

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.4364/DEL/2015
Assessment Year: 2005-06

M/s. M.S. Associates, 267, Masjid Moth, Uday Park, 2 nd Floor, New Delhi.	v.	DCIT, Central Circle-4, New Delhi.
TAN/PAN: AABFM 1714A		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi & Shri Satyajeet Goel, CA		
Respondent by:	Shri Surender Pal, Sr.D.R.		
Date of hearing:	25	02	2019
Date of pronouncement:	30	04	2019

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER

The aforesaid appeal has been filed by the Revenue against the impugned order dated 18.03.2015, passed by Ld. Commissioner of Income Tax (Appeals)-XXX, New Delhi for the quantum of assessment passed u/s.147/143(3) for the Assessment Year 2005-06. In various grounds of appeal, the assessee has challenged the disallowance of Rs.2,20,56,180/- in respect of claim of business expenses and disallowance of depreciation of Rs.23,67,390/-.

2. Besides this, the assessee has also raised additional ground challenging the validity of proceedings u/s.147/148 which reads as under:

“1(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the validity of notice u/s 148 even though the same is without jurisdiction and bad in law.

(ii) That original assessment was framed u/s 143(3) and reopening being after expiry of four years, as per first proviso to section 147 the notice u/s 148 is time barred and invalid in absence of any failure on part of the assessee in disclosing full and true particulars of income.

(iii) That in any case, the complete details relating to claim of expenses having already been furnished during original assessment, the reopening u/s 147 is merely on the basis of change of opinion and re-appraisal of material already on record.

2. That reasons being merely on the basis of information from investigation wing and there being no independent application of mind, the notice u/s. 148 has been issued mechanically and on illegal and arbitrary basis.”

3. The facts in brief are that the assessee firm is engaged in the business of purchase and sale of (online) state lottery tickets and were sold through Distributor of Nagaland and Meghalaya. The assessee has filed its return of income on 31.10.2005 declaring income of Rs.2,69,18,960/- duly accompanied with tax audit report u/s.44AB. The said return was duly processed u/s.143(1) on 26.09.2006. Thereafter, assessee's case was selected for compulsory scrutiny vide notice dated 02.06.2006 issued u/s. 143(2). After detailed scrutiny of books of account and examining the nature of entries including the expenses given debited to the profit & loss account, assessment was completed after making

disallowances of certain expenses like, telephone, tour and travel, car running, etc.; and as against the return of income of Rs.2,69,18,960/-, assessment was completed on an income of Rs.2,74,29,210/-. Now after the expiry of more than four years from the end of relevant Assessment Year, the assessment was sought to be reopened by issuance of notice u/s.148 dated 31.10.2011 after recording the following 'reasons'.

Reasons for reopening the case u/s 147 read with section 148 of the Income-tax Act. 1961

Assessee firm filed its Return of income for the A.Y. 2005-06 on 31/10/2005 declaring total taxable income at Rs. 2,69,18,960/. Assessment u/s 143(3) of the act was completed on 19/12/2007 at Rs. 2,74,29,210/.

Information has been received from the Investigation wing of the Department that a search & seizure operation was conducted in the S.K. Gupta group of cases on 12-12-2006. During the course of search & seizure proceedings, it was found that Sh S.K. Gupta, a chartered accountant by profession was running a number of companies and was also operating numerous Bank accounts either by himself or in the name of his relatives and close associates. Through numerous companies started by him, he was found indulging in issuing accommodation Bills of expenses and providing accommodation entries of share capital etc. During the search & seizure proceedings, no evidence of carrying out of any real business activity by - these companies/ concerns could be found. The Investigation Wing also recorded on oath statement of Sh. S.K. Gupta wherein he categorically admitted to only providing accommodations bills at a commission. He categorically stated that the companies/ concerns run by him were

neither having any infrastructure nor competence for providing any professional / consultancy services- It has also been informed that from the following companies/ concerns spawned by Sh. S. K Gupta for providing accommodation entries in various forms, the Assessee Firm M/s M.S. Associates obtained accommodation entries of various expenses during the Financial Year 2004-05.

<i>M/s Bolni Exim India Ltd.</i>	<i>Web advertising charges</i>
<i>M/s PG Travels Hindustan Com (P) Ltd.</i>	<i>Web advertising charges</i>
<i>M/s Era Advertising Marketing Co. (P) Ltd.</i>	<i>Banner and posters</i>
<i>M/s Power Gold Electrician Systems (P) Ltd.</i>	<i>Purse purchased</i>
<i>Fancy ear rings, sceneries watch and diaries</i>	
<i>M/s Celcel Technologies (P) Ltd.</i>	<i>Server and laptop</i>

Examination of the Assessment records for the A.Y. 2005-06 revealed that in the P&L account, the assessee has debited total expenditure of Rs. 2,22,45,306/- under the head 'advertisement and result publicity expenses'. From the details filed by the assessee during the course of assessment proceedings on 06-12-2007, it is noticed that the assessee firm has claimed the following expenditure through the means of accommodation bills obtained from M/s Bolni Exim India Ltd;

M/s. Bolni Exim India Ltd.,

<i>Bill No. & Date</i>	<i>Amount (Rs.)</i>
<i>2004-05/06/41, 15-06-2004</i>	<i>1491435</i>
<i>2004-05/09/59, 15-09-2004</i>	<i>1491435</i>
<i>2004-05/12/72, 15-12-2004</i>	<i>1491435</i>
<i>2004-05/03/86, 15-03-2005</i>	<i><u>1491435</u></i>
	<i>5965740</i>

Similarly, following claim of expenditure was made claimed by way of accommodation bills obtained from M/s PG Travels Hindustan Com (P) Ltd., .

<i>Bill no. & Date</i>	<i>Amount (Rs.)</i>
<i>2004-05/06/39,24-06-2004</i>	<i>1140810</i>
<i>2004-05/09/60,24-09-2004</i>	<i>1140810</i>
<i>2004-05/12/76, 24-12-2004</i>	<i>1140810</i>
<i>2004-05/03/89, 15-03-2005</i>	<i><u>1140810</u></i>
	<i>4563240</i>

The following accommodation Bill obtained from another concern of Sh S.K Gupta namely, M s Era Advertising & Marketing Co. (P) Ltd. were also claimed as advertisement and result publicity expenses.

Bill no. & Date	Amount (Rs.)
2004-05/06/29 15-06-2004	1775880
2004-05/09/75,22-09-2004	1750880
2004-05/12/89,22-12-2004	1673630
2004-05/03/105,14-03-2005	<u>1770630</u>
	6971020

Thus, total claim of expenditure made in the return of income through accommodation bills under the head advertisement and result publicity expenses comes to Rs. 1,75,00,000/-

Sales promotions expenses- The total claim of expenditure of Rs.51,29,680/ in respect of "sales promotion expenses" included the following accommodation Bills obtained from various concerns of Sh S.K. Gupta.

M/s. Power Gold Electrician Systems (P) Ltd.

Bill no. & Date	Amount (Rs.)
PGES/2004-05/10/73, 15-10-2004	1077500
PGES/2004-05/11/85, 08-11-2004	515000
PGES/2004-05/11/86, 15-11-2004	544350
PGES/2004-05/10/93, 15-12-2004	<u>417500</u>
	2090850

M/s Celcel Technologies (P) Ltd.

Bill no. & Date	Amount
PGS/2004-05/10/67, 25-10-2004	749830
PGS/2004-05/11/72, 05-11-2004	533770
PGS/2004-05/01/92, 12-01-2005	317050
PGS/2004-05/03/03, 07-03-2005	<u>864680</u>
	2465330

Thus, in the return of income total claim of Rs.45,56,180/- under the head sales promotion expenses has been made through accommodation bills obtained from the concerns run by Sh. S.K. Gupta.

Addition to the fixed Assets- *The Assessee firm has also declared to have incurred a total expenditure of Rs. 74,60,772/ on acquisition of fixed assets during the F.Y.2004-05. From the detail filed during the course of assessment proceedings, it is noticed that the following accommodation bills were obtained from the concerns of Sh. S.K. Gupta in respect of purchase of computers and claim of depreciation @ 60% was also made in the return of income.*

M/s Celcel. Technologies (P) Ltd.

<i>Bill no. & Date</i>	<i>Amount (Rs.)</i>
<i>PGS/2004-05/08/6J, 22-08-2004</i>	<i>2017800</i>
<i>PGS/2004-05/09/67, 05-09-2004</i>	<i>1008900</i>
<i>PGS/2004-05/09/73; 25-09-2004</i>	<i><u>918950</u></i>
	<i>3945650</i>

Claim of depreciation @ 60% in respect of the above comes to Rs. 23,67,390/-.

On the facts mentioned above, I have reason to believe that the income to the tune of Rs. 2,44,23,570/- has escaped assessment for the A.Y. 2005-06 for failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment within the meaning of section 147 of the Income-tax Act, 1961. Therefore, I propose to reassess aforesaid income and also any other income chargeable to tax which have escaped assessment.

Issue notice u/s.148 of the Income Tax Act, 1961.”

4. After assessee's participation in the proceedings u/s.148 the 'reasons recorded' were provided. Assessee then raised detailed objections before the Assessing Officer and also requested that the Assessing Officer to provide the copy of statement of Shri S.K. Gupta in relation to alleged accommodation entries received by the assessee firm and also the material in support of adverse inference in respect of various parties referred to in the 'reasons recorded'. However, the Id. Assessing Officer rejected the assessee's objection which has been incorporated in the assessment order from pages 3 to 8. Based on the aforesaid information as incorporated in the reasons recorded, the Assessing Officer has proceeded to make a disallowance of Rs.2,20,56,180/- and also disallowance of depreciation in respect of purchase of computers of Rs.23,67,390/-

5. Before the Id. CIT (A), assessee has challenged the validity of reopening u/s.148 mainly on the grounds that;

- Firstly, in the case of the assessee, assessment was completed u/s. 143(3) and there was no failure on the part of the assessee to disclose trully and fully all material facts, therefore, in view of *proviso* to Section 147, reopening of assessment completed u/s.143(3) cannot be reopened after the period of four years from the end of relevant assessment year. In support various decisions were also relied upon.
- Secondly, the copy of statement of Shri S.K. Gupta in support of allegation of the accommodation entry was never provided by the Assessing Officer during the entire re-assessment proceedings despite several requests and also no opportunity was given for cross-examination.

6. Ld. CIT (A) rejected the assessee's contention on the ground that though all the necessary details/documents were filed before the Assessing Officer, however all these documents are mainly paper trails which cannot be accepted in light of information received, as wherever accommodation entries are arranged all documentary evidences are prepared in order to justify the expenses. Even Shri S.K. Gupta during his statement has categorically admitted for providing accommodation entries which were not genuine This constitutes material for reopening and therefore, action taken by the Assessing Officer for reopening the assessment is fully justified. On merits also, he has confirmed the addition.

7. Before us, learned counsel for the assessee submitted that during the course of original assessment proceedings, the Assessing Officer has specifically raised queries with regard to each and every expenditure incurred and in response to which assessee has submitted the entire details, specifically with regard to advertisement, sales promotion, etc. along with bill and vouchers and the name of the parties. In support, he drew our attention to the letter dated 06.12.2007 filed by the assessee in response to the query raised by the Assessing Officer in the course of original assessment proceedings. Apart from that, assessee has also furnished all the agreements with the parties during the course of assessment proceedings. Further, all the payments were made through account payee cheques after deducting TDS. It was after examining all these details, Assessing Officer has passed the assessment order u/s. 143(3) vide order dated 19.12.2007. Now on the basis of search carried out in Shri S.K. Gupta's case on 12.12.2006 and based on information of the investigation wing, assessee's case has been sought to be reopened on the ground that some of the companies of Shri S.K. Gupta has provided accommodation entries with regard to various expenses. He submitted that even from the copies of the statement of Shri S.K. Gupta which was provided during the course of appellate proceedings, it can be seen that nothing is borne out from the said statement and further both Assessing Officer and Id. CIT (A) have referred to two different statements and in both the statements there is no reference of the assessee at all. It is a matter of record that in the case of Shri S.K. Gupta there was a retraction of his statement taken

during the course of search which has been noted by the Tribunal also in the case of Shri S.K. Gupta. In fact, in one of his affidavit filed before the authorities below he has admitted that he was also doing regular business from his companies and not all the entries are in the nature of accommodation. The entire statement was general in nature and also there was certain contradiction in his statements. He further submitted that, precisely in same set of matter in the case of **Subba Microsystem Ltd. vs. Add. CIT, Range 9, New Delhi in ITA No.05/Del/2011, Assessment Year 2005-06 dated 25.11.2011**, this Tribunal has deleted the said addition after detailed reasoning. Thus, such a reopening is bad in law.

8. On the other hand, learned Department Representative submitted that during the course of search in the case of Shri S.K. Gupta statement was recorded on 13.12.2006 and on 27.12.2006. His retraction was only by way of an affidavit and thereafter, again survey was conducted u/s.133A and second set of statements were recorded in the year 2007-08. In all his statements, he has categorically admitted that he was providing accommodation entries and any retraction by way of affidavit cannot be held to be valid. In support, he has strongly relied upon the decision of Hon'ble Delhi High Court in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd., reported in (2012) 342 ITR 169 (Del.)**. He further relied upon three judgments, (i) Phool Chand Bajrang Lal vs. ITO, (1993) 203 ITR 456 (SC), (ii) ITO vs. Purushottam Das Bangur, (1997) 224 ITR 362 (iii) **Sonia Gandhi vs. ACIT, (2018) 257 Taxman 515 (Del)**.

9. In rejoinder, learned counsel submitted that here in this case Assessing Officer has referred to statement of 2006, whereas the Id. CIT (A) is referring to some different statement of Shri S.K. Gupta. Here the main issue is of applicability of *proviso* to Section 147. What has to be seen is whether there was any failure on the part of the assessee to disclose fully and truly all material facts and here in this case all the relevant facts and material relating to various expenses were filed before the Assessing Officer during the course of original assessment proceedings and also assessee has duly deducted the TDS and deposited the same. Simply based on information which was already there prior to the conclusion of the assessment reopening cannot be justified, when firstly, no material was given to the assessee after it has participated in the re-assessment proceedings; and secondly, nowhere in the assessment record or any other material found, it can be inferred that either assessee has been found to be beneficiary or there is any mention of assessee anywhere. In fact, it is a matter of record that Shri S.K. Gupta has admitted that he has also carrying out certain genuine activity also. Thus, it cannot be held that there was any failure on the part of the assessee. He has also relied upon catena of judgments which are as under:

- “1. *Peethambra Buildcon Ltd. v. ITO* (ITA No. 637/D/18) (Del IT AT)
2. *Sabh Infrastructure Ltd. v. ACIT* (WPC 1357/2016)(25.09.17) (Del)
3. *Sabharwal Properties Industries P. ltd. v. ITO* [2016] 382 ITR 547 (Del)
4. *Madhukar Khosla v. ACIT* [2014] 367 ITR 165 (Del)
5. *CIT v. Multiplex Trading & Industrial Co. ltd.*[2015] 378 ITR 351 (Del)

6. *ACIT v. ICICI Securities Primary Dealership Ltd. [2012] 348 ITR 299 (SC) 52 - 53*
7. *Meadow Infradevelopers P. Ltd. v ITO [2018] 93 taxmann.com 397 (Del)*
8. *CIT v. S. Khader Khan Son [2013] 352 ITR 480 (SC)*
9. *Ms/.Andaman Timber Industries v. CCE (SC)*
10. *Bharti Infratel Ltd. v. DCIT [2019] 101 taxmann.com 285 (Delhi)”*

10. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as material referred to before us *qua* the issue of reopening u/s.148. Here, in this case, as stated above the original assessment was completed u/s. 143(3) after detailed scrutiny vide order dated 19.12.2007. As it transpires from the record, during the course of the assessment proceedings, Ld. Assessing Officer has duly required the assessee to submit the details of all the expenses incurred and debited to the P&L account including advertisement and publicity expenses, sales promotion expenses, etc. In response, the assessee had filed relevant bills, copy of accounts and the details. The relevant details in this regard produced before the Assessing Officer was as under:

M.S. Associates

Details of Advertisement & Result Publicity Expenses during the year 2004-2005.

<i>Bill No.</i>	<i>Bill date</i>	<i>Paid to whom</i>	<i>Amount</i>
404038	22.04.04	Censer Advertising (P) Ltd.	25,600.00
403110	01.04.04	Censer Advertising (P) Ltd.	3,036.00
2004- 2005/06/29	15.06.04	Era Advertising & Marketing Company Pvt. ltd.	1,775,880.00
2004-	15.06.04	Bolni Exim India Ltd.	1,491,435.00

2005/06/41			
2004-2005/06/36	22.06.04	Trump & Gates	1,133,500.00
2004-2005/06/39	24.06.04	PG Travels Hindustan. Com Pvt. Ltd.	1,140,810.00
2004-2005/06/59	15.09.04	Bolni Exim India Ltd.	1,491,435.00
2004-2005/06/75	22.09.04	Era advertising & marketing Company Pvt. Ltd.	1,750,880.00
2004-2005/09/60	24.09.04	PG Travels Hindust. Com Pvt. Ltd.	1,140,810.00
2004-2005/sept/59	22.09.04	Trump & Gates	1,133,500.00
108	01.11.04	Tarun Advertising Agency	32,000.00
186	14.12.04	Bisht Pack-N-Print	40,000.00
2004-2005/12/72	15.12.04	Bolni Exim India Ltd.	1,491,435.00
2004-2005/Dece/72	22.12.04	Trump & Gates	1,133,835.00
2004-2005/12/89	22.12.04	Era Advertising & marketing company Pvt. Ltd.	1,673,630.00
2004-2005/12/76	24.12.04	PG Travels Hindustan. Com Pvt. Ltd.	1,140,810.00
140	14.12.04	Creative Art	40,000.00
007	13.12.04	Mitali Graphix	70,000.00
2004-2005/03/105	14.03.05	Era Advertising & marketing company Pvt. Ltd.	1,770,630.00
2004-2005/Mar/93	11.03.05	Trump & Gates	1,133,835.00
2004-2005/03/86	15.03.05	Bolni Exim India Ltd.	1,491,435.00
2004-2005/03/89	15.03.05	PG Travels Hindustan.com Pvt. Ltd.	22,245,306.00

After examining the aforesaid details, Assessing Officer has accepted most of the expenses barring making certain disallowance of various other expenses like, telephone, tour and travel, car running, depreciation etc.

11. Now after the expiry of more than four year from the end of the relevant Assessment Year, the assessee's case has been sought to be reopened u/s.147 on the basis of information received from the Investigation Wing of department, wherein there is a mention about search and seizure action conducted in the case of Shri S.K. Gupta group of cases on 12.12.2006 and during the course of search it was found that he was providing accommodation entries in various forms and some of the companies belonging to him as noted in the reasons recorded were providing accommodation entries for various expenses. Certain bill numbers and dates have also been mentioned which pertains to the bills submitted by the assessee during the course of original assessment proceedings. Since some of the bills pertain to these companies belonging to Shri S.K. Gupta, therefore, from this it has been inferred by the AO that assessee has taken accommodation entry by way of bills for expenses from these companies relating to advertisement, publicity and sales promotion expenses. First of all, the nature of material received by the Assessing Officer from the Investigation Wing has neither been mentioned in the 'reasons recorded' nor in the assessment order. If certain information has been received from the Investigation Wing, then certainly it does constitute a relevant material to entertain prima facie 'reason to believe' u/s 147. However, after receiving such information, it is the Assessing Officer who has to independently apply his mind on the material so as to establish live link nexus between the information and material coming to him with the assessment records. He cannot have borrowed satisfaction from some

other authority based on letter, he has to first of all see, whether at the time of recording the reasons, he has the requisite material alongwith the information so as to draw any *prima facie* inference that assessee has failed to disclose fully and truly all material facts. Neither in the 'reasons recorded' nor in the assessment order, the Assessing Officer has referred to any material or document received from the investigation wing alongwith the letter as to whether Shri S.K. Gupta in his statement has stated that he has provided accommodation entries to the assessee or to someone else from these companies. Again in the assessment order, the same content of bills which were appearing in the earlier assessment records has been reproduced and asked the assessee to prove the genuineness of the claim. The assessee during the course of assessment proceedings has explained all the details along with books of account. If Assessing Officer is disbelieving the earlier scrutiny assessment and view taken by Assessing Officer by heavily relying upon the statement of Shri S.K. Gupta, then he should have himself perused the statement and the material to come to a *prima facie* belief before recording his reasons. The assessee after receiving the copy of 'reasons recorded' had specifically asked the Assessing Officer to provide the copy of statement of Shri S.K. Gupta about the alleged accommodation entry and also the material in support of which adverse inference is being sought to be drawn. However, no such material was ever confronted to the assessee by him either at the time of recording the reasons or during the course of entire re-assessment proceedings. This leads to a strong inference

Assessing Officer did not had even the statement and the material from the Investigation Wing at the time of recording the reasons on the basis of which Assessing Officer is seeking to reopen the assessment. It has been brought on record before us by the learned counsel that assessee even sought for information under the RTI Act filed before the Department to supply; i) the copy of information along with material received from Investigation Wing as referred in the reasons; ii) copy of forwarding letter through which above information was forwarded to the Assessing Officer; and iii) copy of approval u/s.151. However, as informed by him no such information has been provided till date. Even when this issue was challenged before the Id. CIT (A), the statement which has been provided, is the statement recorded on 20.11.2007 which is entirely different from the one as recorded in the reasons. The Assessing Officer has referred to information received during the course of search in the case of Shri S.K. Gupta on 12.12.2006. Even from a bare perusal of the statement of Shri S.K. Gupta recorded on 20.11.2007, it is seen that he has neither mentioned about any of the company listed in the 'reason recorded' nor there is any reference of any material that he was providing accommodation entries for the expenditure. In fact the list of companies which he has stated to have been providing accommodation entries were entirely different and none of the companies is figuring in that statement.

12. It is a trite law that, in a case where assessment has been completed u/s. 143(3) and more than four years has lapsed from the end of the relevant Assessment Year, then

Assessing Officer has to bring on record a tangible material to show that *prima facie* that there was failure on the part of the assessee to disclose fully and truly all material facts. If the same expenditure claimed has been allowed by the Assessing Officer during the course of original assessment proceedings, then it was all the more incumbent upon the Assessing Officer to bring on record that these expenses were actually bogus and for that he should have the relevant material with him including the statement of Shri S.K. Gupta that these companies had provided accommodation entry to the assessee. Simply based on an information of the investigation wing without any material or statement with the Assessing Officer, it is very difficult to fathom that Assessing Officer has independently applied his mind on such material so as to reach to a *prima facie* believe that income chargeable to tax has escaped assessment. Assessing Officer has to see the live link nexus between the materials gathered or brought on record which could *prima facie* show that assessee's claim was bogus. No doubt the Assessing Officer has to entertain only *prima facie* reason to believe and not conclusive finding before issuing notice u/s.148, but such *prima facie* believe has to be based on material before him and not merely blindly relying upon information from Investigation Wing. If such an information is duly corroborated with the material found and or the statement specifically referring to the assessee as a beneficiary of the accommodation entry or there is any reference to any of the companies through which assessee has transacted, then it can be reasonably presume that Assessing Officer had some *prima facie* reason to believe that

income chargeable to tax has escaped assessment. If a belief is simply based on an information *de hors* any material, then it cannot clothe the Assessing Officer with the jurisdiction to reopen a completed assessment u/s 143(3) or u/s 147.

13. As stated above, in the 'reason recorded', there is mention about information from the Investigation Wing stating that Shri S.K. Gupta has categorically admitted providing accommodation bills at a commission. But here in this case, as brought on record the Assessing Officer without examining the statement or any material sent by the Investigation Wing has not only sought to reopen the assessment but has also disbelieved the finding of the earlier assessment orders simply based on letter from the Investigation Wing. For reopening the assessment completed u/s. 143(3), the conditions of *proviso* to Section 147 has to be strictly met as the onus is heavily upon the Assessing Officer to show that that earlier disclosure made by the assessee which has been duly examined by the Assessing Officer is not correct, because the assessee's disclosure was erroneous and there is failure on the part of the assessee to disclose fully and truly all material facts. Here, the Assessing Officer in the reasons has failed to *prima facie* establish that there was some kind of a failure on the part of the assessee for disclosing all the material facts necessary for the assessment. Thus, we are of the opinion that the aforesaid reason does not clothe the Assessing Officer to acquire jurisdiction u/s.147 to reopen the completed assessment after the expiry of four years from the relevant Assessment Year in view of the *proviso* to Section 147. Accordingly, the entire proceeding initiated

u/s 147 is quashed. Consequently the assessment order is held as void-ab-initio.

14. In view of our aforesaid finding the additions on merits have become purely academic and same is dismissed as infructuous.

Order pronounced in the open Court on 30th April, 2019.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 30th April, 2019

PKK: