आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री रमेश सी0 शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1202 to 1204/JP/2018
निर्धारण वर्ष/Assessment Year : 1993-94 to 1995-96

Punsumi India Ltd. D-16, Meera Marg, Bani Park, Jaipur.	बनाम Vs.	The DCIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAEFP 0156 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by: Shri Dileep Shivpuri (Adv.),
Shri Pramod Patni (C.A.) &
Shri Abhishek Shivpuri (Adv.)

राजस्व की ओर से/ Revenue by : Shri P.P. Meena (ACIT)

सुनवाई की तारीख/ Date of Hearing : 30/04/2019
उदघोषणा की तारीख/Date of Pronouncement: 05 /07/2019

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

These three appeals by the assessee are directed against composite orders of the ld. CIT(A)-I, Jaipur dated 13.08.2018 for the assessment years 1993-94 to 1995-96 respectively.

2. This is second round of appeals as the issue of validity of reopening of the assessment was set aside to the record of the AO for

fresh adjudication and consequently these appeals arising from the order dated 19.03.2016 passed by the AO in the set aside proceedings. The background of the case is that the original assessment in this case was completed u/s 143(3) of the Act. Subsequently, notice dated 31.05.2001 U/s 148 of the Act was issued by the AO and the reassessment order was passed on 28.03.2003. The assessee contested the reassessment order before the Ld. CIT(A) including the legality and action of the AO in issuance of notice u/s 147/ 148 as an additional ground before the ld. CIT(A). Vide order dated 15.10.2004, the ld. CIT(A) decided the appeal on merit but not on the legal issue of notice U/s 147/48 of the Act. The department contested the relief allowed by the ld. CIT(A) before the Tribunal and the assessee filed a Cross Objection therein raising the issue of legality of notice U/s 147/148 of the Act and the reassessment order in addition to other grounds taken on merits of the case. The Tribunal passed a consolidated order dated 29.02.2008 for AY 1993-94, 1994-95 and 1995-96 but without dealing with legal issue of action u/s 147/148 of the Act by the AO which was also not dealt with by the ld. CIT(A). Subsequently, on a Miscellaneous Application

filed by the appellant u/s 254(2) of the Act, the Tribunal vide its order dated 19.08.2011 read with corrigendum dated 02.02.2012, recalled its consolidated order dated 29.02.2008 for deciding the legal issue on reopening of assessment afresh. Vide its order dated 28.02.2014, the Tribunal has set aside the reassessment order to the file of the AO for deciding the legal issue raised by the assessee. In the set aside impugned assessment order dated 19.03.2016, the AO has decided the issue against the assessee. The assessee challenged the orders passed by the AO in the set aside proceedings before the ld. CIT(A) but could not succeed. Accordingly, the assessee has raised common grounds in these three appeals as under:-

> *"1. The learned AO has erred in fact as well as in law in issuing the Notice dt. 31.05.2001 for reopening of the assessment and in framing the re-assessment u/s 147/148 of I.T. Act, 1961 without complying with the provisions of the act and the requirements of law and for also not sharing/communicating such "reasons to believe as recorded" with the satisfaction note as to 'escapement of income by the assessee' with the Assessee despite assessee's preliminary objection and requesting for supply of a copy of the same and thus failing to furnish a copy*

thereof to the assessee before completing the assessment as required in terms of the order of the Hon'ble Supreme Court of India in the case of G.K.N. Driveshafts (India) Ltd. v. CIT [2003] 259 ITR 19 (SC). The assessment thus framed by the AO deserves to be quashed/annulled.

2. The learned AO has erred in fact as well as in law in issuing the Notice for re-assessment without recording satisfaction as to the failure on the part of the assessee with respect to making of full and true disclosures of material facts which enables the AO to initiate proceedings after four years from the end of the assessment years and instead the internal approval referred to in the AO's order appearing to be that for the purposes of verification and confirmation of certain transactions which clearly indicating there being no formation of independent satisfaction for reopening of assessment.

3. The appellant prays leave to add to after and/or amend the aforesaid grounds of appeal at or before the time of hearing of appeal."

3. Ground no. 1 is regarding non furnishing of the reasons recorded for reopening of the assessment to the assessee. The ld. AR of the assessee has submitted that furnishing the reasons recorded for reopening of the assessee is mandatory condition as held by the Hon'ble Supreme Court in case of G.K.N.

Driveshafts (India) Ltd. v. ITO 259 ITR 19 (SC). The AO is duty bound to supply the reasons to the assessee and thereafter the objections against issuing notice U/s 148 of the Act shall be disposed off first before completing the reassessment. Since, the supply of reasons to the assessee and disposing of the objections prior to completion is a mandatory condition and therefore, after reassessment order was passed furnishing the reasons would not validate the reassessment order passed without supply the reasons. He has further submitted that despite the repeated request made by the assessee the AO did not supply the reasons to the assessee and therefore, the impugned order passed by the AO in the set aside proceedings without supply the reasons to the assessee is not valid and liable to set aside. In support of his contention, he has relied upon the following decisions:-

- Pr. CIT vs. V. Ramiah 103 taxmann.com 201(Kar.) which has upheld by the Hon'ble Supreme Court in case 262 taxman 16.
- Manjula Athur vs. ITO 91 taxmann.com 438 (Madras).
- CIT vs. Videsh Sanchar Nigam Ltd. 340 ITR 66 (Bombay).

Thus, the ld. AR has submitted that the impugned order as well as the reassessment order passed by the AO is not valid without supply the reasons to the assessee.

4. The ld. DR has submitted that these are set aside proceedings before the AO and there was no direction of the Tribunal to supply the reasons to the assessee but the grounds raised by the assessee were directed to be decided by the AO afresh. The grounds raised by the assessee in the first round of appeal there was no issue regarding non supply of the reasons but the jurisdiction of the AO is limited only to dispose off the ground raised by the assessee challenging the validity of reopening. He has relied upon the orders of the authorities below and submitted that the AO as well as the CIT(A) has elaborately dealt with this issue while passing the impugned order. The Assessing Officer has also reproduced the reasons recorded in the assessment orders passed in the set aside proceedings and therefore, there is no grievance left once the reasons itself reproduce by the AO in the assessment orders.

5. We have considered the rival submissions as well as the relevant material on record. These are not the appeals

challenging the reassessment order passed by the AO but these are the appeals challenging the set aside assessment order passed by the AO as per direction of this Tribunal vide order dated 28.02.2014. Since, initially the appeals and cross objections were decided vide order dated 29.02.2008 and thereafter on the misc. application filed by the assessee The tribunal vide order dated 02.09.2011 recalled the earlier order for deciding the legal issue raised regarding the validity of reopening. Subsequently, the appeals were again heard on the limited issue of validity of reopening and vide order dated 28.02.2014 the issue of validity of reopening was set aside to the record of the AO for deciding the same afresh after affording reasonable opportunity of being heard to the assessee. The relevant finding of the Tribunal in para 2.3 of order dated 28.02.2014 is as under:-

> *"2.3 After considering the rival submissions of both the parties and the materials available on record, we are of the considered opinion that after 01.04.1989, the powers of reopening have been widened to a greater extent. The AO has been vested with powers to reopen the completed assessment order. In case he has some material or information to form an opinion that the income has escaped assessment. He*

can resort to proceedings u/s 147 read with Section1 48 of the Act. Only in cases where all the material facts are supplied and are available before the A.O. at the time of framing of the assessment order and on the basis of those very material facts, the AO wants to reopen, it cannot be done legally. In order situations where the AO wants to change his opinion based on the same facts which he has while framing the assessment order he cannot revise the same. The third aspect is of limitation. The ld. AR has put forth host of submissions through his written submissions which are regarding 'barrowed satisfaction' and also change of opinion. The limitation issued has also been braked up somewhere in the written submissions and so is the case of no reasons recorded can be inferred from the written submissions of the ld. AR. But from the record, we are afraid that we do not find any mention of this grounds before the authorities or in any case they have cursorily referred to. Thus we are of the considered opinion that full and final facts regarding legal issue recorded by the bench are not available on record. The Tribunal being a final fact finding authority, it becomes imperative for us to cull out full and final facts pertaining to any ground raised before the Tribunal. Accordingly, we are of the consolidated opinion that the legal issued raised in both the years before us need to be restored back to the file of the AO so that he can decide them afresh after affording reasonable opportunity of being heard to the assessee. We do accordingly allow the legal grounds raised in both the appeals as well as C.O. to the file of the A.O. as directed above and treat the legal grounds raised therein as allowed for statistical

purposes only. Thus, the appeals as well as C.O. of the assessee are allowed for statistical purposes."

Thus, the assessee challenged the validity of reopening in the first round of appeal only on the ground that the AO got no reasons to believe that the income chargeable to tax has escaped assessment. All these contentions have been discussed by the Tribunal including the reopening based on borrowed satisfaction and on change of opinion but the issue of non supply of reasons recorded by the AO was not set aside by the Tribunal to the record of the AO. Further, we note that in the first round of appeals the issue raised before the Tribunal challenging the validity of reopening and were set aside to the record of the Assessing Officer for adjudication has been culled out by the AO as reproduced by the ld. CIT(A) at page 15 as under:-

1.The AO has no reason to believe that income chargeable to tax had escaped assessment. It was argued by the assessee before the Hon'ble ITAT that AO had not recorded any reasons for reopening.

2.The assessee argued before the Hon'ble ITAT that the assessment was reopened on the basis of 'borrowed satisfaction' and also 'change of opinion'.

3. The assessee contended before the Hon'ble ITAT that the assessment had been reopened by issue of notices beyond 4 years from the end of the concerned assessment years."

From these objections raised by the assessee before the Tribunal during the first round of appeal it cannot be inferred that the assessee raised any issue in non supply of reasons recorded by the AO. The only question which was raised is that the AO has not recorded any reasons for reopening however, we find that the Assessing Officer has reproduced reasons recorded in the order passed in the set aside proceedings as under:-

"Reasons for the belief that income has escaped assessment in the case of Punsumi India Ltd. A.Y. 94-95.

1. The legible copy of the Memorandum dated 30.08.2000 was received during the course of hearing of admission of application before settlement Commission, of Shri V.K. Bhargava, CMD, Punsumi India Ltd. on 23.05.2000. Para-II of the Memorandum issued by Enforcement Directorate to Punsumi India Ltd., Punsumi Foils & Components Ltd. Shri D.K. Bhargava, Puneet Bhargava and Madhu Bhargava for violating FERA provisions states as under.

"and whereas it further appears from the foregoing that during the financial years 90-91 to 95-96, M/s. Punsumi India Ltd. and M/s. Punsumi Foils & Components Ltd., Jaipur while engaged in the business of imports of raw material and machinery etc. from Japan, otherwise remitted foreign exchange by increasing actual value of goods to the tune of Rs.1.41 crores approximately and

as per secret plan and understanding between Mr. V.K. Bhargava, Managing Director of the said company and the foreign supplier as aforesaid, the said excess remittance was otherwise acquired by Shri V.K. Bhargava under the colour of oothmission but latter on brought into India over a period of time under the garb of credits in the NRE account, declaration under Immunity Scheme and payments received towards allotment of shares to NRIs (except an amount of US$ 13300) otherwise transferred to USA and paid to Shri Puneet Bhargava, a person resident outside India and spent towards benefits of Shri V.K. Bhargava and as mentioned in para-5 of this Memorandum with any general or special permission of RBI."

Enforcement Directorate has issued the Memorandum on the basis of the statements recorded of Shri V.K. Bhargava on various dates, In my view, as the Memorandum states that the company inflated the actual price of the goods imported, the amount of commission received by V.K. Bhargava needs to be reduced from the purchase price shown in this A.Y. 93-94 by the company on imports made from Erbis Engineering Company of Japan (Please refer to column-6 above for figures). Statements of V.K. Bhargava before the Enforcement Directorate and the Memorandum issued by the Enforcement Directorate dated 30.08.2000 have to be relied upon, also order of A.Y. 98-99 of Punsumi India Ltd. needs to be referred to.

2. Copy of page-216 received form the Central Excise & Customs Department, Bhiwadi through letter dated 23.2.2000 addressed to JCIT, Special Range-3, Jaipur mentions as under:

A) Bills entered in our name but not purchased by us
Year 93-94 (i.e. A.Y.94-95) Rs.3,16,023/-

B) Discount/sale-return credited by you but not in our book.

93-94 (i.e. A.Y. 94-95) Rs.27,743/-
Copy of page-214 mentions as under:

D) Debit note issued by us but not entered by you-Annexure-D
93-94 (i.e. A.Y. 94-95) Rs.8,35,092/-

During scrutiny proceedings of Punsumi India Ltd. For A.Y. 98-99, the assessee company explained that these were papers received from one AVM Traders, New Delhi. So they were, was confirmed on inquiry from AVM Traders, New Delhi and the discrepancies found were added back. Therefore, in the relevant A.Y. i.e. 94-95 needs to be reopened to confirm the sales made by Punsumi India to AVM Traders, New Delhi and whether these have been reflected in the books, of course these should match with the information obtained from AVM traders about the purchase made by them in A.Y. 94-95 from Punsumi India Ltd.

3. In A.Y. 98-99, on the basis of recommendations of CEIB, the interest that the company lost on making a deposit of Rs.74,00,000/- with the land lord M/s. G.G. Bhargava, HUF, in 92-93 was added back in view of the ratio of Madras High court decision in the case of K. Somasunderam reported in 238 ITR 939, as this deposit was found to be excessive. From A.Y. 93-94 to A.Y. 97-98 the proportionate interest on this deposit needs to be added back in the hands of the company and therefore, the assessments should be reopened."

Even the Assessing Officer has given the details in the impugned order that the reasons were duly recorded on 30.05.2001 and approval of Commissioner of Income Tax for the same has been received on the same day, i.e. on 30.05.2001 vide letter No. CIT/JPR/ITO(R&S)/2001-

02/301 dated 30.05.2001. Therefore, it is manifest from the record the reasons for reopening of the assessments were duly recorded by the AO before issuing the notice U/s 148 dated 31.05.2001. Thus, the reasons were also approved by the CIT as per communication dated 30.05.2001 as mentioned by the AO but there is no quarrel on the point that if the assessee has demanded the reasons recorded for reopening of the assessment then the AO is duty bound to supply the reasons and disposed off the objections if any filed by the assessee against the notice issued U/s 148 of the Act prior to the reassessment order to be passed by the AO. Though there is no provision in the Act for supply of reasons however, by considering the scheme of the provisions of reopening and reassessment under the Income Tax Act the Hon'ble Supreme Court in case of G.K.N. Driveshafts (India) Ltd. v. ITO(supra) has laid down the principle that recorded reasons must be furnished to the assessee when the assessee sought for reasons. It is not empty formality but the purpose is to enable the assessee to file objection to the same before the AO. Therefore, recording the reasons and furnishing the same to the assessee are mandatory so as to provide an opportunity to the assessee to file the objections if any and decide the same before

completing the reassessment. The disposal of the objections raised by the assessee against the notice issued U/s 148 of the Act is a mandatory condition which gives jurisdiction to the AO to complete the reassessment. This proposition of law is now settled and therefore, before passing the reassessment order the AO is required to dispose off the objection. However, in the case in hand since no objection was raised by the assessee against the notice U/s 148 of the Act before the AO at the time of reassessment proceeding and this issue was raised before the Tribunal in the first round of appeal. The Tribunal restored the issue to the record of the AO however, the merits of the reassessments has already attained finality and therefore, this set aside proceedings were only on the limited issue deciding the validity of reopening and not the valid of reassessment for not disposing of the objection before passing the reassessment order. In the set aside proceedings, the AO was having a limited jurisdiction to dispose off the issue which was remanded for adjudication and accordingly the issue of validity of reopening was disposed off. Hence, we find that the question of non supply of reasons does not amanets either from the order of this

Tribunal dated 28.02.2014 or from the objection raised by the assessee in the first round of appeal before the Tribunal. Though the assessee has raised some arguments in the proceedings however, once the reasons recorded were reproduced in the assessment order the question of non supply of reasons stand settled. The set aside order is not reassessment order but only disposing of the objections of the assessee against the reopening of the assessment. The reassessment order has already attained finality as decided by the Tribunal in the first round of appeal. In the second round of appeal we cannot go behind the order of this Tribunal in the first round of appeal. Accordingly, ground no. 1 of the assessee's appeal is nonest as not arising from the set aside proceedings hence, the same is dismissed.

6. Ground no. 2 is regarding the challenging the validity on the ground that the AO has not recorded the satisfaction as to the failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment.

7. Before us, the ld. AR of the assessee has submitted that the reopening is not based on the reasons to belief but the same

is based on the borrowed satisfaction as the AO has record the memorandum issue by the Enforcement Director as well as the communication from Central Excise and Custom Department. Since, the assessments were reopened after expiry of 4 years from the end the relevant assessment therefore, in the absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment the reopening is not valid. The ld. AR has further submitted that there is no such mention or allegation in the reasons recorded by the AO therefore, the reopening without jurisdiction and liable to be set aside. In support of his contention, he has relied upon the following decisions:-

- Nokia India (P.) Ltd. 251 Taxmann 85 (Delhi)
- Haryana Acrylic Manufacturing Co. vs. CIT 308 ITR 38.
- Wel Intertrade (P.) Ltd. & Anr. Vs. ITO 308 ITR 22.
- Poysha Investments (P.) Ltd. vs. ITO 20 taxmann.com 161.

The ld. AR has also submitted that there is no proper approval before issuing the notice U/s 148 of the Act as the approval is only mechanical without full application of mind.

8. On the other hand, ld. DR has relied upon the orders of the authorities below and submitted that the ld. CIT(A) has considered this issue in detail and has followed various decisions of Hon'ble Supreme Court as well as Hon'ble jurisdictional High Courts.

9. We have considered the rival submissions as well as the relevant material on record. The assessee has challenged the reopening of the assessment by raising the contention that in respect of A.Y. 1993-94 and 1995-96 the reopening is after expiry of 4 years from the relevant assessment years and the AO has not made any allegation in the notice issued U/s 148 that the income assessable to tax has escaped assessment due to failure of the assessee to disclose fully and truly all material facts necessary for the reassessment. Thus, the ld AR of the assessee has submitted that the reopening has been hit by the proviso to Section 147 of the Act. However, we do not find any substance in the contention of the ld AR in so far as the reasons recorded by the A.O. for reopening clearly shows that during the A.Y. 1993-94 and 1995-96, the assessee has imported raw material and machinery from Japan wherein foreign exchange was remitted by

increasing the value of goods to the tune of Rs. 1.41 crores (In A.Y. 1995-96) and as per the secret plan and understanding between Shri V.K. Bhargava, Managing Director of the assessee company and the foreign supplier, the said excess remittance was otherwise acquired by Shri V.K. Bhargava under the colour of commission and later on brought into the India over a period of time under the garb of credits in the NRIE account, declaration under immunity scheme and payment received towards allotment of shares to the NRI. The A.O. also observed in the reasons that the payment was made by U.S. company to Shri Punit Bhargava, a person resident outside India and spent towards benefit of Shri V.K. Bhargava. Thus, by wrongly claiming in the books of account, inflated purchases over and above the actual amount of purchases, the assessee has failed to disclose fully and truly all material facts necessary for his assessment for the relevant assessment years under consideration. As per the reasons recorded, the A.O. also found that there was bills in the name of assessee company but no purchases were affected, debit note issued but not entered in the books, cheques issued but not entered in the books in the A.Y. 1995-96. Similarly, in the A.Y. 1993-94, there was finding that the purchases of Rs. 1,68,427/- was entered in the books but no actual purchases

were made. Thus, from the reasons recorded for reopening, it is clear that there was escapement of income due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Merely because the A.O. has not mentioned such failure in the notice so issued U/s 148 will not make the assessee entitled to take benefit of proviso to Section 147 of the Act which clearly says that non failure of assessee to disclose fully and truly all material facts necessary for assessment is prerequisite for exonerating the assessee from the purview of Section 147 of the Act. Even as per Explanation-1 to Section 147 production before the A.O. of account books or other evidence from which material evidence could, with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of first proviso to Section 147. Therefore, the condition which empowers the A.O. to reopen the assessment did exist in the present case as he could have entertained a reasonable belief that material facts necessary for the assessment of income for the years in question were not truly and fully disclosed and there was an escapement of tax in consequence thereof our view is supported by the decision of the Hon'ble Supreme Court in the case of Kantamani Venkata Narayan & Sons 63 ITR 638. Accordingly, we hold that the

reopening of assessment completed U/s 143(3) even after four year from the end of the relevant assessment year was justified since there was failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment for the relevant assessment years 1993-94 and 1995-96 under consideration. It is pertinent to mention here that all the additions made by the A.O. in both the years after reopening of assessment having been not only confirmed by the ld. CIT(A) but also by the Tribunal. We hold accordingly.

9.1 As regards the reopening of the assessee for the assessment year 1994-95 since there was no original assessment U/s 143(3) of the Act and the return was processed U/s 143(1) therefore, the said reopening is not hit by the proviso to Section 147 of the Act and hence, it cannot be held invalid due to absence of the allegation that the assessee has failed to disclose fully and truly all material facts necessary for the assessment. For this assessment year we will examine the validity of reopening in the contest of other contentions raised by the assessee being the AO have no reasons to belief that the income chargeable to tax has escaped assessment and the reopening is based on borrowed satisfaction. We find that the reasons

recorded by the AO itself clearly made out a case of formation of belief that the income chargeable to tax on account of inflated purchases made by the assessee from Erbis Engineering Company of Japan and the differential amount was paid/remitted to Shri V.K. Bhargava, CMD of the assessee who has also approached the settlement commission against the memorandum issue by the Enforcement Director. Further, it was also found that there were unaccounted transactions of purchases, discount of return/ sales as well as some debit note were also issued which were not recorded in the books of accounts. These transactions were between the assessee and one AVM Traders, New Delhi as found by the Excise and Custom Department. Even during the assessment proceeding for the assessment years 1998-99, the AO detected all these irregularities of unaccounted transactions and recorded his satisfaction which is relevant for the assessment year 1994-95. Thus the reopening of the assessment year 1994-95 is not merely based on the memorandum of enforcement director but it is also based on the material found by the AO during the inquiry conducted in the proceedings for the assessment year 1998-99 which reveals

certain unaccounted transaction with AVM Traders constitute a tangible material forming to belief that the income assessable to tax has escaped assessment. Hence, we do not find any merits or substance in the contention of the ld. AR of the assessee that the reopening is based on borrowed satisfaction or there were no reasons to belief that the income assessable to tax has escaped assessment. As regards the contention of approval granted by the CIT we find that the Assessing Officer has given the details of the approval and therefore, once the reasons recorded by the Assessing Officer itself manifest the escapement of income then the said approval cannot be held mechanical. The ld. CIT(A) has considered this issue as under: -

> *"(c) It was the contention of the appellant that the 'reasons to belief' were recorded on the basis of borrowed satisfaction. It is to be noted that information has been received by the AO about the escapement of income by the appellant and after analyzing the same, the AO has independent reason to believe that the income had escaped assessment. It may be mentioned that in a number of judicial pronouncements, it has been held that proceedings u/s 147 of the Act could be initiated on the basis of investigation report.*

(c)(i) It may be mentioned that in the case of Ankit Agrochem (P.) Ltd. Vs JCIT [2018] 89 taxmann.com 45 (Rajasthan), it was held by the Hon'ble jurisdictional High Court of Rajasthan that the proceedings initiated u/s 147 of the Act on the basis of report received from DIT (Inv.) were valid. The relevant extracts are being reproduced as under:

> "■ *As per Explanation 2(b) to section 147, where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed the excessive loss, deduction, allowance or relief in the return, the same is deemed to be case where income chargeable to tax has escaped assessment. [Para 13]*
>
> ■ *In the instant case, a perusal of the reasons recorded by the Assessing Officer for issuing notice under section 148 reveals that during the assessment proceedings it was noticed that the assessee had received share application money from several entities which was utilised during the year and subsequently returned in financial year 2013-14. That apart, on further examination of certain information received from the Directorate of Investigation, which had carried the investigation in the case of the entities, details whereof has been set out in the reasons*

recorded, it was ascertained that those entities which were companies with no real business and are only engaged in business of providing accommodation entries of bogus nature to beneficiary concerns which was further confirmed by the directors/dummy directors/key persons of the said entities in their respective statements. Thus, on the basis of the material on record, Assessing Officer opined that the appellant company has received and utilised the share application money received from bogus sources lacking genuineness, creditworthiness, genuine identity, which fall within the purview of section 68. [Para 14]

- *It is true that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the Assessing Officer regarding the escapement of the income but then, while recording the reasons for belief formed, the Assessing Officer is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the Assessing Officer had cause or justification to know or suppose that income had escaped assessment. It is also well settled the sufficiency and adequacy of the reasons which have led to formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the Court. [Para 16]"*

(ii) It may be mentioned that the Hon'ble High Court of Gujarat in the case of Peass Industrial Engineers (P.) Ltd. Vs DCIT [2016] 72 taxmann.com 302 (Gujarat) considered the similar issue and held as under:

- *"Based upon the material/information received from the Competent Authority, Kolkata, the Assessing Officer has issued*

notice under section 148 for reopening of assessment, as from the material, the Assessing Officer found that there is a reasonable belief that income of the assessee has escaped assessment and, therefore, it is justified to reopen the assessment. [Para 7]

- *It is also emerging from the order passed by the Assessing Officer rejecting the objections submitted by the assessee that each and every material submitted by the assessee has been extensively dealt with and a detailed order came to be passed and the said order is supported by cogent reasons. From the material available, the Assessing Officer prima facie found that the assessee is also the beneficiary of 'K', who is well known entry operator across the country and to the extent of sizable amount, the assessee has also been benefited and this part of the income appears to have been escaped assessment in the belief of the Assessing Officer, the said belief cannot be intercepted by exercising extraordinary jurisdiction under article 226 of the Constitution. [Para 8]*
- *In the background of aforesaid circumstance available and reflected on record, it appears that the Assessing Officer has applied his mind and has rightly relied upon the information available before him while exercising the power to reopen the assessment.*
- *At the initial stage what is required is reason to believe, but not established fact of escapement of income. Therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen. In the background of facts, there is a specific information received about 'K' and it has been prima facie found that the assessee is also the beneficiary of the*

said 'K'. At this stage of the proceeding, the factum of said aspect whether the assessee is beneficiary or not is not to be finally adjudicated upon by the Assessing Officer. Therefore, the Court is not in a position to dwell into it, but only has to examine whether there is a reasonable belief arrived at or not. From the basis of aforesaid circumstance prevailing on record, it appears that the Assessing Officer is justified prima facie in arriving at conclusion to reopen the assessment. A liberty is always available to the assessee to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted. [Para 9]

- *In view of the aforesaid, the Assessing Officer was justified in issuing notice under section 148 and the reasons were sufficient enough to permit him to exercise jurisdiction to reopen the assessment. Even the order rejecting the objections also appears to the Court cogent enough as supported by valid reasons. [Para 11]*

(iii) In the case of HVK International (P.) Ltd. Vs DCIT [2016] 72 taxmann.com 208 (Gujarat), the Hon'ble High Court of Gujarat upheld the reopening u/s 148 of the Act on the basis of the report of the investigation wing. The head notes are reproduced as under:

"Where even though Assessing Officer relied on report of investigation wing that labour contractors were paid sizable amount of labour charges without such labour work having been done, he having applied his mind to materials on record and formed his own belief that income chargeable to tax had escaped assessment, notice for reopening assessment was justified"

(iv) In the case of Bright Star Syntex (P.) Ltd. Vs ITO [2016] 71 taxmann.com 64 (Bombay), the Hon'ble High Court of Bombay upheld the reopening u/s 148 of the Act on the basis of the report of the investigation wing even in a case wherein earlier assessment was completed u/s 143(3) of the Act. The head notes are reproduced as under:

"Where on basis of evidences collected and statement recorded during course of search of entry provider, Assessing Officer had reason to believe that unsecured loans received by assessee from certain persons escaped assessment, it could not be said that there was change of opinion."

(v) In the case of PCIT Vs Paramount Communication (P.) Ltd [2017] 79 taxmann.com 409 (Delhi), it was held by the Hon'ble High Court (head note) that:

"Section 69, read with section 147, of the Income-tax Act, 1961 - Unexplained investments (Bogus purchases) - Assessment years 2003-04 to 2005-06 - Reassessment was sought to be initiated on recording reason that information was received from Directorate of Revenue Intelligence (DRI) and passed on to revenue authorities that Central Excise Commissioner had detected bogus purchase made by assessee-company from company KIPL during relevant period - Whether said information would be tangible material 'outside' record - Held, yes - Whether to require revenue to disclose further details regarding nature of documents or contents thereof would be virtually rewriting conditions in section 147 and to add further conditions to nature of discussion/reasons that officer authorising notice would have to discuss in note or decision, would be beyond purview of Courts and would not

be justified - Held, yes - Whether, thus, there was valid authorisation and initiation of reassessment - Held, yes [Para 9] [In favour of revenue]"

It is pertinent to mention that the SLP filed by the appellant against the order of Hon'ble High Court was dismissed by the Hon'ble Apex Court in the case of Paramount Communications Ltd. Vs PCIT [2017] 84 taxmann.com 300 (SC).

(vi) In the case of Ankit Financial Services Ltd. Vs DCIT [2017] 78 taxmann.com 58 (Gujarat), it was held by the Hon'ble High Court (head note) that:

"Section 68, read with sections 147 and 151, of the Income-tax Act, 1961 - Cash credits (Reassessment) - Assessment year 2010-11 - Re-opening notice was issued to assessee-company on basis of material provided by Principal Director of Income-tax (Investigation) that in search carried out at premises of one PJ, assessee was found to have received bogus share applications from various bogus concerns operated by said PJ - Whether since assessee was beneficiary of accommodation entries provided by said PJ, in wake of information received, Assessing Officer had rightly assumed jurisdiction to re-open assessment - Held, yes [Para 7.3] [In favour of revenue]"

(vii) In the case of Yogendra Kumar Gupta Vs ITO [2014] 51 taxmann.com 383 (SC), it was held by the Hon'ble Apex Court (head note) that:

"Section 69A, read with section 147 of the Income-tax Act, 1961 - Unexplained moneys (Accommodation entries) - Assessment year 2006-07 - Assessing Officer noted that assessee had taken loans and advances from 'B' Ltd. and having accepted validity of those

transactions, completed assessment under section 143(3) - Subsequently, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries - On basis of said investigation report, Assessing Officer initiated reassessment proceedings - High Court upheld validity of reassessment proceedings as assumption of jurisdiction on part of Assessing Officer was based on fresh information - Whether special leave petition was to be dismissed - Held, yes [In favour of revenue]"

(viii) In view of the above judicial pronouncements, it is held that the AO was having its own independent reason to believe and there was no case of borrowed satisfaction as alleged by the appellant. Hence, this contention of the appellant is hereby rejected.

(d) It was the contention of the appellant that the AO has no reason to believe that the income chargeable to tax had escaped assessment. It is observed from the reasons recorded by the AO that on the basis of information in possession of the AO, which came to its knowledge after completion of the original assessment order that the appellant company has got over invoiced its import bills to the extent of approximately Rs. 1.41 Crore, bogus purchase of Rs. 1,68,427 and the loss of interest on excess deposit of Rs 74 Lac with the landlord, the AO has reason to believe that the income had escaped assessment. It is to be noted that at the time of issuance of notice u/s 148 of the Act, the AO should have prima facie reason to believe that the income had escaped assessment and he was not required to prove actual escapement of income at that point of time.

(d)(i) It may be mentioned that the Courts cannot look into the sufficiency of the reasons recorded by the AO for reopening the assessment u/s 147 of the Act. Reliance is placed on the decision of Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd. Vs ITO [1999] 236 ITR 34 (SC), wherein it was held by their lordship that:

> *"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."*

(e) It was the contention of the appellant that the assessment was reopened after 4 years from end of the relevant assessment year and thus, the proviso to section 147 is applicable. However, in the reasons recorded by the AO there was no mention about the failure of the appellant to disclose all facts material for its assessment. It is an admitted fact that proviso to section 147 is applicable to the

instant case under consideration. However, it is discernible from the reasons recorded by the AO that the appellant has not disclosed all the facts material for its assessment for the year under consideration and there was failure on its part to disclose such facts. Further, the information on the basis of which the AO has reason to believe that income had escaped assessment came to the notice of the AO after passing of the original assessment order and thus, there is no question of change of opinion as alleged by the appellant.

(f) It was the contention of the appellant that the borrowed satisfaction or reasons ultimately got dropped and therefore, such reasons do not survive. It is to be noted that these reasons may not have been survived for proceedings under other statuses, but certainly, the proceedings under the Income Tax Act has lead to detection of income as it appears that some additions were sustained by appellate authorities in income tax proceedings. Hence, this contention of the appellant is hereby rejected.

(ii) Therefore, in view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the AO was justified in reopening the case of the appellant for the year under consideration u/s 147 of the Act and was having reason to believe that income had escaped assessment. Further, there is no infirmity in the impugned assessment order, wherein the AO has dealt with the legal issues which were set aside to it by the Hon'ble ITAT by a speaking order. Hence, this ground of appeal is hereby rejected.

Accordingly, in view of the above facts and circumstances of the case, we do not find any error or illegality in the impugned order

of the ld. CIT(A) so far as the reopening of the assessment year 1994-95.

In the result, all appeals of assessee for the assessment years 1993-94 to 1995-96 are dismissed.

Order pronounced in the open court on 05/07/2019.

Sd/-	Sd/-
(रमेश सी0 शर्मा)	(विजय पाल राव)
(Ramesh. C. Sharma)	(Vijay Pal Rao)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 05/07/2019.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Punsumi India Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1202 to 1204/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar