to establish genuineness.

- **Sumati Dayal v. CIT (214 ITR 801, SC):** The principle of human probabilities was reiterated, holding that improbable explanations unsupported by evidence cannot be accepted.
- **Chuharmal v. CIT (172 ITR 250, SC):** It was held that evidentiary value can be attached to statements and material seized, and adverse inference can be drawn when the assessee fails to explain satisfactorily.

In light of these facts and binding judicial precedents, the assessee's explanation is **contradictory, unsubstantiated, and improbable**. The amount of **₹75 lakhs remains unexplained** and is rightly taxable in the assessee's hands.

- 5 From **pages 9 to 14 of the paper book**, the assessee (**Smt. Saroj Haldia**) has filed a copy of the **agreement dated 10th December 2014** described as an *Ikraar Nama*. This document was executed between the assessee and **Smt. Saroj Dhawan**, Director of **M/s. Medical Designs India Pvt.Ltd.** It is respectfully pointed out that this *Ikraar Nama* is **only between the assessee and Medical Designs India Pvt. Ltd.** for purchase of property. It is **not an agreement between the assessee and M/s. Jagdish Healthcare Pvt. Ltd.** The assessee's explanation that the transaction was undertaken on behalf of **Shri Anil Tambi/Jagdish Healthcare Pvt. Ltd.** therefore has no documentary foundation.

On **page 11 of the paper book**, the *Ikraar Nama* clearly records:

- The **total purchase consideration of ₹3,94,38,675.**
- The agreed rate of **₹22,500 per square meter.**
- Property details showing that the land in question was **already disputed since 10th March 2006** and subject to defective title.

5.1 These facts demonstrate that:

- The assessee entered into a property transaction **in her own name**, not on behalf of Jagdish Healthcare Pvt. Ltd.
- She agreed to purchase a property that was **already under litigation and without clear title.**
- Her subsequent explanation that the transaction was for or on behalf of **Shri Anil Tambi** is **factually false and unsupported.**

5.2 Thus, the assessee's reliance on the *Ikraar Nama* not only fails to support her case, but on the contrary, shows that she entered into an agreement in her own name, for a disputed property, without any evidence of Jagdish Healthcare Pvt. Ltd.'s involvement. Accordingly, the plea that the amount of **₹75 lakhs** received in her account represents money advanced by Jagdish Healthcare Pvt. Ltd. on behalf of Shri Anil Tambi stands **discredited**. The explanation before the authorities is therefore **false, self-serving, and devoid of evidential value**.

6 Conclusion

The sequence of replies and documents shows:

- Admission of ₹75 lakh receipt in assessee's name.
- Reliance on an *Ikraar Nama* never produced (with Jagdish Healthcare Pvt. Ltd.).
- Failure to recall even witnesses.
- Admission that the property transaction was never completed and money not recovered.
- Production of an *Ikraar Nama* only with **Medical Designs India Pvt. Ltd.**, proving the assessee was acting in her own name.
- Clause 2 showing assessee's responsibility for disputed property and risk of forfeiture.
- In light of these facts and binding judicial precedents, the assessee's plea that she was merely acting as a broker on behalf of Shri Anil Tambi is **false, contradictory, and without evidential value**. The amount of **₹75 lakhs remains unexplained in her hands** and is rightly liable to be taxed.

7 The assessee, **Smt. Saroj Haldia**, has filed in her paper book (page no. 16) a copy of her **ICICI Bank account statement**. On perusal, the following facts are evident:

- A credit entry of **₹75 lakhs** has been recorded, shown as received from **Shri Jagdish Tambi**.
- On the **very same date**, two large debit entries appear:
 - **₹22 lakhs transferred to Smt. Tanushi Tambi**, and
 - **₹23 lakhs transferred to Shri Anil Kumar Tambi**.

7.2 The Revenue had specifically pointed this out during oral arguments, questioning why almost **₹45 lakhs out of the ₹75 lakhs** received was immediately transferred back to close relatives of the Dr Tambi. The assessee, however, has **failed to provide any explanation** regarding the nature, purpose, or business justification of these transfers. No supporting documentation, agreement, or clarification has been placed on record. It is relevant to note that **both Tanushi Tambi and Anil Kumar Tambi are close family members of the Dr Tambi**. This fact raises strong doubts about the genuineness of the claim that the ₹75 lakhs was received in connection with any independent property transaction. In absence of a credible explanation, the transaction reflects a clear case of **circular movement of funds within family members**, undermining the assessee's plea that the amount represented a genuine advance from Jagdish Healthcare Pvt. Ltd. for purchase of property.

7.3 Conclusion:

The ICICI bank account entry itself disproves the assessee's version. The receipt of ₹75 lakhs from Shri Jagdish Tambi followed by immediate transfer of a major portion to her own family members remains **unexplained and without justification**, thereby attracting addition in the assessee's hands.

8 Rebuttal to Assessee's Plea

The assessee's claim that she was merely a facilitator/broker on behalf of Shri Anil Tambi is contradicted by the documentary record (Ikraar Nama in her own name, responsibility clause, no agreement with Jagdish Healthcare Pvt. Ltd.).

The non-production of vital documents and witnesses (Ikraar Nama with Jagdish Healthcare, Saroj Dhawan, Dr. Anil Tambi) warrants an adverse inference against the assessee.

Judicial precedents (Durga Prasad More, Sumati Dayal, P. Mohanakala) establish that improbable, self-serving explanations without corroboration cannot be accepted.

9 Prayer

In view of the above facts, circumstances, and settled legal position, the Revenue most respectfully prays that this Hon'ble Bench may be pleased to:

- Reject the assessee's explanation regarding the receipt of ₹75 lakhs.
- Hold that the amount remains unexplained in the hands of the assessee under the provisions of the Income-tax Act, 1961.
- Uphold the addition made by the Assessing Officer and confirmed by the learned CIT(A).''

2.4 We have heard both the parties and perused the materials available on record. The facts in brief as emerges from the assessment order is that the assessee is an individual. The assessee filed ITR for A.Y. 2015-2016 on 31-03-2016 declaring total income of Rs. 13,37,400/-. During the assessment proceedings the AO had reasons to believe that the assessee had claimed deduction u/s 57 of Rs. 34,647/- under the head "Income from other Sources". The AO also noted that the assessee was involved in a transaction of sale of immovable property during the year and the same resulted in short term loss of Rs. 1,46,543/-. The difference of the cost of purchase and the sale consideration was Rs. 63,000/- and thus the short term loss was restricted to Rs. 63,000/-. Hence, Rs. 83,453/- was disallowed by the AO. The AO noted that the assessee also accepted Rs. 75,00,000 as an advance from M/s. Jagdish Health Care Pvt Ltd. vide cheque no. 447451 dated 24-02-2015 in relation of transfer of capital asset. Subsequently, A notice u/s 148 of the Income Tax act, 1961 dated

23.04.2019 was issued along with various other notices. The assessee failed to give a satisfactory reply and not provide any required details. Hence, the A.O, completed the assessment and passed order u/s. 147/144B of the Income-tax Act dated 13.12.2019 Assessing total Income at Rs. 90,97,047/-. It is note worthy to mention that the AO made additions whose narrations are as under:-.

1. Disallowance as per para 6.2.4 Rs.83,453/-

“6.2.4 The difference of the cost of purchase and sale consideration is Rs.63,000/- only and hence in the light of the same the Short Term Loss is restricted to Rs.63,000/- and will be allowed to be set off as per law. The disallowance as per this order is Rs.83,453/- and penalty u/s 271(1)© is initiated in view of the inaccurate particulars filed in respect of the same.”

2. Disallowance as per para 6.14 Rs. 34,647/-

“6.1.4 Consequently in lieu of no direct nexus and the no evidence whatsoever filed by the assessee in respect of these expenses. This amount of Rs.34,647/- cannot be allowed as an expenses and it being an inaccurate submission of particulars of income and penalty proceedings u/s 271(1)© is initiated in respect of the same.”

3. Disallowance as per para 6.3.8 R.75,00,000/-

“6.3.8 Accordingly, this amount of Rs.75,00,000/- is considered as the income of the assessee u/s 56(2)(ix) of the Income Tax Act. Since it is a case of concealment of income, penalty u/s 271(1)© is initiated against the same”

In first appeal, the Id. CIT(A) has confirmed the action of the AO by holding that the assessee has not furnished any substantial written submission or documentary evidence in support of its grounds of appeal challenging the additions (supra). During the course of hearing, the assessee is in appeal before the ITAT with regard to the following additions.

(1) Addition of Rs.75.00 lacs

(2) Addition of Rs.34.647/- u/s 57 of the Act

(3) Addition of Rs.83,453/- as Short Term Loss.

2.4.1 First of all, we take up the issue of addition of Rs.75.00 lacs wherein the facts as emerges are that Medical Design India Private Limited was allotted a Plot F 28, Malviya RIICO Industrial area, Jaipur on 16.09.1987. Subsequently the above allotment by RIICO of Plot No. F 28, Malviya RIICO Industrial area, Jaipur to Medical Design India Pvt. limited was cancelled on 10.03.2006. In this regard, M/s Medical Design India Pvt. Limited went in appeal before the Hon'ble Rajasthan High Court against the cancellation of plot. The Hon'ble Rajasthan High Court directed M/s Medical Design India Pvt. Limited to appeal before the RIICO. As per direction of Hon'ble Rajasthan High Court, M/s Medical Design India Pvt.

Limited accordingly filed appeal before RIICO which was pending when assessee started negotiations. It is noted from the record that Dr. Anil Tambi approached the assessee for getting the above plot at F 28, Malviya RIICO Industrial area, Jaipur from M/s Medical Design India Pvt. Limited as he was confident of getting the hurdles removed regarding allotment/cancellation of plot to M/s Medical Design India Pvt. Limited, and subsequently getting the same to himself from RIICO. In such a situation the assessee approached M/s Medical Design India Pvt. Limited through Director Smt. Saroj Dhawan and executed an agreement on 10.12.2014. The assessee paid Rs. 75,00,000/- as under to M/s Medical Design India Pvt. Limited for agreeing to purchase the plot for a total sum of Rs, 3,94,38,675/-. A copy of agreement dated 10.12.2014 executed between assessee Smt. Saroj Haldiya & Smt. Saroj Dhawan of M/s Medical Design India Pvt. Limited is available on paper book page No 9 to 14. The details of the amount paid by the assessee Smt. Saroj Devi to the first party is as under:-

S No	Date	Cheque No.	Drawn on	Amount
1	18.10.2014	047309	ICICI Bank	25,00,000/-
2	25.10.2014	047310	ICICI Bank	25,00,000/-
3	30.10.2014	047311	ICICI Bank	25,00,000/-
		Total		75,00,000/-

A copy of relevant bank account of the assessee reflecting the above payment is available on paper book page No. 16 & 17. It is relevant to note that as on this date of agreement on 10.12.2014 M/s Medical Design India Pvt. Limited was also not owning the aforesaid plot No. F 28, Malviya RIICO Industrial area, Jaipur, as the same stood cancelled/de-allotted on 10.03.2006 by RIICO and the issue of appeal was pending before the RIICO. Keeping in tandem the aforesaid affairs, a Power of Attorney was also executed in favour of Dr. Anil Tambi by M/s Medical Design India Pvt. Limited through Shri Saroj Dhawan (PB Page 17 to 19) so that he (Dr. Anil Tambi) could pursue the matter with concerned authorities of RIICO for removing the hurdles and getting the plot allotted again to M/s Medical Design India Pvt. Limited so that it could be purchased for Dr Anil Tambi. However the fortunes did not favour, as mentioned in the agreement executed by the assessee with M/s Medical Design India Pvt. Limited on 10.12.2014 as the time limit for getting clearance and removing the hurdles was only of three months failing which the advance of Rs, 75,00,000/- was to be forfeited and ultimately the same stood forfeited. In the meanwhile, the assessee also received payment from Dr Anil Tambi as under :-

S No	Date	Ch No.	Name of payer	Amount
1	16.12.2014	144015	From Tanu shri Tambi	22,00,000/-
2	24.12.2014	566002	From Dr. Anil Tambi	23,00,000/-
		Total		45,00,000/-

Later on Dr Anil Tambi changed his mind to purchase the property in the name of M/s Jagdish Health Care Pvt. Limited his company, instead of in individual name(s). Hence the amount received by the assessee from Tanu Shri Tambi and Dr Anil Tambi was returned on 16.02.2015 through banking channel as under: –

S No	Date	Ch No.	Beneficiary Name	Amount
1	16.02.2015	63026	Dr. Anil TAmBi	23,00,000/-
2	24.12.2014	63030	Tanu Shri Tambi	22,00,222/-
		Total		45,00,000/-

It is further noted that Dr. Anil Tambi/ Jagdish Health care Pvt. Limited paid Rs. 75,00,000/- on 24.02.2015 vide cheque No. 447451 for purchase of this plot situated at F-28, Malviya Nagar RIICO industrial Area, Jaipur for his company M/s. Jagdish Health care Pvt. Limited. Thus, the fact indicates that in the account of this property the assessee did not earn anything at all. This amount was paid as reimbursement of amount of Rs, 75,00,000/- paid by the assessee to Medical Design India (P) Limited as discussed

hereinabove. Hence, from the aforesaid scenario of the case, it is clear that entire matter of money paid to M/s Medical Design India Pvt. Limited and in the last money received from M/s Jagdish Health Care Pvt. Limited has taken place within a short period of time from 10.12.2014 to 24.02.2015 i. e. three months . The record reveals that at no stage of time the assessee was owning plot No. F 28, Malviya RIICo Industrial area, Jaipur and secondly she was acting on behalf of Dr Anil Tambi. These facts are evidenced and corroborated by (i) in the statements of the assessee recorded by investigation wind on 16.05.2017 (PB Pages 2 to 8). (ii) by the agreement executed by the assessee on 10.12.2014 with Medical design India (P)Limited through Smt,. Saroj Dhawan (PB Page 9 to 14) and (iii) by power of Attorney executed by Medical Design India P. Ltd., in favour of Dr. Anil Tambi. Hence, these facts indicate that in the case assessee was not a beneficiary even for a single rupee. The beneficiary in this case is M/s Medical Design India Pvt. Limited who did not return the amount of Rs. 75,00,000/- to the assessee and assessee had to forfeit the same. If any action at all is required with respect to section 56(2)(ix) the same is required to be considered in the case of M/s Medical Design India Pvt. Limited in accordance with law. Thus the AO is not justified in taking action against the assessee instead of at M/s Medical Design India Pvt.

Limited and thus in the facts and circumstances of the case there was no case with the AO for proposing action under section 148 of the Act. The Bench noted that the assessee did not receive amount as advance from M/s. Jagdish Health Care (P) Ltd. / Dr Anil Tambi. The amount of Rs. 75,00,000/- was received on 24.02.2015 by the assessee from Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited in lieu of such payment made earlier by the assessee for bargain of plot for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited to M/s Medical Design India Pvt. Limited from 18.10.2014 to 30.10.2014. Thus it cannot be termed as advance. In fact it is recovery of the amount earlier paid on and for Dr. Anil Tambi/M/s Jagdish Health Care Pvt. Limited to M/s Medical Design India Pvt. Limited. Thus no advance was received. The first stipulation of section 56(2)(ix) is not fulfilled in the case of the assessee. Hence, in view of the above facts and peculiar circumstances of the case, we do not concur with the orders of the lower authorities. Thus, the issue relating to addition of Rs.75,00,000/- made by the AO in the hands of the assessee u/s 56(2)(ix) of the Act is directed to be deleted.

3.0 As regards the disallowance of claim of the assessee amounting to Rs.34,647/- u/s 57 of the Act by the AO, the Bench after hearing both the parties and perusing the materials available on record noted that the

assessee had disclosed interest income of Rs.2,71,511/- as per computation of total income (PB Pages 37 to 53). The computation of income discloses receipt of bank interest on S/B Account of Rs.50,215/- from FDR Rs.83,582/- and from recurring deposit Rs.5,508/-. Thus the assessee was enjoying income from Bank through interest on S/B account FDR and RD and thus the assessee is fully justified to claim transaction charges levied by the bank for Rs. 10,945/-. It is also noted that the assessee vide his letter dated 06-09-2021 (PB Pages 54 to 67) submitted the details before the AO during assessment proceedings. The submissions as prayed by the Id. AR of the assessee on the issue of claim of Rs.34,647/- has merit and the same deserves to be allowed.

4.0 As regards the disallowance of claim of the assessee amounting to Rs.83,453/- (income from capital gain), the Bench after hearing both the parties and perusing the materials available on record noted that **during the year under consideration the assessee has sold a immovable property for Rs, 20,50,000/. The cost of the acquisition of that property was Rs.21,96,453/-. The cost of acquisition of that immovable property is calculated as under :-**

S No	Particulars	Amount
1.	Purchase consideration	20,00,000.00
2	Stamp duty paid on transfer	75000.00
3	Registration charges paid on transfer	33,300.00
4	DD issued in favour of Rajasthan Housing Board for Transfer of Name	15,000.00
5	DD issued in favour of Rajasthan Housing Board for one time house tax	4,680.00
6	DD issued in favour of Rajasthan housing board against demand raised	22,473.00
7	DD issued in favour of Rajasthan housing board for brokerage	46,000.00
	Total	21,96,453.00

It is noted that the capital gain is shown by the assessee asunder:-

Sales price	Rs, 20,50,000.00
Cost price as calculated above	Rs. 21,96,453.00
	=====
Capital loss	Rs. 1,46,453.00
	=====

Since in the case of the assessee, cost of acquisition is more than the sale value, the assessee has shown a capital loss of Rs, 1,46,453/- in the computation of total income. However the AO without assigning any reasons in the entire assessment order restricted the cost of acquisition of property at Rs, 21,13,000/-. Even the AO did not mention in the assessment order which amount is included in the cost, and why the other are excluded. It is noted that as per AO, the cost of acquisition has been taken as under-

Purchase price + stamp duty + registration charges + transfer fee, which are in the case of assessee as under -

Purchase price	20,00,000.00
Stamp duty paid	75,000.00
Registration fee	33,300.00
Name transfer charges	15,000.00
	=====
Total comes to	21,23,300.00
	=====

Whereas the AO has taken the cost of acquisition at Rs, 21,13,000/- only which appears to be a totaling mistake. The amount has been taken less by Rs, 10,000/- It is also noted that the AO in the entire assessment order, did not specify the reasons for not including the remaining amount in the cost of acquisition. It is noted that amount paid to (i) Rajasthan Housing Board of Rs, 4,680/- on account of One time House tax, (ii) amount paid towards demand by Rajasthan housing board of Rs, 22,473/- and (iii) brokerage paid on purchases of immovable property of Rs, 46,000/- all are of capital expenditure and are part of cost of acquisition of capital asset. Thus the AO without mentioning the details and reasons for not accepting the right full claim of the assessee has taken the cost of acquisition at Rs, 21,13,000/- only. Hence, the action of AO is not justified and the Id. CIT(A) has also erred in confirming the action of the learned AO without even going into the merits of the case. Hence in view of the above facts of the case, the Bench allows the cost of acquisition at Rs, 21,96,453/-

consequently capital loss of Rs, 1,46,453/-. Thus, this issue of the assessee

relating to disallowance of addition of Rs.83,453/- by the AO is allowed.

5.0 Conclusively, the additions (supra) made by the AO and sustained by the Id. CIT(A) are allowed in favour of the assessee.

6.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13 /10/2025.

Sd/-

(राठोड कमलेशजयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13 / 10/2025

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt.Saroj Devi Haldiya, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward -6(1), Jaipur
3. आयकरआयुक्त / Theld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 917/JPR/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar