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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No. & A.Y.	Assessee	Address	Department
1375/Del/2019, A.Y: 2011-12	Gopal Chand Mundhra and Sons PAN: AAAHG1928B	C-190, B-III, 3rd Floor, Block-C, Vivek Vihar, Phase-I, New Delhi.	ITO, Ward-55(5), New Delhi.
1721/Del/2019, A.Y: 2011-12	Damyanti Mundhra PAN: AAGPM1023P	- DO-	- DO-
1722/Del/2019, A.Y: 2011-12	Ramdev Mundhra PAN: AAIPM5877B	- DO -	- DO -
1523/Del/2019, A.Y: 2011-12	Shriya Devi Mundhra PAN: AADPD7008G	- DO -	- DO -
1524/Del/2019, A.Y. 2011-12	Gopal Chand Mundhra PAN: AAGPM1028G	- DO -	- DO -

Assessee by : Shri Kapil Goel, Advocate
Revenue by : Shri S.L. Anuragi, Sr.DR

Date of Hearing : 05.08.2019
Date of Pronouncement : 21.08.2019

ORDER

The above batch of appeals filed by the respective assessees are directed against the separate orders of the CIT(A)-19, New Delhi, relating to Assessment Year 2011-12.

2. Since identical grounds have been taken by all the assessees, therefore, they were heard together and are being disposed of by this common order.

3. First we take up ITA No.1523/Del/2019 in the case of Shriya Devi Mundhra as the lead case.

4. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 24th September, 2011 declaring the total income at Rs.6,89,494/-. Subsequently, the Assessing Officer recorded the following reasons for reopening of the assessment u/s 147 of the Act:-

> "Information has been received from Investigation Wing of the Income tax Department that large scale, manipulation had been done in the market price of shares of SPLASH MEDIA by a group of persons acting as a syndicate in order to provide entries of tax exempt long term capital gains to the assessee (beneficiary). According to the information available, the assessee had traded in the above scrip to the tune of Rs.2374500/- during the financial year 2010-11 and bogus LTCG amounting to Rs.2116776 /- had been facilitated to the assessee during the financial year 2010-11. Hence, I have reason to believe that the above income of Rs. 2116776/- chargeable to tax has escaped assessment for the asst, year 2011-12, within the meaning of sec.147 of the Income-tax Act."

5. Accordingly, notice u/s 148 of the IT Act was issued by the ITO, NCW-6(3), Chennai on 19th August, 2016 after obtaining necessary approval u/s 151 of the IT Act. Subsequently, the case was transferred to New Delhi in pursuance of the order dated 19th July, 2017 u/s 127 of the IT Act passed by the PCIT-9, Chennai. The assessee, in response to notice u/s 148 filed her return of income on 4th October, 2017 declaring total income of Rs.6,89,494/- which was the returned income declared in the original return of income. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown income from 'house property', 'income from short-term capital gain' and 'Income from other sources.' The assessee has also shown long-term capital gain of Rs.21,16,676/- and claimed the same as exempt u/s

10(38) of the Act. The long-term capital gain so claimed as exempt by the assessee consists of long-term capital gain of Rs.20,97,998/- on sale of shares of Splash Media & Infrastructure Ltd. (also known as Luharuka Media & Infra Ltd.). From the various details furnished by the assessee, the Assessing Officer inferred that such long-term capital gain shown by the assessee is not natural but is an arranged one. The Assessing Officer referred to the countrywide investigation conducted by the Directorate of Investigation, Calcutta to unearth the organized racket of generating bogus entries of long-term capital gain which is exempt from tax. He analysed the modus operandi of generating such long-term capital gain by unscrupulous persons to help converting the unaccounted money of certain persons and to accommodate other entities who want to book short-term loss. Rejecting various explanations given by the assessee, the Assessing Officer held that the amount of Rs.20,97,998/- claimed by the assessee as exempt long-term capital gain on sale of shares of M/s Splash Media is not genuine. He, therefore, brought the same to tax u/s 68 of the IT Act. Further, he made addition of Rs.1,04,900/- being 5% of the exempt long-term capital gain as commission for earning such bogus long-term capital gain u/s 69 of the IT Act as unexplained expenditure.

6. Before CIT(A), apart from challenging the addition on merit, the assessee challenged the validity of reassessment proceedings. However, the ld.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the validity of the reassessment proceedings and sustained the addition on merit.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> "1. On the facts and in circumstances of the case, the order dated 31/12/2017 passed by Income-tax Officer, Ward - 55(5), New Delhi [in short "Ld. AO"] under section 147 read with section 143(3) of the Income-tax Act [in short "the Act"]and uphold by the Commissioner of Income-tax (Appeals) - 19, New Delhi [in short "Ld. CIT(A)"] is bad in both the eye of law and on the fact.
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> 2. That on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that:
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> a. The AO was right in exercising jurisdiction u/s 148 of the Act; and
> b. The AO has passed his order u/s 147 in violation of the settled law and pivotal facts that existed on the date of assessment order.
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> 3. That on the facts and circumstances of the case, the addition to the tune of Rs. 20,97,998/- as made by the Ld. AO u/s 68 and upheld by the CIT(A) is bad at law and *void ab initio*.
>
> 4. That on the facts and circumstances of the case, the addition to the tune of Rs. 1,04,900/- as made by the Ld. AO u/s 69C and upheld by the CIT(A) is bad at law and *void ab initio.*
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> 5. That on the facts and in law, the Ld CIT(A) erred in not disposing ground taken before his esteemed office:
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> "Ground no. 3 : That on the facts and in law, the Ld AO erred in not providing copy of statement recorded in search and seizure operation and opportunity to cross examine of those parties."
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> 6. That on facts and in law the Ld. CIT(A) erred in not disposing ground taken before his esteemed office:
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> "Ground no. 5 : That on fats and in law AO erred in levying interest u/s 234A, 234B and 234C of the Act.
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> 7.1 All the above grounds are independent and without prejudice to other.
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> 7.2 That the appellant craves the right to add, modify, amend and delete the grounds of appeal during the course of hearing."

8. The ld. counsel for the assessee drew the attention of the Bench to the copy of reasons recorded, copy of which is placed at page 40 of the paper book. He submitted that the reasons recorded by the Assessing Officer are on the basis of vague information and there is no cause and effect relationship. The reasons do not show as to how this transaction is tainted. Referring to the decision of the Hon'ble Bombay High Court in the case of *South Yarra Holdings vs. ITO, vide Writ Petition No.3398 of 2018, order dated 1st March, 2019*, he submitted that the Hon'ble Bombay High Court in the said decision has held that reopening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer to issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment that reopening notice has to be issued. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Meenakshi Overseas Pvt. Ltd., ITA No.692/2016, order dated 26th May, 2017,* he drew the attention of the Bench to the following paragraphs:-

> "22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the

other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.

25. At this stage it requires to be noted that since the original assessment was processed under Section 143 (1) of the Act, and not Section 143 (3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."

9. Referring to the decision of the coordinate Bench of the Tribunal in the case of *M/s SBS Realtors (P) Ltd. vs. ITO, vide ITA No.7791/Del/2018, order dated 1st April,*

2019, he submitted that the coordinate Bench, after considering the decision of the Hon'ble Delhi High Court in the case of *Paramount Communication (P) Ltd., reported in 392 ITR 444,* has held that reopening of assessment on the basis of the report of the Investigation Wing is invalid where there is no crucial link between the information made available to the Assessing Officer and the formation of believe of escapement of income. He accordingly submitted that since the reopening of the assessment was made on the basis of some vague/hollow information and the Assessing Officer has not applied his mind independently, therefore, such reopening of assessment is not valid and accordingly the subsequent proceedings are to be held as *void ab initio*.

10. In his second limb of argument, the ld. counsel for the assessee drew the attention of the Bench to the form of recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of Addl./Joint Commissioner of Income-tax and Commissioner of Income-tax, copy of which is placed at page 40 of the paper book. Referring to column 13 of the said proforma, he drew the attention of the bench to the remarks/approval of the PCIT-9, Chennai where it has been mentioned as under:-

"Yes. I am satisfied."

11. Similarly, in column 12, the Joint Commissioner of Income-tax, while giving his approval, has mentioned as under:-

"Recommended for approval u/s 147 of the Act."

12. Referring to the decision of the coordinate Bench of the Tribunal in the case of *ITO, Ward-17(4), New Delhi vs. Virat Credit & Holdings Pvt. Ltd., ITA*

No.89/Del/2012 and CO No.57/Del/2012, order dated 9th February, 2018, the ld. counsel for the assessee drew the attention of the Bench to para 17 of the order and submitted that where the Addl. CIT has written: "Yes. I am satisfied", the Tribunal, following various decisions has held that such approval is not in accordance with law and, accordingly, the reassessment proceedings were held to be invalid. Referring to the decision of the Tribunal in the case of *Raghav Technology P. Ltd. vs. ITO, vide ITA No.1144/Del/2018, order dated 29th April, 2019*, he submitted that here also where the Pr. CIT while giving approval has simply mentioned: "Yes. I am satisfied." The Tribunal, following various decisions including the decision of the Hon'ble Delhi High Court in the case of *N.C. Cables Ltd. and United Electrical Company Pvt. Ltd.,* has held that the reassessment proceedings should be treated as not in accordance with law since the approval has been given in a mechanical manner without due application of mind by the approving authority. He accordingly submitted that since both the approving authorities have given the approval in a mechanical manner, therefore, such reassessment proceedings are to be held as not in accordance with the law and has to be quashed.

13. So far as the merit of the case is concerned, the ld. counsel for the assessee submitted that the shares were purchased during the F.Y. 2009-10 relevant to assessment year 2010-11 and were sold during the assessment year 2011-12. The shares were held for more than 12 months. The assessee has filed the copy of contract note along with bill of broker; the ledger account of the trader M/s Comfort Securities

Ltd. for F.Y.s 2009-10 and 2010-11; copy of demat account with M/s Bonanza Portfolio; the bank account showing the payment for purchase of shares and receipt of sale of shares and this fully explains the genuineness of the purchase and sales and, therefore, the lower authorities are not justified in disbelieving the long-term capital gain earned by the assessee which has been claimed as exempt u/s 10(38) of the IT Act. He accordingly submitted that both legally as well as factually the addition is not sustainable.

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). So far as the argument of the ld. counsel for the assessee that the Assessing Officer has recorded the reasons on borrowed satisfaction and has not applied his independent mind is concerned, the ld. DR, referring to the decision of the Hon'ble Supreme Court in the case of *Raymond Woollen Mills vs. ITO reported in 236 ITR 34* submitted that in determining whether commencement of reassessment proceedings was valid or not it has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. Referring to the decision of the Hon'ble Supreme Court in the case of *Yogendra Kumar Gupta vs. ITO* reported in 227 Taxman 374 (SC), he submitted that the Hon'ble Supreme Court in the said decision has held that where subsequent to completion of original assessment, the Assessing Officer, on the basis of search carried out in case of another person, came to know that loan transaction of the assessee with a financial company was bogus as the said

company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceedings in case of the assessee. He also relied on the following decisions for the above proposition:-

i) Yuvraj vs. Union of India (2009) 315 ITR 84 (Bom);

ii) ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC);

iii) Devi Electronics Pvt. Ltd. vs. ITO, 2017-TIOL-92-HC-MUM-IT;

iv) Pranawa Leafin (P) Ltd. vs. DCIT (2013) 33 taxmann.com 454 (Bombay);

v) Acorus Unitech Wireless (P) Ltd. vs. ACIT (2014) 362 ITR 417 (Del);

vi) Amit Polyprints (P) Ltd. vs. DCIT (2018) 94 taxmann.com 393 (Guj);

vii) Aaspas Multimedia Ltd. vs. DCIT (2017) 83 taxmann.com 82 (Guj);

viii) Murlibhai Fatandas Sawiani vs. ITO 2016-TIOL-370-HC-AHM-IT;

ix) Ankit Agrochem (P) Ltd. vs. JCIT (2018) 89 taxmann.com 45 (Raj);

x) Rakesh Gupta vs. CIT (2018) 93 taxmann.com 271 (P&H);

xi) Abhishek Jain vs. ITO (2018) 94 taxmann.com 355 (Del);

xii) Home Finders Housing Ltd. vs. ITO (2018) 94 taxmann.com 84 (SC); &

xiii) Baldevbhai Bhikhabhai Patel vs. DCIT (2018) 94 taxmann.com 428 (Guj).

15. So far as the second limb of the argument of the ld. counsel for the assessee that the approving authorities have given the approval in a mechanical manner is concerned, he submitted that the law does not mention anywhere the manner in which the approving authority has to give its approval. The judicial decisions relied on by

the ld. counsel for the assessee also nowhere mention as to how it should be written while giving approval.

16. So far as the merit of the case is concerned, the ld. DR, referring to the decision of the Hon'ble Delhi High Court in the case of *Udit Kalra vs. ITO, ITA No.220/2019 & CM No.10774/2019, order dated 8th March, 2019*, submitted that the Hon'ble High Court has dismissed the appeal filed by the assessee and upheld the order of the Tribunal upholding the addition u/s 68 on account of such long-term capital gain on penny stock claimed as exempt u/s 10(38). He also relied on the following decisions where such claim of exemption u/s 10(38) on account of long-term capital gain earned from trading of penny stocks has been disallowed and the appeals filed by the assessees have been dismissed:-

i) Unit Kalra vs. ITO, ITA No.6717/Del/2017, order dated 08.01.2019;

ii) Anip Rastogi vs. ITO, ITA No.3809/Del/2018 & Anju Rastogi vs. ITO, ITA No.3810/Del/2018, order dated 08.01.2019;

iii) Pooja Ajmani vs. ITO, ITA No.5714/Del/2018, order dated 25.04.2019;

iv) Sanat Kumar vs. ACIT (2019-TIOL-1296-ITAT-DEL);

v) Sanjay Bimalchand Jain L/H Shantidevi Bimalchand Jain vs. CIT (2017) ITA No.18/2017 (Bombay High Court);

vi) Chandan Gupta vs. CIT (2015) 54 taxmann.com 10 (P&H);

vii) Balbir Chand Maini vs. CIT (2011) 12 taxmann.com 276 (P&H);

viii) Usha Chandresh Shah vs. ITO (2014-TIOL-1459-ITAT-MUM);

ix) Ratnakar M Pujari vs. ITO 2016-TIOL-1746-ITAT-MUM;

x) Abhimanyu Soin vs. ACIT, 2018-TIOL-733-ITAT-CHD;

xi) Arvind M Kariya vs. ACIT, ITA No.7024/Mum/2010;

xii) ITO vs. Shamim M Bharwani (2016) 69 Taxmann.com 65.

17. He accordingly submitted that the order of the CIT(A) be upheld.

18. I have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the case of the assessee was reopened u/s 147 by recording the reasons and after obtaining approval from the JCIT and the PCIT on the basis of the information received from the Investigation Wing of the Department that the assessee is a beneficiary of accommodation entry of bogus long-term capital gain. The reasons so recorded by the Assessing Officer has already been reproduced in the preceding paragraphs and, therefore, the same is not being reproduced here to avoid repetition. However, a perusal of the column No.12 and 13 of the form for recording the reasons for initiating the proceedings u/s 147 and for obtaining the approval of the Addl./Joint CIT, copy of which is placed at page 40 of the paper book, reveals that the JCIT while giving his approval has mentioned as under:-

"Recommended for approval u/s 147 of the Act."

19. Similarly, the Pr. CIT, while giving his approval has mentioned as under:-

"Yes. I am satisfied."

20. I find the coordinate Bench of the Tribunal in the case of *M/s Virat Credit & Holdings Pvt. Ltd. (supra)* while deciding an identical issue has quashed the reassessment proceedings where the approving authorities while giving approval has simply mentioned "Yes. I am satisfied." The relevant observations of the Tribunal from para 10 onwards read as under:-

> "10. First of all, ld. AR for the assessee company drew our attention towards sanction accorded by the Addl.CIT for reopening of the assessment obtained by moving an application under Right to Information Act, 2005, available on file as Annexure 'A'. Perusal of the sanction accorded by Addl. CIT in the prescribed proforma shows that there is a question no.13 viz. :
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> > "13. Whether the Addl. CIT is satisfied on the reasons recorded under section 147 that it is a fit case for issue of notice under section 148 of the IT Act.
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> 11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written "Yes. I am satisfied." No doubt, columns of reasons recorded was there and it is also mentioned in column no.12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.
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> 12. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it has proved on record that the sanction is merely mechanical and Addl.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act.
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> 13. Even AO while recording the reasons for initiating the reopening of assessment has not applied his mind independently. When we peruse the reasons recorded, available at pages 31-32 of the paper book, the entire reasons have been based on the statement of one Shri P.K. Jindal, who has furnished the list of companies stated to be not doing any business activities but engaged in providing accommodation entries. Before issuing the notice AO appeared to have not examined the profile of the said companies to arrive at a logical conclusion so as to issue the notice u/s 148 of the Act. When this fact is examined in the light of the completed assessment of the assessee u/s 143 (3), all the documents

concerning share application money, now available at pages 1 to 30 of the paper book, were supplied to the AO. This fact has not been taken into consideration by the AO before initiating the proceedings u/s 147/148 of the Act. However, since reopening of assessment in this case is otherwise not sustainable, we are not entering into any merits.

14. Hon'ble Supreme Court in case cited as CIT vs. S. Goyanka Lime & Chemical Ltd. - (2015) 64 taxmann.com 313 (SC) examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording "Yes. I am satisfied." And held that reopening on the basis of mechanical sanction is invalid by returning following findings :-

> " Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under. section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee] Search and Seizure-Procedure for black Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and CO No.57/Del/2012 147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'-Action for sanction was alleged to be without application of mind and to be done in mechanical manner-Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such• consideration, both Appellate authorities interfered into matter- No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."

15. The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings :-

" Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre- condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

16. Furthermore, perusal of the noting sheet dated 09.03.2010 to 30.12.2010 made available to the Bench for perusal shows that only AO has recorded that Addl.CIT has considered the reasons recorded before according the sanction, however even no prima facie material is there, if Addl.CIT has applied his mind by considering the reasons recorded before according the sanction. We are of the considered view that the AO who has recorded the reasons cannot enter into the mind of the sanctioning authority (Addl.CIT) discharging the quasi-judicial function for according valid sanction for reopening the assessment.

17. Moreover, according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Addl.CIT as required u/s 151 of the Act. When the Revenue Department is manned by highly qualified officers they are to evolve legally sustainable standard operating procedure for discharging quasi-judicial function.

16. Hon'ble High Court of Delhi in case cited as SABH Infrastructure Ltd. vs. ACIT in WP (C) 1357/2016 order dated 25.09.2017 has issued guidelines to the

Revenue authorities while deciding the issue of reopening u/s 147/148 of the Act. Operative part of which is reproduced as under:-

> "19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:
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> (i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;
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> (ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re- opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;
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> (iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;
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> (iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed."

17. In view of what has been discussed above, reassessment opened by the AO in this case is not sustainable in the eyes of law, hence hereby quashed. Consequently, cross objection filed by the assessee company stands allowed and the appeal filed by the Revenue has become infructuous.

21. I find the Tribunal in the case of *Raghav Technology Pvt. Ltd. (supra)* while deciding an identical issue has also quashed the reassessment proceedings under similar circumstances by observing as under:-

> "8. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the case of the assessee was reopened by the Assessing Officer after recording reasons and issue of notice u/s 148 as per the provisions of section 147 and 148 of the Act on the basis of the information received from the Investigation Wing that the assessee is a beneficiary of accommodation entry obtained from Surendra Kumar Jain group of cases towards introduction of share capital of Rs.35 lacs. I find, the assessee has taken a specific ground before the CIT(A) challenging the validity of reassessment proceedings on the ground that approval u/s 151 of the Act of the superior authorities is not in accordance with law. The relevant ground of appeal No.2 taken before the CIT(A) reads as under:-
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> > "2. That under the facts and circumstances, approval u/s 151 of the superior authorities is not accordance with law and otherwise also mechanical and without application of mind, making the re-asstt. Proceedings unsustainable in law."
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> 9. I find the above ground has been extracted by the CIT(A) in the body of the order. She has also mentioned at para 3.2 of the order that the assessee contended that there was no proper compliance of the provisions of section 151 of the IT Act, 1961. However, her finding on this issue is missing in the entire order. A perusal of the approval given u/s 151, copy of which is placed at pages 20 and 21 of the paper book shows that the Pr. CIT while giving approval has simply mentioned as under:-
>
> > "Yes. I am satisfied."
>
> 10. I find, the Hon'ble Delhi High Court in the case of United Electrical Company Pvt. Ltd. (supra) while deciding an identical issue has held that the power vested in the commissioner u/s 151 to grant or not to grant approval to the Assessing Officer to reopen an assessment is coupled with a duty. The commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. That power cannot be exercised casually and in a routine manner. Accordingly, the Hon'ble High Court quashed the notice, since there was no proper application of mind by the Addl.CIT.
>
> 11. I find the Hon'ble Delhi High Court in the case of *Pr. CIT vs. N.C. Cables Ltd.*, while deciding an identical issue has held that section 151 of the Act

clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice has to apply his mind and form an opinion. Mere appending of the expression 'approved' says nothing. It is not as if the commissioner has to record elaborate reasons for agreeing with the noting put up before him. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. When such exercise appears to have been ritualistic and formal rather than meaningful which is the rationale for the safeguard of an approval by a higher ranking official, the finding of the Tribunal quashing the reassessment proceedings cannot be disturbed.

12. I find the Hon'ble Supreme Court in the case of *Chhugamal Rajpal vs. S.P. Chaliha & Ors (supra)* has held that where the commissioner had mechanically recorded permission and the important safeguards provided in the section 147 and 151 were lightly treated by the officer and the commissioner, the notice issued u/s 148 was held as invalid. The various other decisions relied on by the ld. counsel for the assessee in the paper book also support his case. Since, in the instant case, admittedly, the ld. PCIT while granting approval has simply mentioned 'Yes. I am satisfied' therefore, following the decisions of the jurisdictional High Court (cited supra) on this issue which are binding on the Tribunal, the reassessment proceedings are to be treated as not in accordance with the law since the approval has been given in a mechanical manner without due application of mind by the approving authority. I, therefore, allow ground of appeal No.2 by the assessee challenging the validity of reassessment proceedings. Since the assessee succeeds on this legal ground, the various other grounds raised by the assessee are not being adjudicated being academic in nature."

22. Since, in the instant case, both the approving authorities have given approval in a mechanical manner without due application of mind, therefore, such reassessment proceedings have to be treated as not in accordance with law and has to be quashed.

23. Even otherwise also, a perusal of the reasons recorded show that the notice has been issued in a mechanical manner without independent application of mind by the Assessing Officer and the satisfaction by the Assessing Officer is based on borrowed satisfaction of the Investigation Wing. The Assessing Officer, without applying his mind, has simply, on the basis of the information of the Investigation Wing, jumped to

the conclusion that there is escapement of income. The reasons so recorded do not show that there is any application of mind by the Assessing Officer for reaching the conclusion that there was escapement of income except the information from the Investigation Wing. The Hon'ble Delhi High Court in a number of decisions has held that reopening of assessment on the basis of report of the Investigation Wing without independent application of mind by the Assessing Officer is not in accordance with law and accordingly the reassessment proceedings have been quashed. The Hon'ble Delhi High Court recently in the case of *South Yarra Holdings vs. ITO, vide Writ Petition No.3398 of 2018, order dated 1st March, 2019*, at para 7 of the order has observed as under:-

> "7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued."

24. The Hon'ble High Court in the case of PCIT vs. Meenakshi Overseas Pvt. Ltd., vide ITA 692/2016, order dated 26th May, 2017, has observed as under:-

> "19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.
>
> 20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the

information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to be believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act."

25. I find the coordinate Bench of the Tribunal in the case of *M/s SBS Realtors (P) Ltd. vs. ITO, vide ITA No.7791/Del/2018, order dated 1st April, 2019*, has also quashed

the reassessment proceedings based on the information provided by the Investigation Wing without any independent application of mind. It was held that there was no tangible material which formed the basis for the belief that income has escaped assessment. The various other decisions relied by the ld. counsel also supports his case. Since, in the instant case, the reopening of the assessment has been made on the basis of information received from the Investigation Wing and there is no independent application of mind by the Assessing Officer and such reopening is made on the basis of borrowed satisfaction, therefore, such reopening is not in accordance with law and ha to be quashed. Accordingly, such reassessment proceedings have to be treated as not in accordance with law and has to be quashed.

26. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed.

ITA Nos. 1375/Del/2019 (Gopal Chand Mundhra and Sons); 1721/Del/2019 (Damyanti Mundhra); 1722/Del/2019 (Ramdev Mundhra); 1524/Del/2019 (Gopal Chand Mundhra).

27. In these appeals also identical grounds have been taken by the respective assessees and in all these cases the approving authorities have given approval to the reopening of assessment in a mechanical manner without due application of mind. Therefore, following the reasons given in the preceding paragraphs, the reassessment proceedings initiated in the case of these assessees are also held to be not in accordance with the law and are accordingly quashed.

28. In the result, all the five appeals filed by the respective assessees are allowed.

The decision was pronounced in the open court on 21.08.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 21st August, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi