IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No.3059/Del/2018
Assessment Year: 2009-10

M/s. Prashant Agencies Pvt. Ltd. H. No. 11, Road No. 63, West Punjabi Bagh, Delhi - 110026 PAN No. AAACP5839K	Vs	ITO, Ward -19(3) New Delhi
(APPELLANT)		**(RESPONDENT)**

ITA No.3060/Del/2018
Assessment Year: 2009-10

PPN Properties Pvt. Ltd. A-4/7, Mainwali Nagar, New Delhi -110097 PAN No. AADCP2023J	Vs	ITO, Ward -19(2) New Delhi
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Salil Aggarwal, Advocate Sh. Shailesh Gupta, Advocate
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	15/01/2019
Date of Pronouncement:	16/01/2019

ORDER

PER N. S. SAINI AM:

1. These are appeals filed by the assessee against the order CIT(A)-7, New Delhi dated 19.03.2018 for the A. Y. 2009-10 and CIT(A)-7, New Delhi dated 19.03.2018 for A. Y. 2009-10.

2. ITA No.3059/Del/2018 the assessee has taken following grounds of appeal of the assessee as under :-

1 *"That the learned Commissioner of income Tax (Appeals) has grossly erred*

both in law and on facts in sustaining an assessment framed under section. 143(3)/147 of the Act at an income of Rs. 2, 83, 000/- as against returned income being filed at Rs, 40, 629/-.

2 *That the learned Commissioner of Income: Tax. (Appeals.) has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act' without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.*

2.1 *That the learned Commissioner of Income Tax (Appeais) has further erred in law and on facts in sustaining the initiation of proceedings u/s 147 of the Act as there was no tangible material to form a belief that the income of Assessee Company had escaped assessment.*

2.2 *That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceeding so, initiated under section 148 was a mere pretence and was liable to be quashed as such.*

3. That the learned Commissioner of income Tax (Appeals) has further erred in law and on facts in sustaining an addition of Rs. 2. 07. 040/- on account disallowance of loss on account of future and option transactions through stock exchange.

3.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has completely ignored and has arbitrarily brushed aside the documentary evidences filed by the assessee company and due enquiries being conducted by the assessing officer himself under section 131 of the Act (which finds mention in the order of assessment, but not given to assessee for rebuttal), wherein, the stock broker has accepted the genuineness of the said losses and thus, the addition so made by learned officer and sustained by learned CIT (A) was based on mere suspicion and surmises and should be deleted, as such.

3.3 That in doing so, the Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered explaining the aforesaid business losses, however, disallowed losses and based their decision purely on suspicion, surmises and conjectures and as such, the disallowance so made should be deleted.

4. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in relying on judgments totally inapplicable on the facts of the assessee appellant and further, sustaining additions in the hands of assessee

company, without giving any fair and proper opportunity of being heard to the assessee company and passing the assessment in undue haste,-thereby, violating the principles of natural justice."

3. ITA No.3060/Del/2018 the assessee has taken following grounds of appeal of the assessee as under :-

1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an assessment framed under section 143(3)/l47 of the Act at an income of Rs. 3, 08, 440/- as against returned income being filed at Rs. 61, 130/-.

2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/]47 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.

2.1 *That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in sustaining the initiation of proceedings u/s 147 of the Act as there was no tangible material to form a belief that the income of Assessee Company had escaped assessment.*

2.2 *That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceeding so, initiated under section 148 was a mere pretence and was liable to be quashed, as such.*

4. In ground No. 1 and 2 in both the appeals are directed against the order of the CIT(A) holding the initiation of reassessment proceedings by the Assessing Officer as valid.

5. At the time of hearing both the Ld. AR submitted that the facts and issue involved in the case of M/s. Prashant Agencies Pvt. Ltd and M/s. PPN Properties Private Limited are identical and therefore, he will be arguing the appeal in the case of M/s. Prashant Agencies Pvt. Ltd. and the same arguments should be considered in the case of M/s. PPN Properties Private Limited also.

6. The Ld. DR also concurred with the above submissions of the AR of the assessee.

7. Hence, I am considering the facts in the case of M/s. Prashant Agencies Pvt. Ltd. for disposing of the ground No. 1 and 2 of the appeal in both the appeals.

8. The AR of the assessee argued and submitted that the assessment year involved is 2009-10 and the main source of income of the assessee is interest income. He submitted that notice u/s 148 of the Act was issued on 28.3.2016 and assessee filed return of income on 25.5.2016 thereafter the assessee obtained reasons for reopening of the assessment copy of which is placed at paper book page No.13-14. He submitted that some general information flowing from Ahemdabad to the Assessing Officer not backed by any material does not become reason for reopening of assessment. The Assessing Officer in the said reasons has not referred to any statement of broker or any other person on the basis of which the Assessing Officer was satisfied that income chargeable to tax has escaped assessment. He submitted that the assessee has asked the Assessing Officer for cross-examination of the person whose statement was recorded based on which assessment of the assessee was reopened but the same was not allowed to the assessee by the Assessing Officer on the ground that the assessee did not come out clean with the facts with whom he wants cross-examination. Further the Assessing Officer disposed of the objection of the assessee to the reopening of the assessment vide it is letter dated 01.07.2016 wherein it was observed that the assessee had raised objection to reopening and the same was being disposed off as follows. Thereafter the Assessing Officer observed that on the basis of information received after complying with necessary provisions as laid out in the income Act 1961 notice u/s 148 has been sent and, therefore, you are requested to comply with the proceedings at the earliest to complete the proceedings in time. Thus, it was the submissions of the AR of the assessee that neither cross-examination of the person on whose statement the Assessing Officer has relying for reopening the assessment was supplied to the assessee nor the Assessing Officer passed speaking order on the objections raised by the assessee to the reopening of

the assessment and hence the reopening of assessment initiated by the Assessing Officer was bad in law.

9. He relied on decision of Hon'ble Delhi High Court in the case of Signature Hotels Pvt. Ltd. Vs. ITO & Anr. (2011) 338 ITR 51 (Del) where it was held that that the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed.

10. He relied on the decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax Vs. Meenakshi Overseas Pvt. Ltd. reported in 395 ITR 677 where it was held as under :-

> *"that while the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation. In the assessee's case, the crucial link between the information made available to the Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the conclusion in the investigation report received from the Director (Investigation). It was a "borrowed satisfaction". The expression "accommodation entry" was used to*

describe the information set out without explaining the basis for arriving at such a conclusion. The basis for the statement that the entry was given to the assessee on his paying "unaccounted cash" was not disclosed. Who was the accommodation entry giver and how he could be said to be a "known entry operator" were not mentioned. The source for all the conclusions was the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment. No error had been committed by the Appellate Tribunal in concluding that the initiation of the reassessment proceedings under section 147 / 148 to reopen the assessments for the assessment year 2004-05, was not legal.

SIGNATURE HOTELS PVT. LTD. v. ITO [2011] 338 ITR 51 (Delhi) applied.

11. He further relied on the decision of Hon'ble High court in the case of CIT Vs. Pradeep Gupta (2008) 303 ITR 95 (Del) where it was held as under :-

"that the assessment had not been completed under section 143(3) of the Act. There were banking transactions between the assessees and A. The reassessment proceedings had been initiated after several years of the acceptance of the return under section 143(1) of the Act. The assessees' failure to bring the person tilling the land on their behalf could not inexorably lead to the conclusion that no agricultural income had been generated by the assessees. Such an inference could only be drawn from the statement of A to the effect that the transactions between him and the assessees were bogus. Therefore, it was mandatory for the Revenue to produce A for cross examination by the assessees on their specific demand. Once section 147 or 148 was resorted to, the Assessing Officer must first discharge the burden of showing that income had escaped assessment. It was only thereafter that the assessees had to provide all the answers. The Tribunal arrived at the correct conclusion. Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456 (SC) (para 4) referred to."

12. He then relied on the decision of the Delhi D Bench of the Tribunal Jiten Gurnami Vs. ITO vide ITA No. 4908/Del /2012 dated 31.03.2015 where it was held as under :-

4. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the

applicable legal position.

5. As noted by a coordinate bench of this Tribunal, in the case of ITO Vs Vijendra Kumar (67 DTR 283), "No doubt sufficiency of reason cannot be agitated however the first hurdle that the formation of belief is of the concerned AO and not of some other AO has to be met. The blind acceptance in haste the view of another AO has not been rebutted by any cogent fact or argument and to our mind case law cannot address the issue". What is essentially implies that even when an information is received from another wing, the Assessing Officer must apply his mind to the same before one can deal with the question as to whether such an information constitutes legally sustainable reasons for reopening the assessment. The question of existence or adequacy of reasons for reopening the assessment will still be a step away from this fundamental exercise. As we make note of this position, we may also refer to the observations made by Hon'ble jurisdictional High Court, in the case of CIT Vs Pradeep Kumar Gupta (303 ITR 95), as follows:

> 4. *Having heard learned counsel for the parties at great length, we are of the view that the Order of the ITAT is unassailable. In this case, the assessment had not been completed under Section 143(3) of the IT Act. There are banking transactions between the Assessees and Shri Anand Prakash and, therefore, initiation of reassessment Proceedings under Sections 147/148 may be impregnable even to the charge of legitimacy of invocation of Sections 147/148. In other words, since there were banking transactions between these persons, and Shri Anand Prakash had, in fact, deposed that he had provided bogus transactions to the Assessees that would constitute reasons for the AO to believe that income chargeable to tax had escaped assessment justifying action under Sections 147/148. Shri Anand Prakash cannot be seen as a busybody or an informer or a stock witness wholly unconnected with the Assessee concerned. Learned counsel for the Revenue had drawn our attention to Phool Chand Bajrang Lai -vs Income- Tax Officer, [1993] 203 ITR 456 where the ITO had learnt that the party from whom that Assessee had allegedly borrowed Rs.50,000/- in cash had not actually done so. Information pertaining to the false nature of these transactions was exchanged between the respective Income-Tax Officers. Their Lordships opined that - Acquiring fresh information, specific in nature and reliable in character, relating to a concluded assessment which went to expose the falsity of the statement made by the assessee at the time of the original assessment was different from drawing a fresh inference from the same facts and material available with the Income-tax Officer at the time of the original assessment proceedings. This decision, however, does not empower the AO to rely only on the deposition of a third party in order to upset the Return filed by an Assessee.*

5. *This is where the failure of the Revenue to produce Shri Anand Prakash for cross-examination by the Assessees, assumes fatal consequences. Reassessment proceedings have been initiated after several years of the acceptance of the Return under Section 143(1) of the IT Act. The Assessees have themselves relied on the banking transactions between themselves and Shri Anand Prakash; secondly on bills issued by them to Shri Anand Prakash, and on the unassailed payment of rent to Shri Mool Chand. It is true that the Assessees failure to produce Shri Kishan Chand had the consequence of not proving that the said person was tilling the land on their behalf. This failure cannot inexorably lead to the conclusion that no agricultural income had been generated by the Assessees. Such an inference can only be drawn from the statement of Shri Anand Prakash to the effect tfiat the transactions between him and the Assesses were bogus. s y Therefore, it was mandatory for the Revenue to produce Shri Anand j Prakash for cross-examination by the Assessees on their specific demand in this regard. The facts on which the decision to invoke Sections 147/148 are predicated may in some cases be sufficient both for decision to carry out a reassessment as well to justify or sustain the fresh assessment. However, there may well be instances where the former said reopening may pass muster in the light of some facts, but those facts by themselves may turn out to be insufficient to preserve the assessment itself. Once Sections 147/148 are resorted to, the AO must first discharge the burden of showing that income has escaped assessment. It is only thereafter that the Assessee has to provide all the answers. We find no reason why the initial burden of proof should not rest on the AO even where the Assessment has gone through under Section 143(1) of the Act. The Tribunal has, therefore, arrived at the correct conclusion.*

6. *The views so expressed by the Hon'ble jurisdictional High Court bind us. Viewed thus, the very reassessment was legally unsustainable in this case. In this view of the matter, we quash the impugned reassessment proceedings. As reassessment itself is quashed, all other issues, raised on merits, are academic in effect. We, therefore, see no deal to deal with those grievances."*

13. On the other hand Ld. DR relied on the orders of authorities below. He also relied on the decision of Hon'ble Supreme Court in the case of Home Finders Housing Limited Vs. ITO [2018] 94 taxman.com 84 (SC) and submitted that SLP against the order of Hon'ble High Court was dismissed by the Hon'ble Supreme Court by observing that non compliance of direction of Supreme Court in GKN drive shorts (India) Limited Vs. ITO (2002) 125 taxman.com 963 that on receipt objection given by the Assessing Officer to notice u/s 148, the Assessing Officer is bound to dispose of objections by passing a speaking order, would not make reassessment order abinito.

14. In the rejoinder to the same the AR of the assessee submitted that a decision in a case is an authority for what it decides and not for what is logically deduced therefrom. For this he relied on the decision of Hon'ble Supreme Court in the case of Cit Vs. Sun Engineering Works Private Limited 198 ITR 297 (SC) where it was held that :-

> "It would be seen that whereas in the case of Anglo-French Textile Co. Ltd.'s case [1953] 23 ITR 82 (SC), the question as to the rights of an assessee to claim "redoing", "revising" or "recomputing" the entire income during the reassessment proceedings was left open, that question did not come up for consideration in the case of H. R. Sri Ramulu [1977] 39 STC 177 (SC) or H. M. Esufali's case [1973] 90 ITR 271 (SC) or even in V. Jaganmohan Rao's case [1970] 75 ITR 373 (SC). Some of the High Courts, therefore, fell in error in reading those judgments, divorced from the context in which the precise questions came up for consideration in those cases, and to hold that the assessee could " reagitate " the concluded issues and claim relief in respect of items finally concluded in the original assessment proceedings, during the reassessment proceedings, unconnected with the escapement of income. We cannot, therefore, approve the broad proposition laid down in that regard in Deputy Commissioner of Commercial Taxes v. Indian Refrigeration Industries P. Ltd. [1980] 46 STC 264 (Mad), CIT v. Ramsevak Paul [1977] 110 ITR 527 (Cal), CIT v. Assam Oil Co. Ltd. [1982] 133 ITR 204 (Cal), CIT v. Standard Motor Products of India Ltd. [1983] 142 ITR 877 (Mad), CIT v. Rangnath Bangur [1984] 149 ITR 487 (Raj), State Bank of Hyderabad v. CIT [1988] 171 ITR 232 (AP) and CIT v. Indian Rare Earth Ltd. [1990] 181 ITR 22 (Bom) [FB]. **[1993] 200 ITR 614W (SC)"**

15. He further relied of the Hon'ble Supreme Court in the case of CIT Vs. Karan Singh & Ors (19930 200 ITR 61 (SC) where it was held that :-

> *"The basic rules of interpreting court judgments are the same as those of construing other documents. The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for any controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be*

avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision.(see p.627E-G)"

16. He further relied on the decision of Hon'ble full Bench of the Hon'ble Delhi High Court Lachman Dass Bhatia Hingwala Vs. CIT 330 ITR 243 (Del) where it was held as under :-

A judgment has to be read in context, and discerning of factual background is necessary to understand the statement of principles laid down therein. It is obligatory to ascertain the true principle laid down in the decision and it is inappropriate to expand the principle to include what has not been stated therein.

A decision is only an authority for what it actually decides and it is the duty to ascertain the real concrete or ratio decidendi which has binding effect. Mechanical application of a decision treating as a precedent without appre-ciating the underlying principle is not allowable.

17. Hence he prayed that the consequential reassessment order passed by the Assessing Officer was therefore bad in law and liable to be annulled.

18. On the other hand fully supported the orders of the Assessing Officer and CIT(A).

19. I have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. The undisputed facts of the case are that the assessee M/s. Prashant Agencies Pvt. Ltd. filed its return of income u/s 139 of the Act for the A. Y. 2009-10 on 01.08.2009. The said return of income was assessed u/s 143 (1) of the Act. Similarly the assessee M/s. PPN Properties Private Limited filed its return of income u/s 139 of the Act for the A. Y. 2009-10 on 01.08.2009. The said return of income was assessed u/s 143 (1) of the Act. Thereafter the said assessments were reopened by invoking the provisions of section 147 of the Act recording the following as reasons to believe:-

<u>M/s. Prashant Agencies Pvt. Ltd. Dated : 03.06.2016</u>

"Information has been received from Investigation wing Ahmedabad vide letter F No ADIT(Inv.) I (BVAHD/CCM/Dissemination-mail 15-16 dt. 11.03.2016 forwarding of survey report in respect of client code modification. Vide the letter

it has been informed that client codes is a practice under which brokers change the client codes in safe and purchase orders of securities after the trades are conducted. In this regard. SEBI has conducted prove into modification of client codes by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the National Stock Exchange during March 2010. in this it was found that client code modification is being used for tax evasion.

CCM is legally permitted to rectify inadvertent errors in punching the orders. however, there was concern that such modification could be misused for manipulative activities in the market. This has been established in the analysis of data by SEBI wherein it was established that Client Code Modification (CCM) done on NSE. F&O segment was of a nature that establishes that it was not for genuine purposes. This has been established true in the finding of the investigation unit while analysis the data for four years.

In this regard, survey has been conducted by Ahmedabad Investigation Directorate u/s 133A of the IT Act. 1961 at the premises of 12 brokers and few of then clients across India on 23.03,2015. In this survey also was found that Client Code Modification (CCM) is being used as a tool for tax evasion by the brokers After analysis of data it was concluded that 4890 assessee have availed contrived losses of Rs. 1206,18.25.287/- in the four years out of which Rs. 580,12,39.534/- pertains to A.Y. 2009-10. The list of such entities has been forwarded for the cases where losses are quantum of Rs. 1,00,000/- or more and of the cases where quantum of profit shifted is of Rs. 1,00,000/- or more. The entity M/s Parshant Agencies Pvt, Ltd. is one of the beneficiary availing such arrangements in the A.Y, 2009-10.

The details of such entry in respect of the above mentioned assessee is as follows :-

Sl. No	*Pan no. & Name of the beneficiary*	*Name the broker*	*A.Y.*	*Ascertained profit Shifted out*	*Ascertained losses shifted*	*Net reduction income due CCM*
1.	*AAACP5839K M/s Prshant*	*Crimson Financial Services*	*2009-10*	*0*	*(-) 2,07,040*	*(-) 207040*

The above facts clearly establish that such malpractices have been adopted change the client code deliberately to create losses. Since the above amount R.s. 2.Q7?040/- has escaped assessment for the A.Y. 2009-10, which was

chargeable to tax I am satisfied that on account of failure on the part of the assessee to disclose truly and fully all the .material facts necessary for assessment for the above assessment year the income chargeable to tax to the tune of Rs.2,07,040/- has escaped assessment within meaning e; Section 147 of the l.T. Act 1961.

Since, four years has been expired from the end of the relevant assessment year, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction or Pr Commissioner of Income Tax —07, New Delhi in terms of the proviso to Section 151(1) of the IT Act 1961."

M/s. PPN Properties Pvt. Ltd. Dated : 23.06.2016

"Subject: Providing reasonsrecordedfor re-opening of case u/s. 147 of the IT Act, 1961for A.Y. 2009-10-reg.

Please refer to your letter dated 03.06.2016 on the subject mentioned above.

In this regard, as requested by you the reasons recorded before issuance of notice u/s. 148 are reproduced as under:-

Information has been received from Investigation wing Ahmedabad vide letter No. ADIT (inv.) l(3)/AHD/CCM/Dissemination/e-mail/l5-16 dated 11.03.2016 forwarding of survey report in respect of client code modification. Vide the letter it has been informed that client codes is a practice under which brokers change the client codes in sale and purchase orders of securities after the trades are conducted, in this regard, SEB1 has conducted probe into modification of client codes by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the National Stock Exchange during March 2010. In this it was found that client code modification is being used for tax evasion.

CCM is legally permitted to rectify inadvertent errors in punching the orders, however, there was concern that such modification could be misused for manipulative activities in the market. This has been established in the analysis' of data by SEC! wherein it was established that Client Code Modification (CCM) done on NSE, F&O segment was of a nature that establishes that it was not for genuine purposes. This has been established true in the finding of the investigation unit while analysis the data for four years.

In this regard, survey has been conducted by Ahmedabad Investigation Directorate u/s 133A of the IT Act, 1961 at the premises of 12 brokers and few of their clients across India on 23.03.2015. In this survey

also was found that Client Code Modification (CCM) is being used as a tool for tax evasion by the brokers-. After analysis of data it was concluded that 4890 assessees have availed contrived losses of Rs. 1206,18,25,287/- in the four years out of which Rs. 580,12,39,534/- pertains to A.Y. 2009-10. The list of such entities has been forwarded for the cases where losses are quantum of Rs. 1,00,000/- or more and of the cases where quantum of profit shifted is of Rs. 1,00,000/- or more. The entity M/s PPN Properties Pvt. Ltd. is one of the beneficiary availing such arrangements in the A.Y. 2009-10.

The details of such entry in respect of the above mentioned assessee is as follows:

Sl. No	*Pan no. & Name of the beneficiary*	*Name the broker*	*A.Y.*	*Ascertained profit Shifted out*	*Ascertained losses shifted*	*Net reduction income due CCM*
1.	*AADCP2023J M/s PPN Properties Pvt. Ltd.*	*Crimson Financial Services*	*2009-10*	*0*	*(-) 2,47,312.5*	*(-) 2.47,312.5*

However, the above facts clearly establish that such malpractices have been adopted to change the client code deliberately to create losses. Since the above amount of Rs. 2,47,312.5/- has escaped assessment for the A.Y. 2009-10, which was chargeable to tax, 1 am satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the tune of Rs. 2,47.3 12.5 /- has escaped assessment within meaning of Section 147 of the IT. Act 1961.

Since, four years has been expired from the end of the relevant assessment year, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Pr. Commissioner of Income Tax — 7, New Delhi in terms of the proviso to Section 151(1) of the IT Act 1961."

20. On perusal of the above recording shows that it was not at all a reason to believe envisaged u/s 147 of the Act, at best the same can be considered as reason to suspect only. In the recording the Assessing Officer has admitted that client code modification is legally permissible in case of mistake. Further the recording states the assessee M/s. Prashant Agencies

Pvt. Ltd. has suffered a loss of Rs.2,07,040/- in a transaction in which client code modification was involved. Similarly in the case of M/s. PPN Properties Private Limited recording states that the assessee has suffered a loss of Rs.2,47,312/- in a transaction in which client code modification was involved. However, there is no material on record to show that primafacie the said client code modification was because of some malafide reason and the assessee has received cash in lieu of payment made for loss of Rs.2,07,040/- in the case of M/s. Prashant Agencies Pvt. Ltd. and Rs.2,47,312/- in the case of M/s. PPN Properties Private Limited. Thus, the above recording does not satisfy requirement of law which is mandatory for assuming jurisdiction to reopen the assessment. My above view is supported by decision of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited Vs. DCIT reported in 390 ITR 464. Therefore, the reassessment orders passed pursuant to the above recording are hereby quashed and ground of appeals of the assessee is allowed.

21. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 16.01.2019

Sd/-

(N. S. SAINI)

ACCOUNTANT MEMBER

Dated: 16.01.2019.
Neha

Copy of order to: -

1) The Appellant
2) The Respondent
3) The CIT
4) The CIT(A)
5) The DR, I.T.A.T., New Delhi

Assistant Registrar
ITAT, New Delhi

Date of dictation	14.01.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	16.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	