

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4542/Del/2018
Assessment Year : 2010-11

RADIANCE STOCK TRADERS PVT. LTD. 1B/6, RANG RASAYAN APARTMENTS, SECTOR-13, ROHINI, DELHI – 110 085 (PAN: AACCR8298Q) (Appellant)	Vs.	ITO, WARD 20(4), NEW DELHI (Respondent)
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Assessee by	:	Sh. Gautam Jain, Adv. & Sh. Lalit Mohan, CA
Department by	:	Sh. S.L. Anuragi, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-7, New Delhi on 01.06.2018 in relation to the assessment year 2010-11 on the following grounds:-

1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment u/s 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserve to be quashed as such.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that, there was no specific, relevant and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and, in view thereof, the proceedings initiated are illegal, untenable and therefore, unsustainable.

1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act.

1.3 That approval granted is a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground also is invalid.

2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs. 6,05,037/- representing alleged unexplained credit entries u/s. 68 of the Act.

2.1 That addition of Rs. 27,235/- being alleged profit shifted out by the appellant and Rs. 5,75,100/-, being alleged loss shifted by appellant aggregating to Rs. 6,02,335/- by adopting

client code modification facility in connivance with broker is entirely unsubstantiated and, thus untenable.

2.2 That further more the learned Commissioner of Income Tax (Appeals) has proceeded to sustain the additions on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, mechanically borrowed and, lifted from report of investigation wing without any inquiry of his own and, then addition made without there being any supporting direct or indirect or circumstantial evidence is not in accordance with law.

2.3 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in failing to appreciate the written submissions furnished by the appellant and overlooking the judicial pronouncements relied upon by the appellant.

2.4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so confirmed is absolutely unwarranted.

3. That on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred both

on facts and on law, in sustaining addition of Rs. 3,702/- on account of 2% of long term capital gain earned from sale of share in an envisaged manner without considering the documents/ submitted by the appellant and enhanced the income without any basis and cogent evidence.

4. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that all transaction of appellant were supported by documentary evidence in the shape of contract notes, account payee transactions and therefore addition made on surmises, conjectures and suspicion and without bringing on record any specific evidence establishing that claim made is not genuine or incorrect is highly arbitrary, unjustified and untenable.

5. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest rest of Rs. 1,65,354/- u/s 234B of the Act which are not leviable on the facts of the instant case

It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It may be further held that additions made and

sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.

2. The facts in brief are that the assessee filed its return of income electronically on 23.9.2010 declaring loss of Rs. 10,624/-. Subsequently, information was received from the Investigation Wing, Ahmedabad that client code is a practice under which brokers change the client codes in sale and purchase orders of securities after the trades are conducted. The case was accordingly reopened u/s. 147 of the Income Tax Act, 1961 (in short "Act") and Notice u/s. 148 of the Act was issued on 29.3.2017 to the assessee. Thereafter, order u/s. 143(3)/147 of the Act was passed on 08.12.2017, assessing the income at Rs. 5,95,410/- after disallowing loss of Rs. 6,02,335/- due to change of client code and disallowance of Rs. 3,702/- on account of commission of 2% for the entry.

3. Aggrieved with the aforesaid assessment order dated 08.12.2017, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 01.6.2018 has affirmed the action of the AO and dismissed the appeal of the assessee.

4. During the hearing, Ld. Counsel of the assessee stated that learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act

and, completion of assessment u/s 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserve to be quashed as such. He further submitted that learned Commissioner of Income Tax (Appeals) has also failed to appreciate that, there was no specific, relevant and tangible material on record to form a "reason to believe" that income of the assessee had escaped assessment and, in view thereof, the proceedings initiated are illegal, untenable and therefore, unsustainable. It was the further contention that learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act and that approval granted is a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground also is invalid. In view of above, he requested to quash the reassessment. To support his contention, Ld. Counsel of the assessee has filed Paper Books in which records at the stage of assessment as well as appellate were available and having the copy of decisions of the Hon'ble Supreme Court, Hon'ble High Courts and the Tribunal by which the legal issues raised by the assessee in ground no. 1 to 1.3 are squarely covered in favour of the assessee. The following are the case laws on which the Assessee's counsel has relied upon.

1. Judgment of Hon'ble Bombay High Court in the case of Coronation Agro Industries Ltd. vs. DCIT reported in 390 ITR 464.

2. ITAT, Delhi Bench decision in the case of Prabhu Dayal Aggarwal vs. ACIT in ITA No. 1662/Del/2018 dated 29.6.2018.
3. ITAT, Jaipur Bench decision in the case of DCIT vs. Gyandeep Khemka in ITA No. 695/JP/2018.
4. CIT vs. Kelvinator of India Ltd. reported in 320 ITR 561 (SC)
5. ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. reported in 291 ITR 500 (SC)
6. 395 ITR 255 (Del.) Rajiv Aggarwal vs. ACIT
7. 321 ITR 526 (Del.) CIT vs. Batra Bhatta & Co.
8. 132 ITR 707 at page 710 Ashok Kumar Sen vs. ITO.
9. 298 ITR 198 (Del.) Sabh Infrastructure Ltd. vs. ACIT.
10. 87 ITR 349 (SC) CIT vs. Daulat Ram Rawatmull
11. 82 ITR 147 (SC) Sheo Nath Singh vs. AAC.
12. 258 ITR 317 (Del.) United Electrical Co. (P) Ltd. vs. CIT
13. 253 ITR 83 Bawa Abhai Singh.
14. 159 ITR 956 (SC) CIT vs. Indian Oil Corporation.
15. 103 ITR 437 (SC) ITO vs. Lakhamani Mewal Das.

16. 384 ITR 147 (Del.) Pr. CIT vs. G&G Pharma India Ltd.
17. ITA No. 4908/Del/2012 dated 31.3.2015 Jiten Gurnani vs. ITO
18. ITA No. 1372/D/2015 dated 28.10.2015 Unique Metal Industries vs. ITO
19. ITA No. 512/D/2015 dated 2.12.2015 Punjab Metal Store vs. ITO
20. ITA No. 5128/D/2015 dated 22.4.2016 Banke Bihari Properties (P) Ltd. v. ITO ITA No. 6558/D/2014 dated 31.8.2016 R.K. Garg Developers (P) Ltd. v. ITO
21. 299 ITR 383 (Del) CIT vs Atul Jain dated 23.5.2007
22. ITR 285 (Del) CIT vs SFIL Stock Broking Ltd. dated 27.4.2010
23. 329 ITR 110 (Del) Sarthak Securities Co. (P) Ltd. vs ITO dated 18 October 2010
24. 338 ITR 51 (Del) Signature Hotels (P) Ltd. vs. ITO dated 21.7.2011
25. ITA No. 1395/2008 (Del) Smt. Meera Kapoor vs. CIT dated 31.8.2012
26. 357 ITR 24 (Del) CIT vs. Suren International (P) Ltd. dated 7.5.2013
27. 357 ITR 330 (Del) CIT vs. Insecticides (India) Ltd. dated 20.5.2013
28. 303 ITR 155 (Del.) CIT vs. Indian Sugar and Gen. Ind. Ex dated 30.07.2007
29. 319 ITR 221 (Del) Shipra Srivastava v CIT

30. 35 taxmann.com 215 (Del) CIT vs. Supreme Polypropolene (P.) Ltd. dated 26.04.2013 (introduction of share capital)
31. 393 ITR 157 (Del) Amsa India (P) Ltd. v. CIT
32. 375 ITR 460 (Del) Krown Agro Foods (P) Ltd. v. ACIT.
33. 378 ITR 421 (Del) Oriental Insurance Co. v. CIT
34. 382 ITR 443 (Del) Rustagi Engineering Ldyog(P)Ltd. v. DCIT
35. 386 ITR 545 (Del) Agya Ram v. CIT
36. ITA No. 108/2015 dated 19.11.2015 (Del) CIT v. Independent Media (P) Ltd.
37. 395 ITR 255 Rajiv Agarwal v. ACIT
38. 395 ITR 677 (Del) Pr. CIT v. Meenakshi Overseas (P) Ltd. v. ITO
39. 396 ITR 5 (Del) Pr. CIT v. RMG Plyvinyl (I) Ltd.
40. 398 ITR 198 Sabh Infrastructure Ltd. v. ACIT
41. W.P. (C) 7601/2017 dated 29.8.2017 (Del) R.P. Foam Home (P) Ltd. v. ITO
42. CIT vs. S. Goyanka Lime & Chemical Ltd. reported in 237 Taxman 378 (MP)
43. CIT vs. S. Goyanka Lime & Chemical Ltd. reported in 64 taxmann.com 313 (SC).
44. Central India Electricity Supply Co. Ltd. vs. ITO 333 ITR 237 (Del.)
45. Pr. CIT vs. NC Cables Ltd. in ITA No. 335/2015 (DHC)

5. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that Assessing Officer issued the notice u/s. 148 after due

application of mind. He stated that the AO has followed due procedure before issuing the notice u/s 148 of the I.T. Act, 1961. The Assessing Officer had tangible material in the form of information received from the Investigation Wing. The Assessing Officer did not proceed to any hearsay, conjecture or surmises. He relied upon the ITAT, Delhi 'B' Bench decision dated 24.10.2018 in the case of DCIT vs. M/s Erawat Infotech Pvt. Ltd.

6. I have heard both the parties and carefully considered the case laws and the relevant documents available on record, especially the impugned order, Paper Book and the case laws cited by both the parties. From the assessment order. I find that assessee had filed its return of income electronically on 23.9.2010 declaring loss of Rs. 10,624/-. Subsequently, information was received from the Investigation Wing, Ahmedabad that client code is a practice under which brokers change the client codes in sale and purchase orders of securities after the trades are conducted. The case was accordingly reopened u/s. 147 of the Act and Notice u/s. 148 of the Act was issued on 29.3.2017 to the assessee. Thereafter, order u/s. 143(3)/147 of the Act was passed on 08.12.2017, assessing the income at Rs. 5,95,410/- after disallowing loss of Rs. 6,02,335/- due to change of client code and disallowance of Rs. 3,702/- on account of commission of 2% for the entry. I further note that the AO while recording the reasons for the belief that income has escaped assessment has recorded the reasons as under:-

"Reasons for initiating proceedings u/s. 148 and for obtaining approval in the case of M/s Radiance Stock Traders Pvt. Ltd. for AY 2010-11

1	Name and address of the assessee	M/s Radiance Stock Traders Pvt. Ltd. C-159, 1 st floor, Phase-I, Ashok Vihar, New Delhi - 52
2	Permanent Account No.	AACCR8298Q)
3	Status	Company
4	District/circle/Range	Ward 20(4), New Delhi
5	Assessment year in respect of which it is proposed to be issued notice u/s. 148 of the Income Tax Act.	2010-11
6.	The quantum of income which has escaped assessment	Rs. 6,02,335/-
7.	Whether the clauses (a), (b) or (c) of the explanation 2 to the second proviso of section 147 are applicable.	Yes, provisions of section 147(b) applicable.
8	Whether the assessment is proposed to be made for the first time? If reply is in affirmative, please state:	Yes
	(a) whether any voluntary return had already been filed.	No
	(b) if so, the date of filing the said return.	NA
9.	If the answer to item 8 is in negative, please state	
	(a) The income originally assessed	NA
	(b) Whether it is a case of under assessment, assessment at too low a rate which has been made the subject of excessive relief or allowing excessive	NA

	<i>loss or depreciation</i>	
10	<i>Whether the provisions of section 150(1) are applying. If the rely 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 section 150(2) would not stand in the way of initiating proceedings u/s. 147.</i>	No.
11.	<i>Reasons for the belief that income has escaped assessment.</i>	
<p><i>The assessee is a company filed its return of income for AY 2010-11. As per return for AY 2010-11, the details of the Directors of the assessee company obtained from records are hereunder:-</i></p> <p><i>(a) Suresh Arora, 581, Ward No. 16, Street Dr. Inderjit Singh, Arya Samaj Road, Sirsa, Haryana-125055.</i></p> <p><i>(b) Anjali Arora, 581, Ward No. 16, Street Dr. Inderjit Singh, Arya Samaj Road, Sirsa, Haryana-125055</i></p> <p><i>2. In this case, information was received on 21./03/2016 from Asstt. Director of Income Tax (Investigation), Unit 1(3), Ahmedabad by which a Survey Report was disseminated in case of beneficiary clients who have taken contrived losses and shifted out profits using Client Code Modification.</i></p> <p><i>3. It is a detailed report of 589 pages. On going through the report and gathered that Client Code is a unique code which is assigned by a broker to its clients. A broker can issued just one code to a client. Client Code Modification means modification / change of the client codes after execution of trades. Vide Circular No. SMD/Policy/CIR./03 dated February 6, 2003 SEBI mandates that the stock exchanges shall not normally permit changes in the client code except to correct for genuine mistakes. The client code modifications permit brokers to rectify human errors when a client inadvertently provides a wrong code or when or a wrong code is punched in by the broker while executing the trade. The broker is allowed to change it between 3.30 pm and 4 pm to rectify a genuine error that may have occurred while entering the code. The facility ensures smooth functioning of the system and is to be used as an exception</i></p>		

rather than routine. Client code modification means modification of client code after the execution of trade.

Over a period of time, some persons, in connivance with brokers started using Client Code Modifications for purposes other than genuine errors. Contrary to its motive, CCM facility was being misused and brokers transferred gains or losses from one person to another by changing the code, in the garb of correcting an error. These gain or loss book entries were then used to evade taxes.

4. Non genuine CCM were carried out to book contrived losses. In some cases, this facility was used by brokers to transfer gains or losses from one party to another by modifying client codes in the guise of rectifying an error. It became a practice to book artificial profits or losses in March to impact tax liabilities. It is generally done by buying or selling stocks intraday so as to say consciously incurs a loss and use that as a tax offset.

Client Code Modification (CCM) especially in the Futures and Options Segment (F&O) was being used a devise to evade taxes wherein the client codes were modified for booking artificial profits or losses at fag end (Jan to March) of the Financial year when the book profits / losses of various clients have crystallised. This is done with an intention to impact the tax liabilities of the pair of clients whose codes are modified.

On the basis of information received, the assessee company in respect of FY 2009-10 relevant to AY 2010-11 and the following facts are noted that :

- a) During the year it has undertaken transactions in sale / purchase of shares, securities in cash segment as well as Future and Options Segment and its turnover could have included the transactions contrived by way of CCM. As per the information received for the period of 01.4.2009 to 31.3.2010, it has undertaken loss worth Rs. 6,02,335/-.*
- b) The transactions which involved CCM, as per information received under the report of the Investigation Wing are as under:-*

Name of the beneficiary client	Address of beneficiary	Name of broker	When OC (Ascertained Profit Shifted out)	When MC (Ascertained losses shifted in)	Net reduction in income due to CCM
Radiance Stock Traders Pvt. Ltd.	C-159, 1 st floor, Phase-I, Ashok Vihar, New Delhi - 52	Competent Finman Pvt. Ltd.	0	-602335	-602335

c) Thus, the assessee has shifted in ascertained loss of Rs. - 6,02,335/- through a transaction involving CMM.

4. Thus, a careful scrutiny of information received from the Investigation Wing and analysis of report, data of transactions and verification of ITR/Assessment record lead to an irresistible conclusion that Client Code Modification had been carried out in the case of assessee to shift in ascertained loss of Rs. - 06,02,335/-. By shifting in the above loss through contrived transactions by means of CMM, the assessee has artificially depressed its profits. By withholding these facts surrounding the transaction during the regular assessment proceedings, the assessee has failed to disclose fully and truly all the material facts necessary for its assessment.

5. Considering the above referred credible information and analysis subsequent to the information, I have reason to believe that an amount at least of Rs. -6,02,335/- has escaped assessment in case of M/s Radiance Stock Traders Pvt. Ltd. for the AY 2010-11 within the meaning of section 147/148 of Income Tax Act, 1961. The income has escaped assessment due to the failure of the assessee to disclose fully and truly all the material facts necessary for its assessment. Thus, this specific condition for reopening is hereby fully filled in the instant case as assessee has failed to disclose such material facts on its own earlier. The case is squarely covered under the provisions of section 147 of the Income Tax Act, 1961.

6. Since more than 4 years from the end of the since more than 4 years from the end of the relevant assessment year have elapsed, approval of Pr. Commissioner of Income Tax, Delhi -7 is solicited in terms of the provisions of section 151(1) of the Act.

Sd/-
(Pradeep)
Income Tax Officer,
Ward 20(3), New Delhi

12.	Whether the Addl. CIT is satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961	Addl. CIT, Range-20, New Delhi
13.	Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of notice u/s. 148.	Yes. I am satisfied.

Sd/-
Pr. Commissioner of Income Tax,
Delhi -7, New Delhi"

6.1 After perusing the aforesaid reasons recorded, I find that 'information' was received on 21.3.2016 from Asstt. Director of Income Tax (Investigation) Unit- 1(3), Ahmedabad without conducting any enquiry on the same by Assessing officer and without considering the fact of the case of assessee in light of the issue is not a tangible and relevant material to form opinion that income has escaped assessment. It is noted that the proceedings u/s. 147 of the Act can be initiated only on the basis of the tangible material and not on the basis of assumptions and presumptions. The precondition u/s. 147 of the Act is "reason to believe" and, the expression is stronger than the word "satisfied". The belief entertained by the AO must not be arbitrary or irrational, however, it must be reasonable.

In other words, it must be based on reasons which are relevant and material. The existence of tangible and relevant material is a precondition for assuming jurisdiction, as has been held in the case of CIT vs. Kelvinator of India Ltd. reported in 320 ITR 561 (SC) and ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. reported in 291 ITR 500 (SC). Hence, in this case the proceedings have been initiated on the basis of no material much less any tangible and, relevant material and as such reasons record do not constitute valid reason to believe for initiating proceedings u/s 147 of the Act. It is a case of 'reason to suspect' and not 'reason to believe.'

6.2 I further note that the action of the AO has been taken mechanically on the basis of alleged report of Investigation Wing. The mere recording/ formulation of reasons on the basis of reproduction of information from Investigation Wing and, issuing notice for initiation of re-assessment proceedings does not constitute application of mind much less independent application of mind. Hence, the proceedings are without jurisdiction. It is settled law that AO cannot act mechanically on the basis of report of Investigation Wing and to show that the AO has applied his mind, he must distinct all those materials and he must also show that what was material on record. Hence, initiation of proceedings is also based on non-application of mind much less independent application of mind. This view is fortified by the decision of the Hon'ble Delhi High Court in the case of Pr. CIT v. G&G

Pharma India Ltd. reported at 384 ITR 147 (Del), wherein it has been held as under:-

"Today when the case was called out, Mr. Sawhney produced before the Court the very same letter of the AO dated 15th September 2010 which has been reproduced in its entirety in the impugned order of the ITAT. He submitted that the AO was himself present in the Court and further efforts would be made to locate the materials on the basis of which the AO formed his opinion regarding reopening of the assessment. The Court was not prepared to grant further time for this purpose since it was not clear that the materials were, in fact, available with the Department.

12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above

accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case."

6.3 I further note that in the reasons recorded assessee has relied upon the information by the Investigation Wing, Ahmedabad, the AO has stated that having perused and considered the information received from Investigation Wing he has reason to believe that income of the assessee has escaped which has not been conformed to the assessee company, in the course of assessment proceedings, though in view of the judgment of Hon'ble Delhi High Court in the case of Sabh Infrastructure Ltd. Vs. ACIT reported in 398 ITR 198 the same was to be confronted alongwith reasons wherein it has been held as under:

“(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 alongwith the reasons.”

6.3.1 Hence in the absence of such material, the allegation and assumptions are nothing but figment of imagination as they are based on assumption and presumption, apart from being without basis.

6.4 It is further noted that the approval granted by the competent authority is a mechanical approval and action has been taken mechanically because on perusing the reasons recorded, it demonstrates that Pr. CIT has written **“Yes, I am satisfied.”** which establishes that the competent authority 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 (Inv.)), Unit 1(3), Ahmedabad. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am 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. My aforesaid view is fortified by the following decisions:-

(A) Hon'ble Delhi High Court in the case of Pr. CIT vs. M/s NC Cables Ltd. in ITA No. 335/2015 has held as under:-

11. Section 151 of the Act clearly stipulates that the CIT(a), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer, For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

(B). Hon'ble High Court of Madhya Pradesh in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. reported in (2015) 56 taxmann.com 390 (MP) has held as under:-

"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 vs. Asstt. DIT (2000) 246 ITR 363 (MP), 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 Commisisoner 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."*

(C.) Hon'ble Supreme Court of India in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) in the Head Notes has held that *"Section 151, read with section 148 of 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 the Assessee)."

6.5 I further note that it is well settled law that reasons alone can be looked into and, cannot be supported by any supplementary or additional material.

6.6 I further note that Assessing Officer at page no. 2 of his assessment order dated 8.12.2017 u/s. 147/143(3) of the Act stated as under:-

"Objection to reopening

Assessee filed objection vide letter dated 24.11.2017 to the notice u/s. 148/reason recorded.

Removal of objection

The objection filed by the assessee were rejected vide order dated 27.11.2017."

6.6.1 After perusing the aforesaid extracts from the assessment order, it is evident that the assessee has raised objection to initiation of assessment proceedings u/s. 147 of the Act vide letter dated 24.11.2017 and the aforesaid objections were disposed of by the AO vide order dated 27.11.2017, which shows that the AO did not accept the objections so filed, he shall not proceed further in the matter with in a very short period of service of order disposing off objection, however, he has made the order of assessment u/s. 147/143(3) of the Act on 8.12.2017, which is not in

accordance with law and not permissible. This view is fortified by the following decisions:-

- i) ITA NO. 5780/D/2014 DATED 6.4.2018 Meta Plast Engineering (P) Ltd. v. ITO

“9. Further, in view of the decision of the Hon'ble Bombay High Court in the case of Bharat Jayant Patel (supra), learned AO held should have allowed four weeks' time to the assessee to seek their legal remedies after rejection of the objections of the assessee. In view of the fact that the AO has disposed of the objections of the assessee on 22.11.11 and passed the assessment order on 19.12.2011, it is clear that no such time was granted to the assessee. Further, the reasons recorded at the time of assumption of jurisdiction by the AO that the assessee has received an accommodation entry of Rs.15 lacs whereas at the time of framing of assessment, the assessee was assessed the share application money to the tune of Rs.2.15 crores. We find reason in the submission of learned AR that in view of the decision in PCIT vs. RMG Polyvinyl (I) Ltd.386 ITR 5 (Bom), such an error indicates non application of mind by the learned AO.”

- ii) 296 ITR 90 (Bom) Asian Paints Ltd. vs. DCIT

“3. The learned senior counsel for the petitioner pointed out that in some of the cases as soon as the

objections were rejected by the concerned Income-tax Officer, even the assessment order has been passed within a very short time whereby the assessee is left without any remedy to challenge such an order of rejection.

4. Hence we make it clear that if the Assessing Officer does not accept the objections so filed, he shall not proceed further in the matter within a period of four weeks from the date of receipt of service of the said order on objections, on the assessee.

5. Accordingly, rule is made absolute.

6. We also direct that the Income Tax Officer concerned shall follow the above procedure strictly in all such cases of reopening of assessment.”

6.7 As regards case law cited by the Id. DR is concerned, the same is an *ex parte* order and on distinguished facts and circumstances of the case.

6.8 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, I am of the considered view that proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction, hence, the re-assessment is quashed. Since I have already

quashed the re-assessment, the other grounds have become academic and are therefore not adjudicated and accordingly, the assessee's appeal is allowed.

7. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 29-11-2018.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated: 29-11-2018

SRBhatnagar

Copy forwarded to:

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

AR, ITAT, NEW DELHI.