

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'D+SMC', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 4441/Del/2017  
Assessment Year: 2013-14**

Sushil Bansal, V-136/6, Arvind Nagar, Ghonda, New Delhi (PAN- AJLPB 5162G) <b>(Appellant)</b>	<b>vs.</b>	ACIT, Circle 57(1), New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Rano Jain, Advocate & Sh. Venketesh Chaurasia, Adv.
<b>Respondent by</b>	Sh. Kaushlendra Tiwari, Sr. DR

<b>Date of Hearing</b>	14.08.2018
<b>Date of Pronouncement</b>	23.10.2018

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order of ld. CIT(A)-19, New Delhi dated 27.04.2017 for the assessment year 2013-14 on the following revised grounds of appeal :

- "1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
- 2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the initiation of proceedings under Section 147 read with Section 148*

*are bad in law as the conditions and procedure prescribed under the statute have not been satisfied and complied with.*

*3.(i) On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are vague.*

*(ii) On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO are bad in the eye of law as there is no live nexus between the reasons recorded and the belief formed by the Assessing Officer.*

*4. On the facts and circumstances of the case, the reasons recorded for reopening are bad in law, as the same have been recorded without independent application of mind on the part of the Assessing Officer.*

*5. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned AO are bad in the eye of law as no sanction as prescribed under section 151 of the Act having been taken, the reopening is illegal and liable to be quashed.*

*6. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming the order passed by the A.O., despite the same having been passed without proper service of statutory notice under section 148 of the Act.*

*7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.23,00,000/-, made by the A.O. under section 69C of the Act.*

*8. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming the order passed by the A.O., rejecting the explanation and evidences brought on record by the assessee.”*

Out of above grounds, ground Nos. 1 to 6 & 8 relate to the legal issue regarding reopening of the case. Ground No. 7 relates to merits of addition. The ld. AR of the assessee made arguments only on the legal grounds.

2. The brief facts of the case are that assessee is an Individual and did not file any return of income for the year under consideration. Its case was reopened and assessment made u/s. 147 of the Act at a total income of Rs.28,62,000/-. The case was reopened on the basis of information received from Investigation Wing that there was a search under section 132 of the Act on 27.06.2013 at 'Santosh Group of Institution'. After the search an information was passed on from the DIT, Investigation, New Delhi, vide letter dated 09.10.2015 that assessee has paid Rs.30.18 lakhs at the time of admission of his son, Dr. Jatin Bansal in MBBS course to Santosh Medical College, Ghaziabad on 08.08.2012. Dr. P. Mahalingam, the Chairman and Managing Trustee of the group admitted in his statement given before the Investigation Wing that they have accepted capitation fee in addition to regular fees of the Medical college. Complete working showing student wise and course wise capitation fees received for each financial year was also filed before the Investigation Wing. In this list, a chart showing details of contribution/capitation fee received during the assessment year 2013-14, the name of assessee's son- Dr. Jatin Bansal was found appearing at serial No. 72 for the capitation fees of Rs.23,00,000/-. The Assessing Officer also observed from the above information that out of total payment of Rs.30.18 lacs, Rs.7.18 lakhs was the Regular fees and remaining Rs.23 lakhs was the capitation fee paid by the assessee. Therefore, the Assessing Officer recorded the reason and

issued notice under section 148 of the Act to the assessee on 23.03.2015, which was served upon the assessee. Notice u/s. 142(1) was also issued on 23.06.2015 and 09.07.2015, but none attended in response. Thereafter, in response to summon issued u/s. 131 dated 12.01.2016, the assessee Sh. Sushil Bansal attended and his statements were recorded, as reproduced in assessment order. The Assessing Officer noticed that as per statements of assessee, the admission process for Dr. Jatin Bansal was undertaken by the assessee's father-in-law Sh. Jile Ram Bhati and he was not aware whether any capitation fee was paid or not. Summon u/s. 131 was also issued to Sh. Jile Ram Bhati, whose statements were recorded where he stated that he had given a total fees of Rs.7,18,000/- to Santosh Medical College for Dr. Jatin Bansal's admission in MBBS Course, but he does not remember anything about the capitation fees. He also stated that out of Rs.7.18 lakhs, Rs. 3 lakhs was given by Grandfather of Sushil Bansal and remaining amount of Rs.4.18 lakhs was withdrawn from his bank account. For want of any evidence in support of these statements given, and the source of Rs.23 lakhs paid as capitation fee, the Assessing Officer concluded that the cash payment of Rs.23 lakhs was made towards capitation fee out of undisclosed sources over and above the declared taxable income in form No. 16. Accordingly, the Assessing Officer made addition of Rs.23 lakhs u/s. 69C of the IT Act.

3. Aggrieved, the assessee challenged the assessment order in appeal before the Id. CIT(A) both on validity of reopening of assessee's case as well as on merits of the addition. The submissions made before the Id. CIT(A) challenging the validity of reopening u/s. 147/148 were many fold, such as (i) issuance of notice u/s. 148 by present Assessing Officer without jurisdiction;

(ii) no proper service of notice u/s. 148; (iii) reason to believe recorded without application of mind; (iv) issuance of notice issued without obtaining proper sanction u/s. 151 of the IT Act and so on. On merits of the additions, the assessee submitted that the ld. Assessing Officer did not consider the evidences in right perspective. He had also relied on several decisions. The ld. CIT(A), after considering the submissions of the assessee and dealing with various decisions cited by assessee, affirmed the action of the Assessing Officer vide impugned order. The findings reached by the ld. CIT(A) on legal aspects of the case read as under :

6. "Ground No. 2 is in respect of issue of notice u/s 148 without jurisdiction. The assessee had stated that as per the instruction of CBDT no return was required for Assessment Year 2011-12 & 2012-13, since the salary of the assessee was below Rs. 5 Lacs and tax was being duly deducted. However, this exemption was withdrawn in respect of Assessment Year 2013-14 but the assessee not being aware of the same did not file his return. He has thereafter stated that prior to the same the assessee was filing return with ITO, Ward-45(2), New Delhi, where he was being assessed and ITO, Ward 45(2) had the jurisdiction over the PAN of the assessee. He therefore states that issue of notice u/s 148 by the Assessing Officer is without jurisdiction. He thereafter states that the notice was issued to him and the same were sent to a wrong address and was not received by hm. In fact he attended the proceedings only in compliance to summons issued again at the wrong address but which was give to him by tenant staying in that premises. He further states that initiation of proceedings is not valid and order therefore deserves to be quashed.

7. I have gone through the facts of the case and case records. The Investigation Wing of the Department during the course of search seized ledger account of the various students studying in the Santosh Medical College. The Chairman of the college confessed and provided a list of the students from whom capitation fees had been received. The ledger accounts seized show the name of the students and their guardian and also the address. As per the territorial jurisdiction the information was disseminated to the various Assessing Officers. In the present case address of the student as per ledger account is J-3/47, Jai Prakash Nagar, Ghonda, Delhi-110053. The Assessing Officer did not have any information about the PAN. The search of the Data Base reveals many Sushil Bansal. Further, as himself admitted by the assessee that he had not been filing his return of income for the last three years. As such the jurisdiction of the assessee could not have been ascertained in absence of PAN. The

notices were therefore sent by name at the last reported address of the assessee as per record requisitioned from Santosh Medical College.

8. As far as the jurisdiction is concerned as per the provisions of Section 124(3) of the I T Act no person is entitled to question the jurisdiction of the Assessing Officer after the expiry of time allowed by notice 142(1) or 148(1) for filing of the return. In the present case although the assessee states that notice u/s 148(1) was not received by him but it is a fact that he appeared before the Assessing Officer and made a statement, but still he did not question the jurisdiction of the Assessing Officer to initiate the proceedings. Therefore in the appeal he is not entitled to question the jurisdiction of the Assessing Officer for initiating the proceedings and this ground is rejected.

9. As far as the service of the notice is concerned, the notice was served at the last available address which was given by the assessee while admitting his son in Santosh Medical College. In fact the assessee now states that this house belonged to the brother who had let it out.. When summons were issued the tenants provides the same to the brother who in turn provided it to the assessee. This therefore apparently shows that the tenants have been providing the entire correspondence to the brother and assessee. Therefore the notices which have not been returned back by the postal authority would also have been duly served. Further, the assessee has himself admitted that on his personal appearance before the Assessing Officer a copy of the three letters issued on 23/03/2015, 26/03/2015 and 09/07/2015 were shown to him. This includes a copy of notice u/s 148 issued to him on 23/03/2015. The notice has been issued within the limitation period, the only limitation for service is before finalization of proceedings. It therefore cannot be stated that assessee had not been served with a copy of notice u/s 148 before the expiry of proceedings. He was well aware of the proceedings and duly participated in the proceedings before the Assessing Officer. In fact all subsequent letters and notices were issued on his new address along with his Permanent Account Number after the same were intimated to the AO. This ground is also rejected.

10. Ground No. 4 is in respect of non application of mind.

It is necessary to see whether all the conditions described u/s 147 existed for the Assessing Officer to initiate reassessment proceedings. To resolve the controversy, it is necessary to refer to the relevant provisions of sec. 147 as applicable to the year under appeal. Section 147 of the Act confers jurisdiction on the Assessing Officer to reopen assessment subject to the conditions laid down therein. The relevant provisions of section 147 of the Act are as under:

*"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess 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 proceedings under this section, or re-compute 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 year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under subsection (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."*

11.1. Section 148 of the Act provides that before making any assessment or reassessment or re-computation under section 147, the Assessing Officer has to serve a notice there under and before issuing any notice under the said section he has to record reasons for doing so. The relevant provisions of section 148 are as under:

*"148.(1). Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so. "*

11.2. Section 151 of the Act enjoins that in certain situations, no notice under section 148 is to be issued by the Assessing Officer unless on the reasons recorded by such Assessing Officer, the Chief Commissioner or the Joint Commissioner is satisfied that it is a fit case for issue of such notice. The relevant provisions of section 151 are as under:-

*"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 failing 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."*

11.3. Thus, before initiation of any proceeding under section 147 of the Act for assessment or reassessment, the Assessing Officer is required to record his reasons in writing under section 148 and obtain necessary sanction in terms of section 151, wherever necessary and thereafter issue notice under section 148 of the Act. The facts of the present case are now tested vis-a-vis the aforesaid provisions of sec. 147 as applicable for the year under consideration. For a factual recapitulation of the sequence of events, the assessment records were called for and perused. The Assessee had not filed a return of Income for the relevant year.. The information was received from the Investigation Wing that a search had been conducted on Santosh Group of Institutions, and the chairman of the Group had admitted receiving donations/capitation fee, over and above the course fee recorded in the books of accounts. These facts were corroborated by the records and documents found during the course of search. The Assessing Officer, while recording the reasons, mentioned that she had received comprehensive and specific details, comprising inter alia, the identity of the student, course undertaken, batch and the year, date on which payment was made etc. Following recording of the reasons, a notice u/s 148 dated 23/03/2015 was issued by the A.O.

11.4. In this cases letter was received from Deputy Director of Income Tax (Investigation), Unit-5 (I)(hereinafter called the DDIT), addressed to the Principal CIT- 19 on 05.03.2015, intimating about the search and the payment of capitation fee. Along with this letter DDIT had enclosed the copy of statements recorded during course of search and also a copy of the letter dated 20.08.2013 received from Mr. P Mahalingam (the Chairman of the Santosh Group) intimating the person wise details of capitation fee received. These facts were both in the knowledge of the Principal CIT, Addl.CIT and the Assessing Officer who recorded the reasons.

12. The next ground is regarding non-application of mind and mechanical recording of the reasons. Without explaining how he considers recording of reason to be mechanical or without application of mind. Authorized Representative just goes on to rely on various case laws. Apparently the submissions made by the Authorized Representative are mechanical and without application of mind. The decisions are applicable on the facts of each case. The appellant has relied upon the jurisdictional Delhi High Court's decision in the case of Insecticides (I) Ltd. and Signature Hotels Pvt. Ltd. (supra). I have perused these decisions and find that apart from the fact that the Hon'ble Supreme Court decision in Rajesh Jhaveri Stock

Brokers referred to herein above, have not been considered by the jurisdictional High Court, in the matters before the High Court in the afore stated cases, the reasons recorded by the A.O in those particular cases were found to be totally silent with regard to the amount and nature of the bogus entries, the dates on which the transactions were carried out and the persons with whom the transactions had taken place. Such is not the case here. Consequently these decisions are of no help to the appellant. The assessee has placed a great deal of reliance on the decision of the Pr. CIT-4 vs G&G Pharma India Ltd., 384 ITR 147. The facts of that case are again completely different. The assessment in that case was made u/s 143(3) of the Act and procedure and formality for reopening and assessee already completed u/s 143(3) are much different as compared to the present case which has been only process u/s 143(1). The Hon'ble Court in this case had mainly relied on the judgment in the case of Multiplex Trading & Industrial Co. Ltd. which dealt only with matter relating to initiation proceeding u/s 147 beyond 4 years where the original assessment was carried out u/s 143(3). The Hon'ble court thereafter relied upon the judgment of Supreme Court in the case of Chhugamal Rajpal vs. S P Chaliha 79 ITR 603. The Hon'ble Supreme Court at that time rendered its judgment on the basis of than prevailing provisions of section 147 which were much different from the present provisions. The Court held that *"Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the emission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a) or cl (b) of S. 147 are satisfied, the ITO has jurisdiction to issue a notice under S. 148. "*

13. This decision is now to be read in the context of the subsequent decision of the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers (P) Ltd. wherein the Hon'ble court held that *" So long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued. [Para 18]" [emphasis supplied. ]* Thus, when the return was processed under sec. 143(1) and there was no assessment under sec. 143(3), what is to be seen is whether the A.O. had prima-facie reasons to believe that income has escaped assessment, for issue of notice under sec. 148. Whether the appellant has disclosed all material facts in the return or not is of no relevance as the proviso is not applicable in such cases.

14. Unfortunately the decision of the Hon'ble Supreme Court in Rajesh Jhaveri Stock Brokers (P) Ltd. was not brought before the Hon'ble Delhi High Court but

which has thereafter been considered by it in the judgment of Indu Lata Rangwala vs. DCIT, the Hon'ble Court summarizing the legal position held as under –

*“35.1 The upshot of the above discussion is that where the return initially filed is processed under Section 143 (1) of the Act, and an intimation is sent to an Assessee, it is not an 'assessment' in the strict sense of the term for the purposes of Section 147 of the Act. In other words, in such event, there is no occasion for the AO to form an opinion after examining the documents enclosed with the return whether in the form of balance sheet, audited accounts, tax audit report etc.*

*35.2. The first proviso to Section 147 of the Act applies only (i) where the initial assessment is under Section 143 (5) of the Act and (ii) where such reopening is sought to be done after the expiry of four years from the end of the relevant assessment year. In other words, the requirement in the first proviso to Section 147 of there having to be a failure on the part of the Assessee "to disclose fully and truly all material facts" does not at all apply where the initial return has been processed under Section 143 (1) of the Act.*

*35.3. As explained in Rajesh Jhaveri Stock Brokers (P) Ltd. (supra) "an intimation issued under Section 143 (1) can be subjected to proceedings for reopening", "so long as the ingredients of Section 147 are fulfilled".*

*35.4. Explanation 2 (b) below Section 147 states that for the purposes of Section 147, where a return of income has been furnished by the Assessee but no assessment has been made and it is noticed by the AO that the Assessee has understated the income and claimed excessive loss, deduction, allowance and relief in the return then that "shall also be deemed to be a case where the income chargeable to tax has escaped assessment".*

*35.5 As explained by the Supreme Court in Rajesh Jhaveri Stock Brokers P. Ltd. (supra) and reiterated by it in Zuari Estate Development and Investment Co. Ltd. (supra) an intimation under Section 143 (1) (a) cannot be treated to be an order of assessment. There being no assessment under Section 143 (1) (a), the question of change of opinion does not arise.*

*35.6. Whereas in a case where the initial assessment order is under Section 143, and it is sought to be reopened within four years from the expiry of the relevant assessment year, the AO has to base his 'reasons to believe' that income has escaped assessment on some fresh tangible material that provides the nexus or link to the formation of such belief. In a case where the initial return is processed under Section 143 (1) of the Act and an intimation is sent to the Assessee, the reopening of such assessment no doubt requires the AO to form reasons to believe that income has escaped assessment, but such reasons do not require any fresh tangible material.*

35.7. *In other words, where reopening is sought of an assessment in a situation where the initial return is processed under Section 143 (1) of the Act, the Assessing Officer can form reasons to believe that income has escaped assessment by examining the very return and/or the documents accompanying the return. It is not necessary in such a case for the AO to come across some fresh tangible material to form 'reasons to believe' that income has escaped assessment.*

35.8. *In the assessment proceedings pursuant to such reopening, it will be open to the Assessee to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment.*

35.9. *The decisions of this Court and other Courts to the extent inconsistent with the above decisions of the Supreme Court cannot be said to reflect the correct legal position."*

15. Moreover, in the case of Chhugamal Rajpal vs. S P Chaliha 79 ITR 603 the information was indeed vague, since neither the amount nor the particular transaction which was alleged to be bogus was pointed out by the Assessing Officer. In the present case, the specific name of the student his Batch No. and amount is clearly available. Many parents out of the list supplied by Mr. Mahalingam have accepted having paid the capitation money for getting their student admitted (to be discussed later in this order). In view of the discussion above the facts of the case in G&G Pharma India Ltd. are completely different from the facts of this case. Considering the decision of Rajesh Jhaveri Stock Brokers (P) Ltd., & Zuari Estates Development Industrial Co. Pvt. Ltd. 373 ITR 661 (SC)\, the Assessing Officer had a prima facie case and reason to believe that income has escaped assessment. The reasons were recorded after going through the various documents & record of students and corroborated statement of chairman of the Santosh Group. In fact clause " to Explanation 2 to section 147 creates a deeming fiction in respect of escapement of Income in cases where no return had been filed and the income exceeded the minimum amount which is not chargeable to tax. In the present case assessee had an income of Rs.4,08,382/-and the case fall under the deeming provision as well. "This ground of appeal is therefore rejected.

16. In Ground No. 4(c) the assessee challenged enhancement of income by Rs. 1,53,900/-. He has stated that the Assessing Officer has erred in taking salary income from Form No. 16 as Rs. 5,62,282/- instead of Rs. 4,08,382/- thereby enhancing the income by Rs. 1,53,900/-. I have considered the facts of the case and case record, the Assessing Officer is directed to restrict the salary income to Rs. 4,08,382/-."

Aggrieved by the impugned order, the assessee is in appeal before the Tribunal.

4. Before us, the ld. AR of the assessee reiterating the submissions made before the ld. Authorities below, also filed a small written synopsis, which reads as under :

1. The case of the assessee was reopened by issuing notice under section 148 dt. 23.03.2015 by the AO after recording the reasons for the same, which are enclosed in the paper book at *PB 8* (Notice Pg 3). Addition of Rs. 23,00,000}-was made on the basis of information from the investigation wing alleging that this amount was paid by the assessee as capitation fee for the admission of his son in Santosh Medical College.

***Non application of mind***

2. A perusal of the reasons recorded by the AO would clearly show that the AO has merely relied upon the report received from the Investigation Wing, and there are no independent findings of his own.
3. The AO has merely mentioned the contents of some report from DDIT, Inv. Unit, in the reasons recorded. This fact is further corroborated from the fact that the AO in the reasons recorded has not once mentions the name of the assessee or how the income of the assessee has escaped and therein no mention of any such amount escaping assessment.
4. A perusal of the reasons recorded by the AO clearly show that the AO has simply acted upon the information received from the Investigation Wing and did not apply his own mind to the said information.
5. The AO has not brought any record or material on the basis of which any nexus could have been established between the material and the escapement of income.
6. In the instant case, the reasons recorded do not show any application of mind nor the same show any belief independently arrived at by the AO, which is the basic pre-requisite for issuing notice u/s 148.
7. The law postulates the AO (and not the Investigation Wing) to have reason to believe.
8. It is a settled law that blind acceptance of the information furnished by the Investigation Wing cannot form reasons leading to the belief by the AO of any

escapement of income.

9. This issue is squarely covered by the decision of *Hon'ble Delhi ITAT* in the case of *Shri Shiv Charan Goel vs. ITO, ITA 4035/Del/2017, dt. 13.06.2017*, where in the background of exactly the same facts, hon'ble ITAT, observed as under:

*"9.1 On the same date the reasons were approved by the Addl. Commissioner of Income Tax, Range 56, New Delhi. While approving he has simply mentioned "Yes". Therefore, now the question arises that whether the re-opening has been correctly initiated by the learned Assessing Officer or he has simply acted on the information received from the Investigation Wing. On perusal of the reasons recorded it is apparent that the learned Assessing Officer referred to the letter dated 5.03.2015 received from the Dy. Director of Income Tax, Investigation, and based on that information he stated that he is satisfied that the fee paid of ? 70 lakhs in cash is assessee's unexplained income from undisclosed sources. According to the provisions of section 147 of the Income Tax Act if the Assessing Officer has reason to believe that income has escaped the assessment then only he can re-open the assessment. The reason has to be of the assessee and cannot be borrowed one. The Hon'ble Delhi High Court in para No. 15 in Signature Hotels Pvt. Ltd. \vs. ITO (supra) has held that there is no reference to the document or statement in this case except the letter of the Investigation Wing, which has been quoted in the reasons. The Annexure also does not show prima facie or establishes nexus for link which discloses escapement of income. Further the Assessing Officer did not apply his own mind to the information and examined the basis and material or the information. The Addl. Commissioner also granted his approval mechanically. The facts are similar to the facts before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court then held that the reasons do not satisfy the requirement of section 147 of the Act. Therefore, respectfully following the decision of the Hon'ble Delhi High Court, we also hold that re-opening in this case also does not satisfy provisions of section 147 of the Act. In view of this the order passed by the learned Assessing Officer does not stand the test of the ratio laid down by the Hon'ble Delhi High Court." in the case of **Dhawan Creative Prints Pvt. Ltd. and ors. Vs. UOI and ors., dt. 11.01.2018, Delhi High Court**, while dealing with the constitutional validity of certain provisions of the PMLA, observed as under:*

*"72. Reasons to believe cannot be a rubber stamping of the opinion already formed by someone else. The officer who is supposed to write down his reasons to believe has to independently apply his mind. Further, and more importantly, it cannot be a mechanical reproduction of the words in the statute. When an authority judicially reviewing such a decision peruses such reasons to believe, it must be apparent to the reviewing authority that the officer penning the reasons has applied his mind to the materials available on record and has, on that basis, arrived at his reasons to believe. The process of thinking of the officer must be discernible. The reasons have to be made explicit. It is only the reasons that can enable the reviewing authority to discern how the officer formed his reasons to believe. As explained in **Oriental Insurance***

**Company v. Commissioner of Income Tax [2015] 378 ITR 421 (Delhi)**, “*the prima facie formation of belief should be rational, coherent and not ex facie incorrect and contrary to what is on record*”. A rubberstamp reason can never take the character of ‘reasons to believe’, as explained by the **Supreme Court in Union of India v. Mohan Lai Kapoor (1973) 2 SCC 836**. In **Dilip N Shroff v. CIT (2007) 6 SCC 329**, the Supreme Court decried the practice of issuing notices in a standard pro forma manner “without material particulars and without deleting inappropriate words or paragraphs”.

10. Further reliance is placed on following judgments:

- *Shri Sai Infrastructure vs. DCIT, W.P. © 2158/2016 and W.P.(C) 2383/2016, dt.23.07.2018, Delhi High Court*
- *Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. , ITA 692/2016, dt.26.05.2017, Delhi High Court*
- *Signature Hotels (P) Ltd. vs. ITO (2011) 338 ITR 51 (Del)*
- *Pr. CIT vs. SNG Developers Limited, ITA 92/2017, dt. 12.07.2017, Delhi High Court, SLP dismissed dt. 09.02.2018*

11 **In the case of Shamshad Khan vs. ACIT, W.P.(C) No.11504 of 2016, dt. 11.04.2017, Delhi High Court, on the similar fact situation, observed as under:**

*“6. Having considered the aforesaid contentions, the Court is of the view that where a third party has been proceeded against as a recipient of the donation/capitation fees insofar as the said amount was not offered for assessment, it would have to undergo the relevant proceedings for appropriate taxation, etc. However, the same could not necessarily be the basis for granting the approval or constitute ‘reasons to believe’ that this undisclosed income of the recipient had escaped assessment in the case of the donor as well. ”*

12. Therefore, in view of the above circumstances and further considering the settled position of law in this regard, the reassessment proceedings initiated by the AO are without due application of mind, and thus, the reassessment proceedings should be quashed as such.

### **No proper sanction**

13. In the present case no approval as provided u/s 151 has been taken before issue of notice u/s 148 of the act. This issue was raised by the assessee before the CIT(A) also. The CIT(A) has dealt with the same at page 7, para 11.2 onwards, in his order. The finding given by the CIT(A) are at Page 9, Para 11.4, which reads as under:

*“ In this case letter was received from Deputy Director on Income Tax (Investigation), Unit-5(1)(hereinafter called the DDIT), addressed to the Principal CIT-19 on 05.03.2015, intimating about the search and the payment of capitation fee. Along*

*with this letter DDIT has enclosed the copy of statements recorded during the course of search and also a copy of the letter dated 20.08.2013 received from Mr. P Mahalingam (the chairman of the Santosh Group) intimating the person wise details of capitation fee received. These facts were both in the knowledge of the Principal CIT, Addl.CIT and the Assessing Officer who recorded the reasons. ”*

14. From the perusal of the above, it appears that CIT(A) was of the view that the report regarding the capitation fee received by the medical college being in the knowledge of Pr. CIT, Addl. CIT etc., there was no need to get any specific approval for reopening a particular case.
15. It is to be appreciated that approval from the prescribed authority is a statutory requirement provided under section 151 of the Act and no assessment without proper sanction can be reopened.
16. Further, on a request made by the assessee dt. 10.07.2018 (PB Pg. 30-31) for providing the certified copies of reasons together with the approval, the A.O. replied vide letter dt. 20.07.2018 (PB Pg. 32), after quoting the reasons for reopening, he states in the last paragraph as under:

*“ The case was reopened u/s 147 of the I.T. Act, 1961, with the prior approval of Pr. CIT-19, New Delhi dated 18.03.2015. (Copy enclosed)”*

Paper book Page 33 is the copy of above said letter dt. 18.03.2015. it is a letter from the office of the Pr. CIT, written by ITO(Hqrs) Delhi-19 to the Addl. CIT, Range 55, Range 56 and Range-57, whereby a copy of letter of DDIT(Inv.), Unit 5(1) was forwarded to the Range heads and a request has been made to direct the A.O.s concerned to take appropriate action. By no stretch of imagination this communication can be considered as approval for reopening in terms of the provisions of section 151 of the Act.

17. Even if the contention of the A.O., vide his letter dt.20.07.2017 that the approval has been taken from the Pr.CIT, same is also not in consonance with the law laid down with regard to the approval to be taken for reopening.
18. Reliance is placed on the following judgements:
- *CIT vs. SPL's Siddhartha Ltd. (2012) 345 ITR 223 (Del)*
  - *Yum Restaurants vs. DDIT, W.P. © 1353/2013, dt. 31.08.2017*
  - *CIT vs. Soyuz Industrial Resources ltd. ITA 158/2015, dt. 27.02.2015*
  - *Pr. CIT vs. N.C. Cables (2017) 391 ITR 11 (Del) Q*

### **ON MERITS**

On receiving the information from the investigation wing, the A.O. issued summons to the assessee and recorded his statement (PB Pg. 10-12). In response to Q. No. 4 (PB Pg. 11), the assessee explained in detail how the admission fee of his son was deposited in the medical college. The assessee explained that he was not aware of the capitation fee

and even otherwise the admission fee was paid by his father in law Sh. Zile Singh Bhati. At page 12 of the A.O.'s order he mentions that in pursuance of this deposition of the assessee a summon was issued to Sh. Zile Singh Bhati also and a statement dt. 04.03.2016 was recorded. He also showed his ignorance on the capitation fee, however he admitted that the admission fee of Rs. 7,18,000/- was given by him. He further stated that out of this an amount of Rs. 3 lakhs was given by grandfather of Sushil Bansal and remaining 4.18 lakhs was withdrawn from his bank account. After that the A.O. stopped the investigation and just made the addition in the hands of the assessee. The deposition of assessee that the payment was made by Sh. Zile Singh having been confirmed by Sh. Zile Singh himself in the statement recorded, by no stretch of imagination the impugned addition can be made in the hands of the assessee.

Thus, considering the above submissions and various judgments in this regard, the action of the AO in making an addition of Rs.23,00,000 is bad in law and thus CIT(A) order in holding the same to be true should be deleted.”

5. The learned DR on the other hand, relied on the findings reached by the ld. Authorities below in their orders and submitted that once the cash receipt of capitation fee by Santosh Medical College from the guardian of Dr. Nitin Bansal, the son of assessee, stood revealed during their search and specific information in this regard was in possession of the Assessing Officer, it was imperative on the part of the assessee to explain the source thereof. It was submitted that the Assessing Officer having tangible material in his possession, had prima facie reason to believe escapement of income and complete powers to reopen the case u/s. 147 of the Act. It was also submitted that the decisions relied by the assessee are not applicable to the peculiar facts and circumstances of the present case.

6. We have considered the rival submissions and have gone through the entire material available on record including the decisions relied by the assessee. As is evident from the revised grounds of appeal as well as the written synopsis filed by the assessee, we find that the assessee, though had

challenged the jurisdiction of present Assessing Officer to issue the notice u/s. 148, but this issue has nowhere been challenged by the assessee either in the revised grounds of appeal or in the written synopsis of the assessee. However, the challenge thrown by the assessee to the validity of reopening of case centres round his manifold submissions like, reopening of case only on the basis of information from investigation wing without application of independent mind and recording of vague reasons having no live nexus of reasons with belief of escapement of income; reopening without seeking sanction of competent authority; and no proper service of notice u/s. 148.

7. As far as the contention regarding reopening of the case on the basis of information of Investigation wing without application of mind is concerned, we find that this contention of the assessee sounds hollow. It is significant to note that the information received by the Assessing Officer was neither unspecific nor general nor vague and it referred to the direct transaction of capitation fee paid in cash by the guardian of assessee's son to Santosh Medical College. Not only this, the Assessing Officer was in possession of documentary evidences seized in the search, i.e., ledger account of Santosh Medical college, the statements of principal person of the Institute admitting receipt of capitation fee during the year under consideration and the letter of ADIT, Investigation Wing as referred to in the assessment order. This information contains the name of the person, from whom the capitation fee was received along with their addresses, date of payments, name of the course pursued, which establishes a live link between the recipient of the cash payments and the payer thereof. Once, the receipt of cash payments towards

capitation fee stood established by documentary evidences and statements of the recipient, it was incumbent upon the assessee to explain and establish by cogent evidence that no such payment was made by it. However, there is no evidence to this effect on record.

8. It is worthwhile to note that in presence of such a specific information and tangible material in possession of the Assessing Officer, in our considered view, the Assessing Officer was justified to form a prima facie belief or opinion that income chargeable to tax in the hands of the assessee had escaped assessment. Thus, the contention of the assessee that there was no application of mind, does not sound good. For this, we stand fortified by the decisions of Hon'ble Delhi High Court in CIT vs. Nova Promoters & Finlease (P) Ltd., (2012) 18 taxmann.com 217 (Delhi), where it has been held that at the stage of issuing notice u/s. 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment.

Hon'ble Supreme Court in ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 161 Taxman 316 (SC) has also propounded following principle of law :

16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in *Central Provinces Manganese Ore Co. Ltd. v. ITO* [1991 191 ITR 662. for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage,

what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction *ITO v. Selected Dalurband Coal Co. (P.) Ltd.* [1996] 217 ITR 597 (SC); *Raymond Woollen Mills Ltd. v. ITO* [1999] 236 ITR 34 (SC)."

In view of aforesaid decisions, the reasons recorded by the Assessing Officer in the peculiar facts and circumstances of the present case, cannot be said to be vague or having been recorded without application of mind.

9. It is also pertinent to note that the Assessing Officer has tried its best to justify the impugned addition. The assessee in his statements, side tracking the explanation to explain the source and nature of payment stated that the payments towards fee etc. for his son's admission was made by his father-in-law, Shri Jile Singh Bhati and Shri Jile Singh Bhati in his statements stated that he did not remember payment of capitation fee, but admitted payment of only Rs.4.18 lacs. The statements of both the assessee and his father-in-law nowhere go to belie the factum of payment of capitation fee. Even no evidence regarding admitted payment of regular fee was also laid before the Assessing Officer. In such state of affairs, in our opinion, there is no infirmity in the conclusions reached by the authorities below.

10. In view of the above attending facts of the case, the decisions relied by the assessee do not render any help to the assessee due to disparity in the facts and circumstances. In the case of *Shamshad Khan vs. ACIT*, 217 (6) TMI 599, Hon'ble Jurisdictional High Court has given relief to the assessee holding that undisclosed income of the recipient would not constitute a reason to

believe that income of the donor is also escaped assessment, particularly if the donor's income tax return itself could show that he was a person of means, had a substantial opening balance in his bank account, had filed returns to the tune of Rs.69,74,191/-, i.e., far in excess of the amount donated. No such situation is there in the instant case. The assessee in the present case even did not file any return of income nor is there any such explanation on behalf of the assessee or evidence to prove that he had substantial amount in his bank account or opening balance to cover up the capitation fee paid. Therefore, this decision also does not render any help to the assessee.

11. As far as the contention of assessee regarding reopening of case without proper service of notice u/s. 148 is concerned, we do not find any justification to discard the conclusion reached by the Id. CIT(A) that the notice was sent at the last available address of assessee as given by him while admitting his son in the medical college. Moreover, the notices, summons etc. so issued to the assessee at the given address admittedly stood served upon the assessee either through the tenant or through his brother. The assessee, when appeared before the Assessing Officer itself had shown copies of three letters issued by the Assessing Officer on 23.03.15, 26.03.15 and 09.07.15, which included the notice u/s. 148. We, therefore, find that this contention of the assessee does not stand proved nor does it render any help to the assessee.

12. Coming to the stand of assessee regarding reopening without seeking proper sanction, we feel it appropriate to reproduce the relevant provisions of section 151 of the Act as it stood then :

Sanction for issue of notice.

151. (1) No notice shall be issued under [section 148](#) by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal 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.

(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, 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.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint 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.

We, however, find that the aforesaid provisions of section 151 were substituted by the Finance Act, 2015, w.e.f. 01.06.2015. In the instant case, the notice u/s. 148 was issued on 23.03.2015 and at that point of time the existing provisions of section 151 were as under :

“Sanction for issue of notice.

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 principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Commissioner or Commissioner of the Principal Chief Commissioner or Chief Commission, 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.”

In the instant case, it is evident from record that no assessment of assessee was made u/s. 143(3). The assessee did not file even a return u/s. 139 for this year. Therefore, the case of assessee does not come within the reach of sub-section (1). In Sub-sec. (2), there is restriction without sanction of competent authority for the issuance of notice **beyond the period of four years from the end of relevant assessment year**, which too is not applicable in the instant case, as the notice u/s. 148 has been issued within the period of four years. In presence of these facts, the decisions relied by the Id. AR on this issue are not applicable to the present case.

13. Keeping in view the fact that the assessee has not argued on merits of the addition and also considering what has been discussed above, we find no substance in the appeal of the assessee which deserves to be dismissed being devoid of merits.

14. In the result, the appeal is dismissed.

Order pronounced in the open court on 23<sup>rd</sup> October, 2018.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 23<sup>rd</sup> October, 2018

\*aks\*