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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3927/Del/2018
Assessment Year : 2009-10

DILWARA LEASING & INVESTMENT LTD., C/O KAPIL GOEL, ADV., F-26/124, SECTOR-7, ROHINI, DELHI – 110 085 (PAN: AAACD0488N) (Appellant)	Vs.	ITO, WARD 7(3), NEW DELHI (Respondent)

Assessee by	:	Sh. Kapil Goel, Adv.
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)-3, Delhi on 15.02.2018 in relation to the assessment year 2009-10 on the following grounds:-

1. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in sustaining the order passed by AO u/s. 147/143 of the Income Tax Act, 1961 (in short "Act") without appreciating that assumption of jurisdiction u/s. 148 of the Act was by AO was in violation of jurisdictional conditions stipulated under the Act;

1.1 That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in sustaining the order passed by the AO u/s. 147/143(3) without appreciating that "rubber stamp" reasons in present case are based on unconfronted "Appraisal Report" of investigation wing and are without independent application of mind.

1.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that material referred in reasons has not been confronted to assessee namely report of investigation wing Ahmedabad, broker surveyed u/sl33A, statement of broker surveyed and material found from survey and connection of that broker with the assessee, lack of which vitiates the entire proceedings as complete reasons were not furnished to the assessee;

1.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that Ld AO issued notice u/s 143(2) on

30/06/2016 when reasons were supplied only on 27/09/2016 which vitiates the entire exercise being done in undue hurry and haste;

2. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that on basis of surfeit and inundated evidences on records burden lying on assessee has been fully discharged and met so addition made by Ld AO (Rs 39,83,700) and confirmed by CIT-A in impugned order deserves to be deleted.

2.1 That on the facts and in the circumstances -of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that there is no basis of any of the addition of Rs 39,83,700 as whole addition is based merely on assumption , conjectures and surmises and suspicion only without any iota of evidence to support the bald allegation made.

2.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the

order passed by Ld AO u/s 147/143(3) without appreciating that all the additions made are without bringing legally admissible document;

2.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that none of evidence filed by assessee is overruled in accordance with law;

3. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in not restoring the returned income declared by assessee in its return of income.

4. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in not deleting the addition made by Ld AO which was also unlawful and made in violation of principles of natural justice.

That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

2. The facts in brief are that Notice u/s. 148 of the Income Tax Act, 1961 (in short "Act") was issued on 30.3.2016 to the assessee, after recording

the reasons with the prior approval of the competent authority. In response to the same, the A.R. for the assessee attended the proceedings and filed the reply and the case was adjourned for 16.5.2016. Thereafter, the AR for the assessee attended and filed reply attaching therewith the income tax return dated 4.3.2010 for the AY 2009-10, revised return treated as return in response to notice u/s. 148 of the Act. AO issued the notice u/s. 143(2) of the Act on 30.6.2016 fixing the hearing for 11.7.2016 and in response to the same, the AR for the assessee attended the proceedings from time to time. The reassessment proceedings were initiated on the information received from ADIT(Inv.), Unit 1(3), Ahmedabad by which a survey report was disseminated in the case cases of Beneficiary clients who have taken contrived losses and shifted out profits using client code Modification. AO observed that client code has been modified in assessee case as per the report of the Investigation. AO observed from the details of share trading that assessee has made only one transaction in the FY 2008-09. No other transactions were made and assessee only made transaction in this year to book artificial loss through Client Code Modification and has set off the income earned through this activity. Hence, AO held that loss of Rs. 39,83,700/- claimed by the assessee is not genuine and was disallowed and added back to the income of the assessee vide order dated 31.12.2016 passed u/s. 147/143(3) of the Act and assessed the income at Rs. 3918820/-.

3. Aggrieved with the aforesaid assessment order dated 31.12.2016, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 15.2.2018 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 assessee has raised 4 grounds of appeal, but he is only arguing the ground no. 1 & 1.1 which are in legal in nature and stated that Ld. CIT(A) has erred in sustaining the order of the AO without appreciating that assumption of jurisdiction u/s. 148 by the AO was in violation of jurisdictional condition stipulated under the Act. He further stated that AO has wrongly assumed the jurisdiction u/s. 148 of the Act without applying his mind and issued notice without confronting the Appraisal Report of the Investigation Wing. He draw my attention towards the assessment order as well as the order passed by the Ld. CIT(A) and stated that the similar issue has already been decided by the ITAT, SMC, Delhi Bench in ITA No. 4542/Del/2018 (AY 2010-11) in the case of Radiance Stock Traders Pvt. Ltd. vs. ITO, Ward 20(4), New Delhi. He further draw my attention towards decision of the tribunal mentioned at page no. 15 to 25 in the order vide para no. 6.1 to 6.8. He further draw my attention towards page no. 39 to 41 of the Appeal File which is a copy of reasons for issue of notice u/s. 148 for reopening of assessment u/s. 147 of the Act and stated that the facts and circumstances of the present case are squarely covered by the aforesaid decision of the

ITAT in the case of Radiance Stock Traders Pvt. Ltd. (Supra), hence, requested to respectfully following the above precedent and quash the reassessment.

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. In support of his contention, he has filed the following written submission and requested to dismiss the appeal of the assessee.

> *"Sub: Written Submission in the above case- reg.*
>
> *In the above case, it is humbly submitted that the following decisions, apart from relying on the decision of learned CIT(A), may kindly be considered with regard to reopening of cases u/s 147 of I.T. Act :*
>
> *1. Yogendra kumar Gupta Vs ITO (51 taxmann.com 383) (SC)/f20141 227 Taxman 374 (SC) (Copy enclosed) where Hon'ble Supreme Court held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance*

company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.

2. Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 341 (Copy Enclosed) where Hon'ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

3. Yuvraj v. Union of India Bombay High Court [20091 315 ITR 84 (Bombay)/r20091 225 CTR 283 (Bombay) Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.

4. ACIT Vs Rajesh Jhaveri Stock Brokers (P.) Ltd (2007) 161 Taxman 316 (SC)/r20071 291 ITR 500 (SC)/[2007] 210 CTR 30 (SC)

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 ADANI EXPORTS v. DCIT[1999] 240 ITR 224 (Guj) distinguished.

5. Devi Electronics Pvt Ltd Vs ITO Bombay High Court 2017-TIQL-92-HC-MUM- II

The likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice.

6. Pranawa Leafin (P.) Ltd. Vs DCIT Bombay High Court T20131 33 taxmann.com 454 (Bombay)/r20131 215 Taxman 109 (Bombay)(MAG.)

Where there was failure on part of assessee to make true and complete disclosure in respect of share transactions entered into by it, in view of proviso to section 147, Assessing Officer was justified in

initiating reassessment proceedings even after expiry of four years from end of relevant assessment year.

7. Acorus Unitech Wireless (P.) Ltd. Vs ACIT Delhi High Court T20141 43 taxmann.com 62 (Delhi)/r20141 223 Taxman 181 (Delhi)(MAG)/r20141 362 ITR 417 (Delhi)

In terms of section 148, law only requires that information or material on which Assessing Officer records his or her satisfaction has to be communicated to assessee, without mandating disclosure of any specific document.

8. PCIT, Vs Paramount Communication (P.) Ltd. Delhi High Court [20171 79 taxmann.com 409 (Delhi)/r20171 392 ITR 444 (Delhi)

Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

9. Paramount Communication (P.) Ltd. Vs PCIT Supreme Court 2017-TIQL-253- SC-IT

SLP of assessee dismissed. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings.

10. Amit Polyprints (P.) Ltd. Vs PCIT Gujarat High Court T2018l 94 taxmann.com 393 (Gujarat)

Where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, reassessment could not be held unjustified.

11. Aaspas Multimedia Ltd. Vs PCIT Gujarat High Court T20171 83 taxmann.com 82 (Gujarat)

Where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

12. Murlibhai Fatandas Sawlani Vs ITO Gujarat High Court 2016-TIQL-370-HC- AHM-IT

It is not open to the assessee to object to the reopening by asking the AO to produce the source from where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.

13. Ankit Aqrochem (P.) Ltd. Vs JCIT Rajasthan High Court T20181 89 taxmann.com 45 (Rajasthan)

Where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

14. Rakesh Gupta Vs CIT P&H High Court f20181 93 taxmann.com 271 (Punjab & Haryana)

Where Assessing Officer received information from Principle Director of Income Tax (Investigation) that assessee had received bogus loss from his broker by

client code modification, reassessment on basis of said information was justified.

15. Abhishek Jain Vs ITO Delhi High Court (2018) 94 taxmann.com 355 (Delhi), 2018-TIQL-1059-HC-DEL-IT Date of Order 01.06.20181

In terms of section 124(3)(b) jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from date on which he was served with a notice for reopening assessment under section 148."

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, it is noted that Notice u/s. 148 of the Income Tax Act, 1961 was issued on 30.3.2016 to the assessee, after recording the reasons with the prior approval of the competent authority. In response to the same, the A.R. for the assessee attended the proceedings and filed the reply and the case was adjourned for 16.5.2016. Thereafter, the AR for the assessee attended and filed reply attaching therewith the income tax return dated 4.3.2010 for the AY 2009-10, revised return treated as return in response to notice u/s. 148 of the Act. AO issued the notice u/s. 143(2) of

the Act on 30.6.2016 fixing the hearing for 11.7.2016 and in response to the same, the AR for the assessee attended the proceedings from time to time. The reassessment proceedings were initiated on the information received from ADIT(Inv.), Unit 1(3), Ahmedabad by which a survey report was disseminated in the case cases of Beneficiary clients who have taken contrived losses and shifted out profits using client code Modification. AO observed that client code has been modified in assessee case as per the report of the Investigation. AO observed from the details of share trading that assessee has made only one transaction in the FY 2008-09. No other transactions were made and assessee only made transaction in this year to book artificial loss through Client Code Modification and has set off the income earned through this activity. Hence, AO held that loss of Rs. 39,83,700/- claimed by the assessee is not genuine and was disallowed and added back to the income of the assessee vide order dated 31.12.2016 passed u/s. 147/143(3) of the Act and assessed the income at Rs. 3918820/-. 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 issue of Notice u/s 148 for reopening of assessment u/s 147 of I T Act 1961 for the A.Y.2Q09-10 in the case of M/s. Dilwara Leasing and Investment Limited*
>
> *1. The assessee is a company filed its return of income on 04.03.2010 declaring income of Rs. nil /-.Thereafter, the return was processed under 143(1) of the I.T. Act on 29.03.2011 at an income of*

nil determining a refund of Rs. 26,69,140 /- . The case was not picked up for scrutiny, so assessment u/s 143(3) was not made.

2. Subsequently, information through email was received on 14/03/2016 from Asstt. Director of Income Tax [Investigation], Unit 1(3), Ahmedabad by which a Survey Report was disseminated in cases of beneficiary clients who have taken contrived losses & shifted out profits using Client Code Modification.

3. I have gone through the report and gathered that Client Code is a unique code which is assigned by a broker to its clients. A broker can issue 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 mandated 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 whilst 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 rather than routine. Client code modification means modification of client . code after the execution of trade.

4. 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.

5. Non genuine CCM were earned 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 look artificial profits or tosses in March to impact tax liabilities it is generally done by buying or selling stocks intra-day so as to say consciously incurs' a loss and use that as a tax offset.

6. Client code modification (CCM) especially in the Futures and Options Segment (F&O) was being used a device to evade taxes wherein the client codes were modified for booking artificial profits or losses at the fag end Jan to March) of the Financial year when the book profits/losses of various clients have crystallized. This is done

with an intention to impact the tax liabilities of the pair of clients whose codes are modified.

7. I have examined the report of DIT(Investigation) and the details of exact transactions between the assessee and broker M/s A TO Z STOCK TRADE PRIVATE LIMITED ARE AS FOLLOWS:-

BR ID	Broker Name?	Original ; Client Code	Name of original client	PAN of original client	Modified ^ client	Name of . Modified Client	PAN of Modified Client	Script name	Final Date
12906	A TO Z STOCK TRADE PRIVATE LIMITED	CK01	KTG COMDEX PRIVATE LIMITED	AACCK7714N	CD08	DILWARA LEASING AND INVESTMENT LTD	AAACD0488N	AKRUTI	26.9.09

BQty	BTOTAL	SQTY	STOTAL	Base equl.	Base Value	Net P&L	F.Y	No. Of Characters as OCC	No. Of character as MCC
5400	9275760	5400	5292060	5400	5292060	(-)3983700	2008-09	4	4

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
M/s Dilwara Leasing and » Investment Ltd	4034, Charkhewalan, Chawri Bazar, Delhi-110006.	A TO Z STOCK TRADE PRIVATE LIMITED	0	(-)3983700	(-)13983700

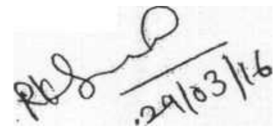
c) Thus, the assessee has shifted in ascertained loss of Rs. (-)39,83,700 through a transaction involving CCM.

8. Thus, a careful scrutiny of information; received from the investigation wing and analysis of report, data of transactionsand verification of ITR/Assessment Record lead to an irresistible conclusion that Client Code Modification had been earned out in the case of

assessee to shift in ascertained losses of Rs. (-)39,83,700/-. By shifting in the above losses through contrived transactions by means of CCM, the assessee has artificially depressed its profits. By withholding reporting these facts surrounding the transaction while filing its return of income, the assessee has failed to disclose fully and truly all the material facts necessary for its assessment.

9. Considering the above referred credible information and analysis subsequent to the information, I have reason to; believe that an amount at least of Rs. 39,83,700/-- has escaped assessment in case the of M/s Dilwara Leasing and Investment Ltd. for the A.Y 2009-10 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 fulfilled in the instant ease as assessee has failed to disclose such material facts on its own earlier. The case is squarely covered under provisions of section 147 of income- tax Act, 1961.

10. Since more than 4 years from the end of the relevant assessment year have elapsed, approval of Pr Commissioner of Income Tax, Delhi 3, is solicited in terms of the Provisions of Section 151(1) of the Act.



ITO, Ward 7(3), New Delhi

6.1 After perusing the aforesaid reasons recorded, I find that 'information' was received from Asstt. Director of Income Tax (Investigation) Unit- 1(3), Ahmedabad without conducting proper 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 further noted that Ld. CIT(A) has wrongly sustained the order of the AO without appreciating that "rubber stamp"

reasons in present case are based on unconfronted "appraisal report" of investigation wing and are without application of mind. 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.' 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). 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 assesssee 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. I further find that on exactly on similar reasons and facts and circumstances of the case, ITAT SMC Bench, Delhi in the case of Radiance Stock Traders Pvt. Ltd. in ITA No. 4542/D/2018 vide order dated 29.11.2018 on identical issue of CCM has quashed the reassessment. For the sake of clarity, I am reproducing the relevant findings of the Tribunal in the case of Radiance Stock Traders Pvt. Ltd. as under:-

> *"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, 1st 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 relied or allowing excessive loss or depreciation	*NA*

10	*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.*	*No.*
11.	*Reasons for the belief that income has escaped assessment.*	

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:-

(a) Suresh Arora, 581, Ward No. 16, Street Dr. Inderjit Singh, Arya Samaj Road, Sirsa, Haryana-125055.

(b) Anjali Arora, 581, Ward No. 16, Street Dr. Inderjit Singh, Arya Samaj Road, Sirsa, Haryana-125055

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.

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 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 crystalised. 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	*Address of*	*Name of*	*When OC*	*When MC*	*Net*

the beneficiary client	*beneficiary*	*broker*	*(Ascertained Profit Shifted out)*	*(Ascertained losses shifted in)*	*reduction in income due to CCM*
Radiance Stock Traders Pvt. Ltd.	*C-159, 1st 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 loose 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 entirely 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 assesssee 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.

<u>Removal of objection</u>

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 ld. DR is concerned, the same is an exparte 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."

6.2 Keeping in view of the facts and circumstances of the present case and case laws relied upon by both the parties, I am of the considered view that that case laws cited by the Ld. DR are on distinguished facts and

circumstances of the case, however, the case law cited by the Ld. Counsel for the assessee are exactly on similar facts and circumstances of the present case, hence, respectfully following the precedent in the case of Radiance Stocks Traders Pvt. Ltd. in ITA No. 4542/Del/2018 (Supra), 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, without jurisdiction and without applying his mind and AO issued notice without confronting the Appraisal Report of the Investigation Wing. Hence, the reassessment is quashed and accordingly, I allow the legal ground no. 1 to 1.1 raised by the assessee. No other ground has been adjudicated as the same has not been argued by the Ld. Counsel for the assessee.

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

Order pronounced on 11-01-2019. Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 11-01-2019

SRBhatnagar

Copy forwarded to:

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

AR, ITAT, NEW DELHI.