IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : "A" NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.3569/Del/2015
Assessment Year: 2006-07

ITO, Ward 1(1), New Delhi.	Vs	A.K. Goenka & Sons Pvt. Ltd., N-86, Connaught Place, New Delhi. PAN: AADCA3663M

CO No.80/Del/2016
(ITA No.3569/Del/2015)
Assessment Year: 2006-07

A.K. Goenka & Sons Pvt. Ltd., N-86, Connaught Place, New Delhi. PAN: AADCA3663M	Vs.	ITO, Ward 1(1), New Delhi.

(Appellant) (Respondent)

Assessee by	:	Dr. Ram Samujh, Advocate
Revenue by	:	Ms Ashima Neb, Sr. DR
Date of Hearing	:	30.01.2019
Date of Pronouncement	:	25.02.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the Revenue is directed against the order dated 27th March 2015 of the CIT(A)-1, New Delhi, relating to assessment year 2006-2007. The assessee has

filed CO against the appeal filed by the Revenue. For the sake of convenience these were heard together and are being disposed of by this common order.

ITA No.3569/Del/2015

2. The only effective ground raised by the Revenue reads as under:-

> "1. On the facts and in the circumstances of the case the ld.CIT(A) has erred in holding that the reopening of case u/s 147 was bad in law and quashing the reassessment when the assessee had failed to disclose all the material facts before the A.O. at the time of original assessment thereby leading to escapement of income.
>
> 2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

3. Facts of the case, in brief, are that the assessee is a company engaged in business activities. It filed its return of income on 13th November 2006 declaring total loss of Rs.29,972/-. The A.O. passed the order u/s 143(3) on 15th October 2008 accepting the returned loss of Rs.29,972/-. Subsequently, on the basis of information received from the Investigation Wing, the Assessing Officer reopened the assessment by recording the following reasons:-

> " The DCIT circle 12(1) New Delhi, vide letter no.DCIT/CIRCLE/12(1)/ 2012-13/2122 dated 28.03.2013 addressed to the Addl.CIT Range-1 New Delhi, forwarded letter no.Asstt.DIT(Inv.)/ UnitIII(3)/2012-13/333 dated 25.03.2013 received from a ADIT(Inv.) Unit III(3), New Delhi. The letter of ADIT(Inv.) referred above intimated that while investigating into the case of M/s G.D. Goenka, it was observed that the G.D Goenka group obtained accommodation entry in the various group companies in the form of share capital/share premium from various suspicious/non-existing parties/paper companies. Further, the field enquiry by the investigation wing revealed that most of the entry provider entities did not exist at the given addresses. Also, the details of the income tax returns of the entry provider entities created serious doubts about their creditworthiness. Further, when the Goenka group was asked to furnish details of the entry provider parties (alleged investors who invested in the Goenka group

companies), to verify their identity, creditworthiness and the genuineness of the transactions, the Goenka group did not furnish such details.

As per the details received the following entries have been taken by the assessee company from the entry operators:-

S.No.	Investor/Entry Provider	Address	Amount
1	Cap Vanijya Pvt. Ltd.	14-C, Maharishi Devendra Road, 4th Floor, Kolkata	400000
2.	Anikit Tracom Pvt. Ltd.	14-C, Maharishi Devendra Road, 4th Floor, Kolkata	3000000
3.	Anikit Tracom Pvt. Ltd.	14-C, Maharishi Devendra Road, 4th Floor, Kolkata	6000000
4.	Lodha & Co. Pvt. Ltd.	1&2, Old Court House Corner, 2nd Floor, No.3F, Kolkata.	500000
5.	Twinkle Traders Pvt. Ltd.	29A, Western Street, 1st Floor, Kolkata	6500000
6.	Janet Investment Pvt. Ltd.	48, S.N. Roy Road, Kolkata	500000
7.	Jabali Commercial Co. Pvt. Ltd.	1&2, Old Court House Corner, 2nd Floor, No.3F, Kolkata.	500000
8	Balrampur Com Enterprises Pvt. Ltd.	23A, N.S. Road, 8th Floor, room No.6A, Kolkata.	3000000
9.	Coorg Vincom Pvt. Ltd.	9/12, Lal Bazar Street, 2nd Floor, Block E, Kolkata	5000000
10.	Alpha Vinimay Pvt. Ltd.	9/12, Lal Bazar Street, 2nd Floor, Block E, Kolkata	2500000
			27900000

Such true nature of the transaction undertaken by the assessee company has come to light only after the detailed investigation carried by the investigation wing, Delhi. This tantamount to fresh information in respect of the assessee, as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income of the assessee company, which has not been offered to tax by the assessee in its return filed.

The total of the above accommodation entries taken by the assessee company comes to Rs.2,79,00,000/-. Having perused and considered the information received from the investigation wing and on the basis of this new information, I have reason to believe that the income of Rs.2,79,00,000/- has escaped assessment as defined by sec.147 of the IT Act."

4. In compliance to the notice issued under section 148 of the IT Act, the assessee filed a letter on 9th April 2013 requesting the assessing officer to treat the return of

income furnished on 13.11.2006 as return filed in response to notice under section 148 of the Income Tax Act. On being asked by the assessee the AO provided the reasons for such reopening. The assessee filed objections for such reopening which was disposed of by the assessing officer by passing a speaking order. Subsequently notices under section 143(2)/142(1) of the Income Tax Act were also issued to the assessee and the assessee appeared before the Assessing Officer from time to time.

5. On the basis of the details receive from the investigation wing, the Assessing Officer noted that the assessee has taken entries from 10 entry operators the details of which are as per page 1 and 2 of the assessment order. He issued notice u/s 133(6) to various companies who have given share application money/premium to the assessee on the addresses which were given at the time of original assessment u/s 143(3). The Assessing Officer noted that in the following cases the notices were returned back undelivered:-

(i) Janet Investment Pvt. Ltd.,

(ii) Jabali Commercial Co. Pvt. Ltd.,

(iii) Alpha Vinimay Pvt. Ltd.,

(iv) Balrampur Com Enterprises Pvt. Ltd.,

(v) Coorg Vincom Pvt. Ltd.

6. He, therefore, asked the assessee to file the addresses from whom share application money was received. The assessee filed the latest addresses of the

companies and accordingly notices u/s 133(6) were again issued as per the new addresses. Confirmations were received from the following companies by courier:-

S.No.	Name of the assessee	Confirmation received	Return of Income
1.	Balrampur Com Enterprises Pvt. Ltd.	07.03.2014	0
2.	Jabali commercial Co. Pvt. Ltd.	07.03.2014	0
3.	Ankit Tracom Pvt. Ltd.	06.03.2014	1210
4.	Coorg Vincom Pvt. Ltd.	06.03.2014	4525
5.	Cap Vanijya Pvt. Ltd.	06.03.2014	3260
6.	Alpha Vinimay Pvt. Ltd.	06.03.2014	-2675
7.	Twinkle Traders Pvt. Ltd.	02.01.2014	3226

7. However, no confirmations were received in respect of Lodha & Co. Pvt. Ltd. and Janet Investment Pvt. Ltd. The assessing officer examined the details furnished by the companies who have invested in the share application money of the assessee company. From the various details furnished by the assessee, he observed that the income declared in the return by the share applicants was very less compared with the share application money given to the assessee. The companies are filing either nil income or declared very negligible income between Rs.2000 to Rs.5000. The bank accounts examined by the Assessing Officer shows that those were operated only just to give the share application monies to various companies. It was further noticed that for each type of entries in the account, there is a credit entry which is before a day or on the same day in their accounts. Since no information was submitted to verify the flow of funds and details which could substantiate the identity, creditworthiness and genuineness of the transaction entered into by the assessee company the assessing officer gathered the same from the ROC site and noted that the latest address is totally

different and in some cases no data is appearing on the ROC site. According to the assessing officer the assessee intentionally has given such addresses from where the reply may be sent in response to notice under section 133(6). Rejecting the various explanations given by the assessee and observing that the assessee failed to fulfil the ingredients of section 68 of the Income Tax Act by proving: (i) the identity of the applicants; (ii) genuineness of the share capital received; and (iii) the creditworthiness of the share applicants, the assessing officer made addition of Rs.2,79,00,000/- to the total income of the assessee u/s 68 of the Income Tax Act. While doing so he relied on a plethora of decisions including the decision of the Honorable Delhi High Court in the case of M/s Empire Buildtech Private Limited in ITA No.493/2013, order dated 27.01.2014 and N.R. Portfolio P. Ltd. vide order dated 22.11.2013.

8. Before CIT(A) apart from challenging the addition on merit the assessee challenged the validity of reassessment proceedings initiated beyond a period of 4 years from the end of the relevant assessment year. It was argued that the notice under section 148 has been issued 4 years after the completion of assessment under section 143(3) and in the notice issued under section 148 of the IT Act there is no recording by the Assessing Officer that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. The assessee also argued that the objection against reason for reopening was not disposed of by the assessing officer and the reopening was initiated on the direction of the superior authorities which is bad in law. It was argued that neither the copy of

investigation report nor opportunity of cross examination was provided to the assessee. It was further submitted that there was no evidence of prior permission of the JCIT under section 151(1) of the IT Act. It was argued that the assessment has been reopened merely on the basis of change of opinion and, therefore, the same was bad in law. The decision of the Hon'ble Delhi High Court in the case of *CIT vs Viniyas Finance & Investment (P) Ltd. (2013) 215 Taxman 20 (Del) and in the case of CIT vs. Suren International Private Limited (2013) 357 ITR 24 (Del)* were relied upon. Various procedural lapses were also brought to the notice of the CIT(A).

9. Based on the arguments advanced by the assessee and following the decision of the Hon'ble Delhi High court in the case of *CIT vs Viniyas Finance & Investment (P) Ltd. and CIT vs. Suren International Private Limited (Supra)*, the ld.CIT(A) quashed the reassessment proceedings. While doing so he noted that the assessing officer has investigated the share applicants during the original assessment u/s 143(3) of the Income-Tax Act and accepted them to be genuine. Since the assessment had been reopened after 4 years of completion of assessment under section 143(3) of the IT Act and there was no failure on the part of the assessee to disclose all material facts, therefore, the notice under section 148 of the Act issued by the Assessing Officer was held by him to be bad in law.

10. Aggrieved with such order of the CIT(A) the Revenue is in appeal before the Tribunal.

11. The Ld. DR strongly challenged the order of the CIT(A) in quashing the reassessment proceedings initiated under section 148 of the Act. She submitted that the assessee, in the instant case, has taken accommodation entries to the extent of Rs.2.79 crores from various non-existent companies claimed to be share applicants. The information was received from the investigation wing, which is an arm of the department, after detailed field enquiries and after completion of assessment. Since the true nature of transaction came to light only after detailed enquiry by the investigation wing, the assessing officer formed a belief that the assessee had failed to disclose fully and truly all material facts necessary for completion of the assessment before the assessing officer thereby leading to escapement of income to the tune of Rs.2.79 crores. She further submitted that after obtaining the approval of Addl.CIT, Range-1,who has also recorded his satisfaction, notice under section 148 was issued. Therefore, the ld. CIT(A) was not justified in quashing the reassessment relying on the decision of Hon'ble Delhi High Court in the case of CIT vs Suren International Pvt. Ltd., since the facts of the present case are dissimilar to that of Suren International Pvt. Ltd. (supra).

12. The ld. counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). Referring to page 48 of the paper book he drew the attention of the Bench to the assessment completed u/s 143(3) of the Act on 15th October 2008 accepting the returned loss of Rs.29,972/-. Referring to page 23 of the second paper book, the ld. counsel for the assessee drew the attention of the Bench to the

questionnaire issued by the assessing officer vide letter dated 7th April 2008. Referring to clause 7 and 8 of the said letter he drew the attention of the Bench to the query raised by the assessing officer regarding the name and address of the debtors/creditors outstanding at the beginning and at the end of the year and name and address of the parties from/to whom loan/advance of above Rs.50,000/- was received or given during the previous year and to discharge the onus in case of loans/advances received as per section 68 of the IT Act. Referring to the reply dated 21st April 2008, copy of which is placed at page 24 of the paper book, the ld. counsel for the assessee drew the attention of the bench to the details of the shareholders along with quantum of holding as on 01.04.2005 to 31.03.2006 and the copy of the bank statement of the assessee company. Referring to page 25 of the paper book, he drew the attention of the bench to the notice issued under section 133(6) of the Act to M/s Janet Investments Pvt. Ltd. Referring to page 13 of the said paper book, he drew the attention of the Bench to the information under section 133(6) obtained by the assessing officer from M/s Coorg Vincom Pvt. Ltd. Referring to page 8 to 68 of the paper book filed by the Revenue the ld. counsel drew the attention of the Bench to various submissions made by the assessee before the assessing officer from time to time during the course of original assessment proceedings substantiating the share application money received by the assessee company. He accordingly submitted that when all aspects of share application money was examined by the Assessing Officer during the course of original assessment proceedings and the order has been passed u/s 143(3), therefore, in absence of any allegation by the Assessing Officer of any failure on the part of the assessee to

disclose fully and truly all material facts necessary for completion of the assessment, the reassessment initiated after a period of four years is not in accordance with the law.

13. The ld. counsel for the assessee drew the attention of the Bench to the reasons recorded copy of which is placed at page 51 and 52 of the paper book. He submitted that the information was received from the investigation wing of the department and the assessing officer has not applied his mind and he has not verified the details given by the investigation wing. He neither conducted an enquiry nor verified the records. He submitted that as per the notice issued under section 148 the Assessing Officer has mentioned the amount of Rs.4 lakhs received by share application money from M/s Cap Vanijya Pvt. Ltd. whereas as per the confirmations and details submitted during the course of original assessment proceedings the amount is Rs 40 lakhs. Similarly, in the case of Twinkle Traders Pvt. Ltd., the amount has been mentioned as Rs.65 lakhs whereas as per the confirmation filed during the course of original assessment proceedings including the bank statement of the assessee and the share applicants the amount is only Rs.15 lakhs. Thus, the amount of Rs.2,79,00,000/- as alleged by the Assessing Officer as receipt towards share application money, the correct amount is Rs.2,65,00,000/-. Thus, it clearly shows that there is non-application of mind by the assessing officer and he has in a mechanical manner proceeded to issue notice under section 148 of the Income Tax Act. The ld. counsel for the assessee further submitted that there is no mention of any permission obtained as per provisions of section 151 of the Income Tax Act. Referring to page 49 of the paper book, he drew the attention of

the Bench to the notice issued under section 148 of the Act where the assessing officer has mentioned that the notice is being issued after obtaining the necessary satisfaction of the Addl.CIT Range-1, New Delhi. Referring to page 69 of the paper book file by the Revenue, he submitted that here also it was clearly mentioned that approval of Addl. CIT, Range-1, New Delhi was obtained. Referring to the provisions of Section 151 of the IT Act, he submitted that since the notice has been issued after the expiry of a period of 4 years from the end of the relevant assessment year, where the order was passed under section 143(3) of the Income Tax Act, therefore, the notice should have been issued after obtaining prior permission of the Pr. CIT or CIT as the case may be. However, in the instant case, the approval has been obtained from the Addl. CIT, therefore, the very basis of the issue of notice is bad in law and, therefore, the reassessment proceedings have to be quashed.

14. The ld. counsel for the assessee in his alternate argument submitted that the original assessment was completed under section 143(3) and the issue relating to share application money was thoroughly examined, therefore, issue of notice under section 148 amounts to change of opinion. Referring to the decision of the Hon'ble Supreme Court in the case of *ITO vs. M/s Taxman India Private Limited & Anr., vide Civil Appeal No.2732 of 2007, order dated 24th April 1998,* he is submitted that the Hon'ble Supreme Court in the said decision has held that reopening of the completed assessment is not justified for mere change of opinion.

15. In yet another alternate argument, the ld. Counsel for the assessee submitted that merely on the basis of report of the Investigation Wing, the AO cannot reopen the assessment without independent application of mind and without confronting the assessee regarding share application and without conducting any enquiry at his level. He further submitted that the objections raised by the assessee to issue of such notice under section 148 has not been properly disposed of by the assessing officer, therefore, on all counts, the reassessment proceedings are bad in law and, therefore, the order of the CIT(A) has to be upheld and the ground raised by the Revenue should be dismissed.

16. The ld. DR, in her rejoinder, referring to the decision of the Hon'ble Supreme Court in the case of *ITO vs. Biju Patnaik reported in (1990) INSC 383 (7th December 1990)* drew the attention of the Bench to the following observations:-

> "HELD: (1) Section 147 (a) of the Income Tax Act postulates two conditions, namely, that the Income-Tax Officer must, on the basis of material facts on record, prima facie, be satisfied that the income of the assessee is exigible to tax for that relevant assessment year and that he had reason to believe that it had escaped assessment. Further, he must have reason to believe that the escapement of income was on account of the omission or failure of the part of the assessee to fully and truly disclose all the material facts necessary for the assessment. Both the conditions are conditions precedent to the exercise of the jurisdiction under section 147 (a) read with section 148. [492B-C] Calcutta Discount Co. Ltd. v. I.T.O., [1961] 41 I.T.R. 191 (SC), referred to.
>
> (2) It is true that the notice does not prima facie disclose the satisfaction of the two conditions precedent enjoined under section 147 (a), but in the counter affidavit filed by the Income-Tax Officer in the High Court, he

> has stated all the material facts. It is settled law that in an administrative action, though the order does not ex facie disclose the satisfaction by the Officer of the necessary facts, but if the record discloses the same, the notice or the order does not per se become illegal. [492G-493B]."

17. She accordingly submitted that mere non-mentioning of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment will not invalidate the notice or the order.

18. Referring to the decision of the Hon'ble Supreme Court in the case of *Raymond Woollen Mills vs. ITO (1999) 236 ITR 34 (SC),* she drew the attention of the Bench to the following observations of the Hon'ble Supreme Court:-

> "3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see 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. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

19. She accordingly submitted that sufficiency or correctness of the material is not a thing to be considered at the time of issue of notice under section 148. She accordingly submitted that the order of the CIT(A) being not in accordance with law has to be reversed and reassessment proceedings have to be held as valid.

20. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decisions cited before us. We find the assessment in the instant case was completed u/s 143(3) on 15th October, 2008. We find the Assessing Officer, on the basis of information received from the Investigation Wing that the assessee has taken accommodation entries to the tune of Rs.2.79 crores from ten share applicants, reopened the assessment u/s 147 of the IT Act. We find the ld.CIT(A) quashed the reassessment proceedings on the ground that the original assessment was completed u/s 143(3) and the reassessment proceedings were initiated after four years from the end of the relevant assessment year and there was no allegation of failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. While doing so, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Viniyas Finance & Investment (P) Ltd. (supra) and the decision in the case of Suren International Pvt. Ltd. (supra).

21. We do not find any infirmity in the order of the CIT(A). Admittedly, the assessment was reopened beyond four years where the original assessment was completed u/s 143(3). A perusal of the reasons recorded in the notice issued for reopening of the assessment does not show any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Proviso to section 147(1) reads as under:-

"Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"

22. As mentioned earlier, the assessment has been completed u/s 143(3) of the Act and notice has been issued after a period of four years from the end of the relevant assessment year and there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for the completion of the assessment. Therefore, the decision relied on by the ld.CIT(A) are fully applicable to the facts of the case and, therefore, there is no infirmity in his order quashing the reassessment proceedings.

23. So far as the decision relied on by the ld. DR in the case of Biju Patnaik (supra) is concerned, the same is not applicable to the facts of the present case and is distinguishable. In that case, the notice was issued u/s 147(a) as it then stood. However, the provisions of 147(a) has undergone a change and the entire provisions of section 147 has been amended by the Direct Taxes Law (Amendment) Act, 1987

w.e.f. 01.04.1989. This view of ours is fortified by the decision of the Hon'ble Delhi High Court in the case of *M/s Alcatel-Lucent France and Anr. Vs. Asstt. Director of Income-tax and batch of other appeals*. The Hon'ble Jurisdictional High Court in the batch of appeals delivered on 27th April, 2016, has distinguished the decision in the case of Biju Patnaik (supra) and has observed as under which is being reproduced for the sake of clarity:-

> "31. As far as the reliance of the decision in Biju Patnaik (supra) is concerned, as rightly pointed out by Mr. Aggarwal, that dealt with Section 147(a) as it then stood. Section 147 (a) has undergone a change that has been explained in some detail by the Supreme Court in Kelvinator India (supra) and in particular the following extract:
>
> > "On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review ; he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it

would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549 dated October 31, 1989 ([1990] 182 ITR (St.) 1, 29), which reads as follows:

> "7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section
> 147.- A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same.""

32. In view of the above authoritative enunciation of the legal position in light of the amended Section 147, the reliance by the Revenue on the decision of Biju Patnaik (supra) is to no avail.

33. Where reopening of the assessment is sought to be done more than four years after the end of the relevant assessment year, then the requirement of the Revenue having to say that there was a failure to disclose fully and truly all material facts by the Assessee leading to escapement of income is a sine qua non. In Ritu Investments v. DCIT (supra), the Court took note of the fact that the AO would not get jurisdiction to reopen the assessment only on the basis of mere "error of judgment". The Court referred to the decision in Gemini Leather Stores v. Income Tax Officer, B-Ward, Agra (1975) 100 ITR 1 (SC), and held that when the AO had all the material facts before him he could not take recourse to Section 147(a) "to remedy the error resulting from his own oversight". Reference was also made to the decision in of the Supreme Court in Indian & Eastern Newspaper Society v. Commissioner of Income Tax, New Delhi (1979) 119 ITR 996 (SC), and it was noted that the contrary view in Kalyanji Mavji & Co. v. CIT (1976) 102 ITR 287 (SC) was no longer good law. In this context reference was also made to the decision of Atma Ram (supra). The Court clarified that Explanation (1) to Section 147 applies only where the AO on the basis of account books or other evidence fails to discover the material facts and not where the AO fails to apply the relevant law. There can be no doubt that as far as the present case is concerned, the reasons do not refer to any failure on the part of ALF to disclose any material when it filed its original return or even the return pursuant to the earlier notices issued under Section 148 of the Act."

24. In view of the decision of the Jurisdictional High Court cited (supra) the decision relied on by the ld. DR is not applicable to the facts of the present case. In

this view of the matter, we uphold the order of the CIT(A) and the grounds raised by the Revenue are dismissed.

25. Now, coming to the CO No.80/Del/2016, the assessee has raised the ground in the CO regarding the non-adjudication of the ground against the addition of Rs.279 lakhs on merit.

26. We have considered the rival arguments made by both the sides. Since the appeal filed by the Revenue has been dismissed, therefore, the CO filed by the assessee becomes infructuous. Accordingly, the same is dismissed.

27. In the result, the appeal filed by the Revenue as well as the CO filed by the assessee are dismissed.

The decision was pronounced in the open court on 25.02.2019.

Sd/-	Sd/-
(K. NARASIMHA CHARY)	(R.K. PANDA)
JUDICIAL MEMBER	ACCOUNTANT MEMFBER

Dated: 25th February, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi