IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)

I.T.A. No. 277/Mum/2018 (Assessment Year 2007-08)

Astra Exim Pvt. Ltd. 'C' Wing, 4th Floor Unit No. 4101, Oberoi Garden Estate, Off. Saki Vihar Road, Chandivli Andheri East Mumbai-400 072. PAN : AADA9987A	Vs.	ITO 9(1)(4) Aayakar Bhavan M.K. Road Mumbai-400020.
(Appellant)		(Respondent)

Assessee by	Shri Neelkanth Khandelwal
Department by	Shri Abhijit Patankar
Date of Hearing	2.8.2018
Date of Pronouncement	31.8.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 20-12-2017 passed by Ld CIT(A)-16, Mumbai and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.24.95 crores made by the AO u/s 68 of the Act.

2. Before the Tribunal, the assessee has raised certain legal grounds by way of additional grounds, which are extracted below:-

The following additional grounds of appeals are independent of and without prejudice to, one another and to the original grounds of appeal:

1. The Income-tax Officer - 9(1)(4), Mumbai (hereinafter referred to as the Assessing Officer) erred in issuing notice dated 16.06.2014 under section 143(2) prior to the date on which the return of income in response to notice issued under section 148 reached him, thereby rendering the entire assessment proceedings null and void.

The appellants contend that on the facts and in the circumstances of the case and in law, the notice under section 143(2) of the Act is issued prior

to the date on which the return of income in response to notice issued under section 148 reached the Assessing Officer and hence, the entire assessment is bad in law and thus, the assessment order needs to be quashed.

2. The Assessing Officer erred in issuing notice under section 148 of the Act without obtaining appropriate approval from the Commissioner of Income-tax- 2, Mumbai (CIT) and hence the assessment is bad in law, thereby rendering the entire assessment proceedings null and void.

The appellants contend that the prior approval obtained by the Assessing Officer of the CIT as envisaged in section 151 of the Act is a mechanical approval inasmuch as column no 13 requiring recording the reasons for initiating proceedings u/s. 147 and or obtaining the approval of the Commissioner of Income-tax-2, Mumbai merely mentions 'Yes I am satisfied' and thus, there is total non-application of mind in granting the approval by the CIT as such, the entire assessment is bad in law and thus, the assessment order needs to be quashed.

3. The Assessing Officer erred in passing the assessment order beyond the prescribed time as envisaged under section 153 of the Act.

The appellant contended that on the facts and in the circumstances of the case and in law, the impugned assessment order is passed beyond the time prescribed under section 153 of the Act and hence, the order is barred by limitation and hence the assessment order needs to be quashed.

We heard the parties on admission of these additional grounds. We notice that these are legal grounds and the facts relating to the same are available in the assessment record. Accordingly we admit them by following the decision rendered by Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd (229 ITR 383).

3. The assessee is engaged in the business of trading in chemicals and pharmaceutical intermediaries. The original assessment was completed in the hands of the assessee for the year under consideration u/s 143(3) of the Act on 28-10-2009, wherein book profit was determined at Rs.16,48,236/- and the total income under normal provisions of the Act was determined as NIL. Subsequently, the AO reopened the assessment by issuing a notice u/s 148 of the Act on 28-03-2014 on noticing that the assessee is having a current

account with ICICI Bank and the said account was having huge volume of transactions. The AO completed the re-opened assessment by determining total income of the assessee at Rs.52.01 crores, wherein he added a sum of Rs.24.95 crores towards unaccounted income/un-reconciled entries in Bank account; a sum of Rs.26.90 crores towards current liabilities and Rs.17.00 lakhs towards un-reconciled Loan. The Ld CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal challenging the order passed by Ld CIT(A). As stated above, the assessee has raised certain legal grounds also.

4. We shall first take up the legal grounds urged by the assessee. In the first legal ground, the assessee is stating that the AO has issued 143(2) notice prior to the date of receipt of return of income filed by the assessee in response to the notice issued u/s 148 of the Act.

5. The ld A.R submitted that the assessee filed a letter in response to the notice received u/s 148 of the Act on 06-06-2014. In the said letter, the assessee has requested the AO to treat the original return filed on 30-10-2006 as the return filed in response to the notice issued u/s 148 of the Act. Hence the above said letter is considered to be the return of income. The above said letter was filed in the ASK (Aaykar Seva Kendra) counter by the assessee on 06-06-2014, vide ASK acknowledgement number.: 079060614012283. Subsequently, the AO issued notice u/s 143(2) of the Act on 16-06-2014, wherein he asked for various details.

6. It is the submission of the assessee that the return of income filed on 06-06-2014 by way of letter has reached the hands of the assessing officer only on 17-06-2014. This is evidenced by the seal affixed in the office of the assessing officer on the letter filed by the assessee. The said seal bears the date of 17-06-2014, where as the AO has issued notice u/s 143(2) of the Act on 16-06-2014, i.e., one day prior to the date of receipt of return of income. Based on these facts, the Ld A.R submitted that the AO is entitled to issue notice u/s 143(2) of the Act only after receipt of return in his hands, whereas in the

instant case, the AO has issued notice u/s 143(2) of the Act before receipt of return in his hands.

7. On the contrary, the Ld D.R submitted that the ASK counter is an integral part of Income tax department and the return of income and other letters could be filed with ASK. The date on which the return of income/letters is submitted with ASK counter is considered to be the date of filing of return of income. The Ld D.R submitted that the assessee has filed its return of income on 06-06-2014 in the ASK counter. The AO has issued notice u/s 143(2) of the Act only on 16-06-2014. He submitted that the seal affixed by the office of AO on 17-06-2014 may not be relevant here, as it only an internal procedure. Since the AO has reopened the assessment to assess the escaped income, he has issued notice u/s 143(2) of the Act upon noticing that the assessee has filed return of income on 06-06-2014 in the ASK counter.

8. We heard rival contentions on this legal issue. The provisions of sec. 143(2) mandate issuing of notice under that section after furnishing of a return. The relevant portion of section 143(2) reads as under:-

> "***Where a return has been furnished*** *under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,--*
>
> *(i).....*
>
> *(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner,* ***serve on the assessee a notice*** *requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return."*

A plain reading of the section would show that the notice u/s 143(2) of the Act shall be issued after furnishing of return. There should not be any dispute that the "date of furnishing of return of income" shall be the date on which the letter was filed with ASK counter. In the instant case, it has been filed with ASK counter on 06-06-2014. The AO has issued notice u/s 143(2) of the Act

on 16-06-2014, i.e., after furnishing the return of income. Accordingly there is merit in the contentions of Ld D.R that the notice u/s 143(2) of the Act has been issued in accordance with the provisions of that section.

9. The ld A.R placed emphasis on the seal affixed upon the letter filed by the assessee. As submitted by Ld D.R, it is an internal matter and hence without ascertaining the internal procedures adopted in this regard by the Income tax department, it may not be possible to draw any inferences. The assessee has not brought on record any material to show that the date of filing of return should not be considered to be the date on which the letter was filed with ASK counter or date of filing of return should be the date on which the same was received by AO in his hands. In this era of e-filing also, the date of filing of return of income is taken as the date on which the return of income is uploaded into the computer system of the department. In this view of the matter, we are of the view that the AO has issued notice u/s 143(2) of the Act after furnishing of return of income by the assessee. Accordingly we reject this ground of the assessee.

10. The next legal issue urged by the assessee is that the approval obtained by the AO from the Commissioner of Income tax is not in accordance with the mandate of provisions of sec. 151 of the Act, i.e., it is the contention of the assessee that the Ld CIT has given approval in a mechanical manner without application of mind and hence the entire assessment proceedings is rendered null and void.

11. As per the provisions of sec.151, sanction from higher authorities is required to be obtained for issuing notice u/s 148 of the Act. Since the AO has reopened the assessment after expiry of four years and since the original assessment has been completed u/s 143(3) of the Act, no notice u/s 148 can be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing officer, that it is a fit case for the issue of

such notice. The relevant provisions are extracted below, for the sake of convenience:-

> *"151.(1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an assessing officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice.*
>
> *Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing officer aforesaid, that it is a fit case for the issue of such notice."*

12. It is the contention of the Ld A.R that the Ld CIT should apply his mind on the reasons recorded by the Assessing officer and should arrive at satisfaction that it is a fit case for issue of notice u/s 148 of the Act. He submitted that the satisfaction of Ld CIT should not be mechanical, but on due application of mind. He submitted that the mechanical approval given by Ld CIT would vitiate the assessment proceedings and the assessment order is liable to be quashed. In support of this proposition, the Ld A.R placed his reliance on the following case laws:-

(a) Virat Credit & Holdings P Ltd (ITA No.89/Del/2012 dated 09-02-18)
(b) RMG Polyvinyl (I) Ltd (ITA No.1596/Del/2014 dated 12-04-2016)
(c) S.Goyanka Lime & Chemicals Ltd (2015)(56 taxmann.com 390)(MP) (2015)(64 taxmann.com 313)(SC)

13. The Ld A.R invited our attention to the internal processing sheet titled as "Form for recording the reasons for initiating proceedings u/s 147 and or obtaining the approval of the Commissioner of Income tax-2, Mumbai". The above said processing sheet is used by the assessing officer to obtain approval as contemplated u/s 151 of the Act. The Ld A.R submitted that the Ld CIT has mechanically granted approval and did not show that he was satisfied that it is a fit case for issuing notice u/s 148 of the Act, which is evident from the following facts:-

(a) Item No. 6 of the sheet contains the question "The quantum of income which has escaped assessment". The AO has given answer as "To be quantified Above Rs.1 lakh".

(b) Item No.13 of the sheet contains the question "Whether the Commissioner of Income tax-2, is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of notice u/s 148". The Ld Commissioner of Income tax has stated "Yes I am satisfied".

The Ld A.R submitted that the income escaping assessment should be quantified properly and further mere writing of "Yes I am satisfied" is considered as mechanical approval given by Ld CIT, as the same is given without making reference to the reasons recorded by the assessing officer. He submitted that the above said case laws deal with identical approval granted by Ld CIT(A) and the Hon'ble Madhyra Pradesh High Court has held it to be a mechanical approval and accordingly quashed the assessment proceedings.

14. The Ld CIT-DR, on the contrary, submitted that the Ld CIT has granted approval as per the requirement of sec. 151 of the Act after proper application of mind. He submitted that the assessing officer is required to forward the proposal to reopen the assessment through the Additional CIT. In the instant case, the proposal of the AO was examined by the Additional CIT and he has recorded his satisfaction as under in Item 12 of the internal processing sheet:-

"Have discussed the case with the AO. Have perused the reasons recorded. Recommended reframing of the asst."

Since the Additional CIT has examined the proposal of the AO and recorded his satisfaction, the Ld CIT has approved the same by writing "Yes I am satisfied". The Ld D.R submitted that these facts show that the Ld CIT has given approval after application of mind. He further submitted that the Act does not prescribe any specific format for recording satisfaction. Hence the satisfaction of the Ld CIT should be understood from the proceedings. The Ld D.R submitted that the Ahmedabad bench of Tribunal has expressed the view in the case of Mayurbhai Mangaldas Patel vs. ITO (ITA No.3451/Ahd/2014 dated

30.11.2017) that the words "approved" or "sanctioned" are not required to be used by the sanctioning authority.

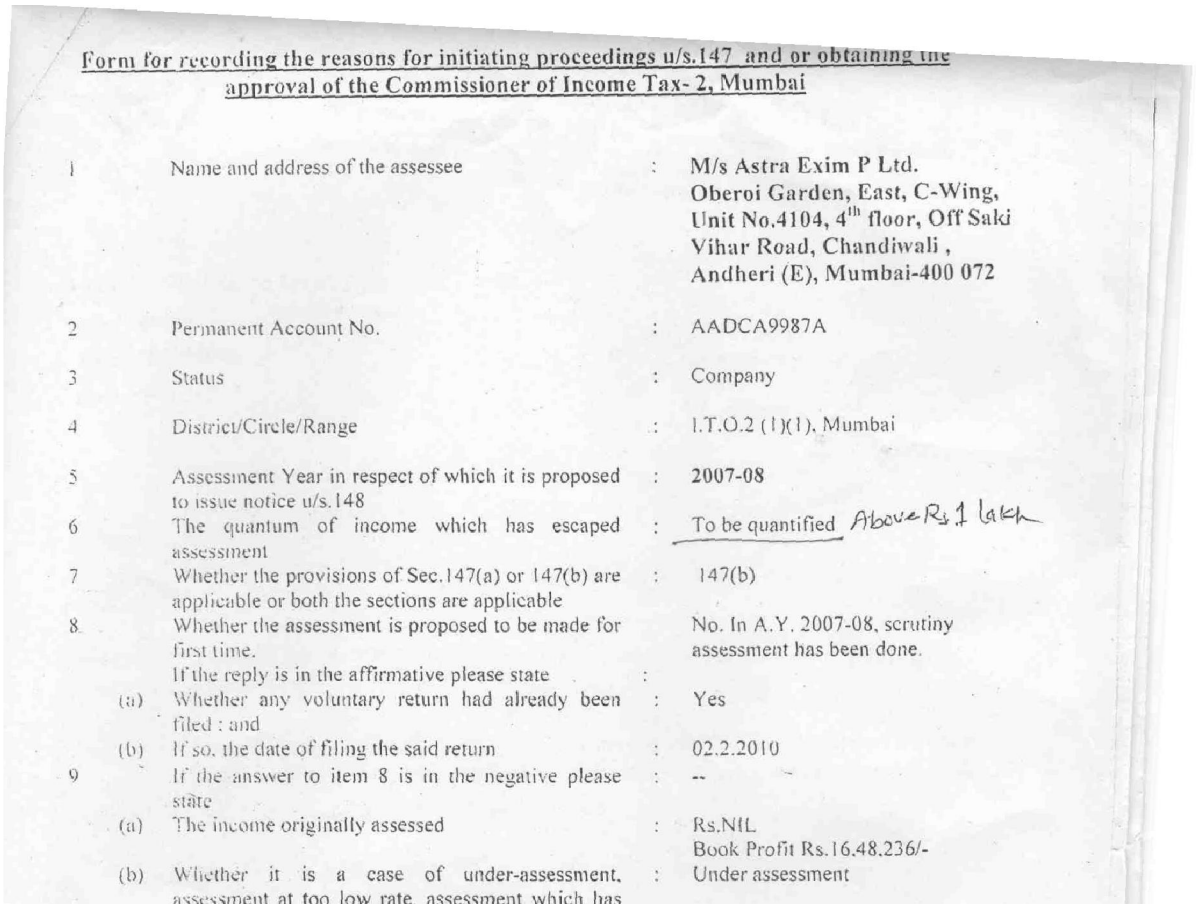
15. In the rejoinder, the Ld D.R submitted that the Ahmedabad bench of Tribunal has not considered the decision rendered by Hon'ble Madhya Pradesh High Court in the case of S.Goyanka Lime & Chemicals Ltd (supra). Further the facts prevailing in the case of Mayurbhai Mangaldas Patel (supra), considered by Ahmadabad bench of Tribunal is totally different. He submitted that, in the above said case, the approval was required to be obtained from Additional Commissioner of Income tax. Even though the Additional CIT granted approval by duly recording his satisfaction on the reasons recorded by AO, yet he forwarded it to Commissioner of Income tax, who also granted approval. The case of the assessee before the Tribunal is that the approval granted by Ld CIT, being not the prescribed authority, would vitiate the proceedings. The ITAT, Ahmedabad, however, expressed the view that the satisfaction of Addl. CIT as required u/s 151 of the Act is available and he was the competent authority in the case before the Ahmedabad bench. This view of the Tribunal was also upheld by Hon'ble Gujarat High Court in the same case reported in (2018)(93 taxmann.com 220) with the following observations:-

> *"10. The legal proposition is that when the statute casts a duty on a certain administrative officer, the same must be performed by him and satisfaction arrived at even by the higher authority would not be sufficient. However, in the present case, there was no lack of satisfaction or exercise of power by the Joint Commissioner. He, in clear terms, expressed his satisfaction that on the basis of the reasons recorded by the Assessing Officer, it was a fit case for issuance of notice under section 148 of the Act. Merely because the papers were thereafter for some erroneous reason also placed before the Commissioner who also recorded his similar satisfaction would not take away anything from the previous conclusion."*

The Ld A.R submitted that, in the instant case, the Ld CIT is required to satisfy himself on the reasons recorded by the AO. The Addl CIT has merely recommended the case for approval. As such, the Ld CIT has not applied his mind at all and has granted approval only mechanically. Had he applied his

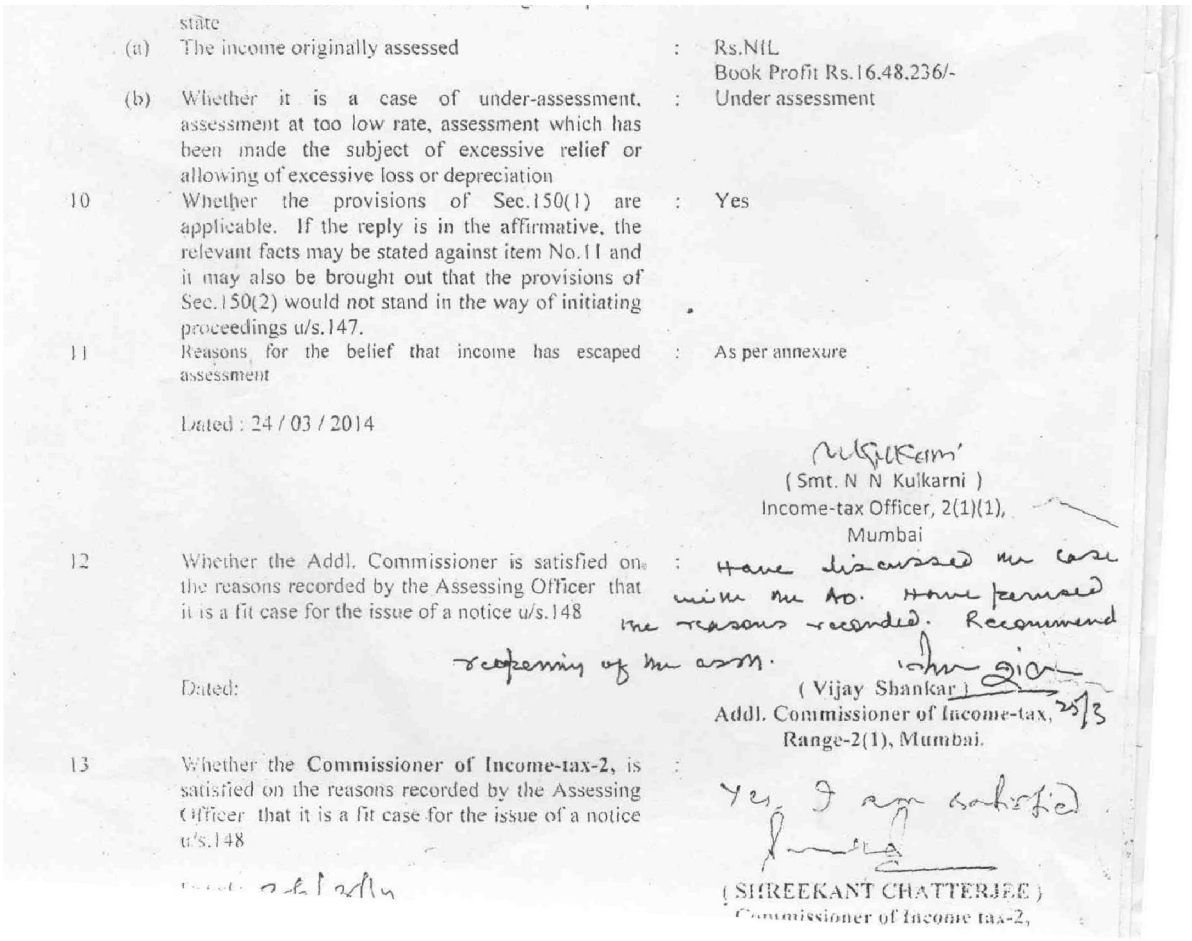
mind, he would have noticed that the AO has not quantified the income escaping assessment, which is a mandatory condition for re-opening the assessment after four years. Further, in the reasons for reopening, the AO has referred to the affidavit given by a person named "Shri Vijay Shenoy". However, the affidavit is actually furnished by Shri Vinod Shenoy. This fact also shows that the AO has adopted a casual approach while recording reasons for reopening and the Ld CIT has also not examined the reasons.

16. We have heard rival contentions on this legal issue and perused the record. In order to properly appreciate the contentions of the assessee, we extract below the Internal Processing sheet, referred to by Ld A.R:-



Form for recording the reasons for initiating proceedings u/s.147 and or obtaining the approval of the Commissioner of Income Tax- 2, Mumbai

1		Name and address of the assessee	:	M/s Astra Exim P Ltd. Oberoi Garden, East, C-Wing, Unit No.4104, 4th floor, Off Saki Vihar Road, Chandiwali , Andheri (E), Mumbai-400 072
2		Permanent Account No.	:	AADCA9987A
3		Status	:	Company
4		District/Circle/Range	:	I.T.O.2 (1)(1), Mumbai
5		Assessment Year in respect of which it is proposed to issue notice u/s.148	:	2007-08
6		The quantum of income which has escaped assessment	:	To be quantified Above Rs.1 lakh
7		Whether the provisions of Sec.147(a) or 147(b) are applicable or both the sections are applicable	:	147(b)
8		Whether the assessment is proposed to be made for first time.		No. In A.Y. 2007-08, scrutiny assessment has been done.
		If the reply is in the affirmative please state	:	
	(a)	Whether any voluntary return had already been filed : and	:	Yes
	(b)	If so, the date of filing the said return	:	02.2.2010
9		If the answer to item 8 is in the negative please state	:	--
	(a)	The income originally assessed	:	Rs.NIL Book Profit Rs.16,48,236/-
	(b)	Whether it is a case of under-assessment, assessment at too low rate, assessment which has	:	Under assessment



state

(a) The income originally assessed : Rs.NIL
Book Profit Rs.16.48.236/-

(b) Whether it is a case of under-assessment, assessment at too low rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation : Under assessment

10 Whether the provisions of Sec.150(1) are applicable. If the reply is in the affirmative, the relevant facts may be stated against item No.11 and it may also be brought out that the provisions of Sec.150(2) would not stand in the way of initiating proceedings u/s.147. : Yes

11 Reasons for the belief that income has escaped assessment : As per annexure

Dated : 24 / 03 / 2014

(Smt. N N Kulkarni)
Income-tax Officer, 2(1)(1),
Mumbai

12 Whether the Addl. Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s.148 : Have discussed the case with the AO. Have perused the reasons recorded. Recommend reopening of the asstt.

Dated:

(Vijay Shankar)
Addl. Commissioner of Income-tax, 25/3
Range-2(1), Mumbai.

13 Whether the Commissioner of Income-tax-2, is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s.148 : Yes, I am satisfied

(SHREEKANT CHATTERJEE)
Commissioner of Income tax-2,

A careful perusal of the above said processing sheet would show that the Addl. CIT has recommended re-opening of assessment and the Ld CIT has approved the same with the endorsement "Yes I am satisfied".

17. The contention of Ld A.R is that the endorsement "Yes I am satisfied" does not indicate the satisfaction of Ld CIT on the reasons recorded by the AO that it is a fit case for reopening of assessment, i.e., it is a mechanical approval granted by the Ld CIT, which would vitiate reopening. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon'ble Madhya Pradesh High Court in the case of S.Goyanka Lime & Chemicals Ltd (supra). The following observations made by Hon'ble Madhya Pradesh High Court are relevant here:-

7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra)(246 ITR 363), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

> *"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."*

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue. 10- In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

It is pertinent to note that the SLP filed by the revenue against the above said decision before Hon'ble Supreme Court has been dismissed as reported in (2015)(64 taxmann.com 313).

18. An identical issue was considered by Delhi bench of Tribunal in the case of M/s Virat Credit & Holdings P Ltd (supra). The following observations made by the Tribunal are relevant here:-

> *10. First of all, ld. AR for the assessee company drew our attention towards sanction accorded by the Addl.CIT for reopening of the assessment obtained by moving an application under Right to Information Act, 2005, available on file as Annexure 'A'. Perusal of the sanction accorded by Addl. CIT in the prescribed proforma shows that there is a question no.13 viz. :*

> *"13. Whether the Addl. CIT is satisfied on the reasons recorded under section 147 that it is a fit case for issue of notice under section 148 of the IT Act.*

11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written "Yes. I am satisfied." No doubt, columns of reasons recorded was there and it is also mentioned in column no.12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.

12. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it has proved on record that the sanction is merely mechanical and Addl.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act.

13. Even AO while recording the reasons for initiating the reopening of assessment has not applied his mind independently. When we peruse the reasons recorded, available at pages 31-32 of the paper book, the entire reasons have been based on the statement of one Shri P.K. Jindal, who has furnished the list of companies stated to be not doing any business activities but engaged in providing accommodation entries. Before issuing the notice AO appeared to have not examined the profile of the said companies to arrive at a logical conclusion so as to issue the notice u/s 148 of the CO No.57/Del/2012 Act. When this fact is examined in the light of the completed assessment of the assessee u/s 143 (3), all the documents concerning share application money, now available at pages 1 to 30 of the paper book, were supplied to the AO. This fact has not been taken into consideration by the AO before initiating the proceedings u/s 147/148 of the Act. However, since reopening of assessment in this case is otherwise not sustainable, we are not entering into any merits.

14. Hon'ble Supreme Court in case cited as CIT vs. S. Goyanka Lime & Chemical Ltd. - (2015) 64 taxmann.com 313 (SC) examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording "Yes. I am satisfied." And held that reopening on the basis of mechanical sanction is invalid by returning following findings :-

> *" Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical*

manner and without application of mind to accord sanction for issuing notice under. section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

Search and Seizure-Procedure for black Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)-However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and CO No.57/Del/2012 147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'-Action for sanction was alleged to be without application of mind and to be done in mechanical manner-Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such consideration, both Appellate authorities interfered into matter- No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."

15. The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings :-

"Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's

cross appeal was on correctness of reopening of assessment-Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of CO No.57/Del/2012 given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

16. Furthermore, perusal of the noting sheet dated 09.03.2010 to 30.12.2010 made available to the Bench for perusal shows that only AO has recorded that Addl.CIT has considered the reasons recorded before according the sanction, however even no prima facie material is there, if Addl.CIT has applied his mind by considering the reasons recorded before according the sanction. We are of the considered view that the AO who has recorded the reasons cannot enter into the mind of the sanctioning authority (Addl.CIT) discharging the quasi-judicial function for according valid sanction for reopening the assessment.

17. Moreover, according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Addl.CIT as required u/s 151 of the Act. When the Revenue Department is manned by highly qualified officers they are to evolve legally sustainable standard operating procedure for discharging quasi- judicial function.

16. Hon'ble High Court of Delhi in case cited as SABH Infrastructure Ltd. vs. ACIT in WP (C) 1357/2016 order dated 25.09.2017 has issued guidelines to the Revenue authorities while CO No.57/Del/2012 deciding the issue of reopening u/s 147/148 of the Act. Operative part of which is reproduced as under:-

"19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re- opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for CO No.57/Del/2012 reopening of the assessment beyond what has already been disclosed."

17. In view of what has been discussed above, reassessment opened by the AO in this case is not sustainable in the eyes of law, hence hereby quashed. Consequently, cross objection filed by the assessee company stands allowed and the appeal filed by the Revenue has become infructuous."

19. In the case of RMG Polyvinyl (I) Ltd (supra), the Delhi bench of Tribunal has considered an identical issue. One of the reasons for quashing the reopening of assessment is that the Ld CIT has mechanically approved the reopening with the endorsement "Yes I am satisfied". The relevant observations made by the Tribunal are extracted below:-

7. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case law cited by the assessee's counsel on the issue in dispute. In our view, it is very much necessary to reproduce the reasons recorded by the

AO before issue of notice u/s. 148 and the approval of the Ld. Addl. CIT, Range-17, New Delhi for reopening of assessment which reads as under:-

"FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S. 148 AND FOR OBTAINING THE APPROVAL OF THE ADDL. COMMISSIONER OF INCOME TAX / COMMISSIONER OF INCOME TAX

1.	Name & Address of the Assessee	M/s Pine View Construction & Traders Pvt. Ltd., 107, Padam Chambers, 3924/26, Padam Singh Road, Karol Bagh, New Delhi - 110 005
2	PAN	AACCP0184F
3	STATUS	PVT. LTD. COMPANY
4	RANGE/WARD	ITO, WARD-14(2), NEW DELHI
5	Assessment year in respect of which it is proposed to issue notice u/s. 148.	2004-05
6	The quantum of income which has escaped assessment.	Rs. 1,56,00,000/-
7	Whether the provisions of Section 147(a), 147(b) or 147(c) are applicable or all the Sections are applicable.	147(a) of the I.T. Act, 1961
8	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative please state. Whether any voluntary No return had already been filed. If so, date of filing the said return.	Yes
9	If the answer to item 8 is in negative please	NA

	state The income originally assessed Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	NA NA
10	Whether the provisions of No section 150(1) are applicable, if the reply is in the affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provision of section 150(2) would not stand in the way of initiating proceedings u/s. 147.	NA
11	Reasons for the belief that income has escaped assessment.	Information has been received from Investigation Wing of the Income-tax assessment. Department that M/s Pine View Construction & Traders Pvt. Ltd. is a beneficiary of accommodation entries received from certain established entry operators identified by the Investigation Wing during the period relevant to A.Y. 2004-05. A comprehensive investigation was carried out by the Investigation Wing for identification of entry operators engaged in the business of money laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a detailed report has been forwarded. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the transaction mentioned in the enclosed Annexure-'A' of Rs.1,56,00,000/-. The accommodation entry provider have given accommodation entries in the grab of share application

		money / expenses / gift / purchase of shares etc. They have worked for commission. The assessee is a company incorporated on 11.09.1998. It is noticed that there is no return of come is available in the AST database of Income-tax Department. Therefore, it is clear that the assessee has not filed return of income for the A.Y. 2004-05 and consequently has not offered any income for taxation. Sources of the transactions are not explained. I, therefore, have reason to believe that on account failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the extent of accommodation entry of Rs. 1,56,00,000/- has escaped assessment within the meaning of section 147of I.T. Act. 1961. To bring to tax the income which has escaped assessment, I proposed to issue notice u/s. 148 of the I.T. Act. 1961. Since, four years has expired from the end of the relevant assessment year, and no scrutiny assessment was completed u/s. 143(3) in this case for the said assessment year, the reasons recorded above for the purpose of reopening of assessment is put up kind satisfaction of Addl. Commissioner of Income Tax, Range-14, New Delhi in terms of the proviso of Section 151(2) of the I.T. Act, 1961.
	Dated: 16.03.2011	Sd/- (C.M. MEENA) ITO, WARD 14(2), NEW DELHI
12	Whether the Addl. CIT/CIT/CBDT is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice u/s. 148.	YES, I'AM SATISFIED.
	Dated: 18/3/11	Sd/- (Mukesh Verma) Addl. CIT, Range-14, New Delhi"

8. After going through the reasons recorded by the Assessing Officer/DCIT, Circle 14(2), New Delhi for reopening and the approval thereof by the Ld. Addl. CIT, Range-14, New Delhi, we are of the view that AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that income has escaped during the year. In our view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO has

mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. Even otherwise, a perusal of the above demonstrates that the Addl. CIT has written "Yes, I am Satisfied" which establishes that he has not recorded proper satisfaction / approval, before issue of notice u/s. 148 of the I.T. Act. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed.

20. The co-ordinate Mumbai bench of Tribunal has also considered an identical issue in the case of Amarlal Bajaj(ITA No.611/Mum/2004) and has held as under:-

"*5. We have considered the rival submissions and carefully perused the orders of the lower authorities and also the material evidences brought on record from both sides. We have also the benefit of perusing the order sheet entries by which the Ld. CIT has granted sanction. Let us first consider the relevant part of the provisions of Sec. 151 of the Act.*

> *151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], unless the [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :*
>
> *Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*
>
> *(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the*

[Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.] [Explanation.--For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]"

6. A simple reading of the provisions of Sec. 151(1) with the proviso clearly show that no such notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount for which the least that is expected from the Commissioner is application of mind and due diligence before according sanction to the reasons recorded by the AO. In the present case, the order sheet which is placed on record show that the Commissioner has simply affixed "approved" at the bottom of the note sheet prepared by the ITO technical. Nowhere the CIT has recorded his satisfaction. In the case before the Hon'ble Supreme Court (supra) that on AO's report the Commissioner against the question "whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148 merely noted " Yes " and affixed his signature there under. On these facts, the Hon'ble Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Hon'ble Supreme Court further observed that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore, invalid. It would be pertinent here to note the reasons recorded by the AO.

"Intimation has been received from DCIT-24(2), Mumbai vide his letters dt. 22nd February, 2002 that one Shri Nitin J. Rugmani assessed in his charge had arranged Hawala entries in arranging loans, expenses, gifts. During the year Shri Amar G. Bajaj, Prop. Of Mohan Brothers, 712, Linking Road, Khar (W), Mumbai-52 was the beneficiary of such loans, expenses and gifts. The modus-operandi was to collect cash from the parties to whom loans were given and cash was deposited into account of Shri Nitin J. Rugani and cheques were issued to the beneficiary of the loan transaction. In order to ensure that the money reached by cheques to the beneficiary Shri Nitin J. Rugani kept blank cheques of the third parties. The assessee Shri Amar G. Bajaj had taken benefit of such entries of loans, commission and bill discounting of Rs. 8,00,000/-, 11,21,243/- and 9,64,739/- respectively. The st assessment was

completed u/s. 143(3) of the I.T. Act on 31 March, 1998 by DCIT-Spl. Rg. 40, Mumbai. It is seen from records that the aforesaid points have not been verified in the assessment. I have therefore reason to believe that by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, income has escaped assessment within the meaning of proviso to Sec. 147 and explanation 2 (c)(i) of the income-tax Act, 1961."

7. In the light of the above mentioned reasons, in our considerate view, Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Sec. 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of Sec. 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act. In the instant case, we find from the perusal of the order sheet which is on record, the Commissioner has simply put "approved" and signed the report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction.

8. Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 258 ITR 317 has held that "the proviso to sub-section (1) of section151of the Act provides that after the expiry of four years from the end of the relevant assessment year, notice under section 148 shall not be issued unless the Chief Commissioner or the Commissioner, as the case may be, is satisfied, on the reasons recorded by the Assessing Officer concerned, that it is a fit case for the issue of such notice. These are some in-builts safeguards to prevent arbitrary exercise of power by an Assessing Officer to fiddle with the completed assessment". The Hon'ble High Court further observed that "what disturbs us more is that even the Additional Commissioner has accorded his approval for action under section 147mechanically. We feel that if the Additional Commissioner had cared to go through the statement of the said parties, perhaps he would not have granted his approval, which was mandatory in terms of the proviso to sub-section (1) of section 151 of the Act as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The power vested in the Commissioner to grant or not to grant approval is coupled with a duty. The

Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. We are constrained to observe that in the present case there has been no application of mind by the Additional Commissioner before granting the approval".

9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the concerned AO. In the light of the ratios/observations of the Hon'ble High Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis-à-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio."

It can be noticed that the co-ordinate bench of Tribunal has taken support of the decision rendered by Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd. Vs CIT 258 ITR 317.

21. The Hon'ble Delhi High Court has also considered the issue of granting approval u/s 151 of the Act in the case of Central India Electric supply co. Ltd vs. ITO (333 ITR 237) and expressed the view that mere rubber stamping of underlying material would suggest that there was no application of mind and decision had been taken in a mechanical manner. The relevant observations made by Hon'ble Delhi High Court are extracted below:-

19. In respect of the first plea, if the judgments in Chuggamal Rajpal''s case (supra); Chanchal Kumar Chatterjee''s case (supra); and Govinda Choudhury & Sons''s case (supra) are examined, the absence of reasons by the assessing officer does not exist. This is so as along with the proforma, reasons set out by the assessing officer were, in fact, given. However, in the instant case, the manner in which the proforma was stamped amounting to approval by the Board leaves much to be desired. It is a case where literally a mere stamp is affixed. It is signed by a Under Secretary underneath a stamped „Yes'' against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprematur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached

by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Our opinion is fortified by the decision of the Apex Court in Union of India v. M.L. Capoor & Ors., AIR 1974 SC 87 wherein it was observed as under :-

> *"27. ... We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. ... ...*
>
> *28. ... If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. ..."*
>
> *(emphasis supplied)*

This is completely absent in the present case. Thus, we find force in the contention of learned counsel for the appellant that there has not been proper application of mind by the Board and if a proper application had taken place, there would have been no reason to re-open the closed chapter in view of what we are setting out hereinafter.

22. The Hon'ble Bombay High Court has also made certain observations on the duty of Ld CIT to apply his mind before granting approval for reopening in the case of German Remedies Ltd vs. DCIT (2006)(287 ITR 494). The relevant observations made by Hon'ble Bombay High Court are extracted below:-

> *"23. Having said so, it is necessary to consider 2 more submissions advanced on behalf of the petitioners. Firstly, the impugned notice is bared by limitation since it was issued beyond period of 4 years from the end of relevant assessment year. Failure on the part of petitioners to disclose full and true material has not been alleged. In this case, power to reopen has been exercised after expiry of 4 years from the end of relevant assessment year to which they relate. In the circumstances, the impugned notice having been issued beyond 4 years from the last date of the of*

relevant assessment year without alleging any failure to disclose full and true material facts is liable to be set aside.

24. It is not in dispute that the Assessing Officer on 15.9.2003 had himself carried file to the Commissioner of Income tax and on the very same day, rather same moment in the presence of the Assessing Officer, the Commissioner of Income tax granted approval. As a matter of fact, while granting approval it was obligatory on his part to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment year. It was also obligatory on the part of the Commissioner to consider whether or not power to reopen is being invoked within a period of 4 years from the end of the assessment year to which they relate. None of these aspects have been considered by him which is sufficient to justify the contention raised by the petitioner that the approval granted suffers from non-application of mind . In the above view of the matter, the impugned notices and consequently the order justifying reasons recorded are unsustainable. The same are liable to be quashed and set aside."

23. The Ld D.R placed his reliance on the decision rendered by Ahmedabad bench of Tribunal in the case of Mayurbhai Mangaldas Patel (supra). The facts prevailing in that case are different and the same has been rightly explained by the Ld A.R during the course of his rejoinder, which we have discussed earlier. Hence, we are of the view that the revenue cannot take support of that decision. In any case, we notice that the Addl CIT has only forwarded the proposal to Ld CIT.

24. In the instant case also, we have noticed that the AO had not quantified the income that is claimed to have escaped the assessment. We also notice that the Ld CIT has not applied his mind on this crucial aspect. The Hon'ble jurisdictional High Court in the case of Dulraj U Jain vs. ACIT (Writ Petition No.1641 of 2018), while examining the validity of reopening of assessment has, inter alia, noted that the AO has not quantified the tax which has escaped assessment. Accordingly the Hon'ble Bombay High Court took the view that the reasons recorded do not indicate reasonable belief of Assessing Officer himself to issue notice u/s 148 of the Act. This aspect alone shows that the AO as well as Ld CIT has not applied their mind on the reasons recorded.

25. Further, in the reasons for reopening, the AO has referred to the affidavit filed by a person by mentioning wrong name. While the afffidavit was given by Shri Vinod Shenoy, the AO referred it as given by Shri Vijay Shenoy. This aspect would have come to the notice of Ld CIT, had he examined the reasons for the purpose of arriving at his satisfaction.

26. Further, we have noticed that the Ld CIT(A) has simply written "Yes I am satisfied" against the question "Whether the Commissioner of Income tax-2, is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of notice u/s 148". Admittedly, the Ld CIT did not refer to the reasons recorded by the assessing officer. In the various cases discussed above, mere endorsement as "Yes I am satisfied" is considered to be a mechanical action.

27. All these facts show that the Ld CIT did not apply his mind on the issue of reopening and has granted his approval in a mechanical manner. In our considered view, the various case laws discussed above support the contentions advanced by the assessee in this regard. Accordingly we hold that the reopening of assessment of the year under consideration is not valid, as the Ld CIT has accorded his approval in a mechanical manner. Accordingly we hold that the reopening proceedings vis-à-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void ab initio. Accordingly we set aside the orders passed by the tax authorities.

28. The assessee has also taken another legal ground that the assessment order is barred by limitation. The assessee has raised this legal ground as the assessment order was handed over to the postal authorities only on 08-04-2015. We notice that the assessee has drawn inference that the assessing officer should have passed the assessment order only after 31-03-2015, as the order was handed over to the postal authorities only on 08-04-2015. In our view, the assessee has drawn only certain inferences on the basis of surmises and conjectures, as no credible material was brought on record to support the

legal ground. Accordingly we do not find any merit in this legal ground of the assessee.

29. Since the orders of tax authorities are set aside on the basis of second legal ground urged by the assessee, there is no requirement to adjudicate grounds urged on merits.

30. In the result, the appeal of the assessee is treated as allowed.

Order has been pronounced in the Court on 31.8.2018.

Sd/-	Sd/-
(AMARJIT SINGH)	(B.R. BASKARAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 31/8/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Senior Private Secretary)

PS ITAT, Mumbai