INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 4565/Del/2014
Asstt. Year: 2005-06

Raghvi Finance Ltd. 10, Community Centre-II, Ashok Vihar, Phase-II, New Delhi 110 063 PAN AAACR5879F	Vs.	ITO Ward-15(1) New Delhi.
(Appellant)		**(Respondent)**

Assessee by:	Shri Kapil Goel, Advocate
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	23/09/2019
Date of pronouncement	27/09/2019

O R D E R

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is filed by the assessee against the order of the Ld Commissioner of Income Tax (Appeals) {CIT (A)} dated 20.06.2014 and pertains to assessment year 2005-06.

2.0 The brief facts of the case are that assessee filed its return of income on 31.10.2005 declaring income of Rs 72,222/-. The return of income was initially processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act). Subsequently,

information was received from the CIT Central II, New Delhi vide letter no CIT(C)/II/2011-12/20168 dated 15.03.2012 which indicated that one Shri Aseem Kumar Gupta had provided accommodation entries to several beneficiaries. Therefore, notice u/s 148 of the Act was issued vide dated 29.03.2012 in the case of the assessee. Assessee's objection to reopening were disposed off by the Assessing Officer (AO) vide order dated 14.12.2012. Assessment order u/s 147/144 of the Act was passed after making following additions:

i) Rs 600,000/- on account of alleged accommodation entry as referred to in the reasons recorded)
ii) Rs 6,000/- (on account of alleged expenditure to obtain the said accommodation entry u/s 69C of the Act)
iii) Rs 970,000/- (on a/c of increase of share capital after excluding Rs 600,000 as added above as taken from the assessee's balance sheet)
iv) Rs 62,80,000/- (on a/c of increase of share premium as taken from the assessee's balance sheet)

2.1 The assessment was made at total income of Rs 79,28,220/- as compared to the returned income of 72,222/-.

2.2 In appeal before the Ld CIT-A , various legal grounds were taken challenging the assumption of jurisdiction u/s 148 of the Act and also the additions made were challenged on merits.

On legal and merits, both aspects, the Ld. CIT-A confirmed the AO's action and sustained the AO's order except for allowing marginal relief of Rs 3,000/- on a/c of alleged expenditure incurred by the assessee in obtaining the said entry.

2.3 Now the assessee is before this Tribunal (ITAT) in appeal and the main ground argued by the assessee before us relates to assumption of jurisdiction u/s 147 of the Act. The relevant ground as argued before us is reproduced below for the sake of ready reference:

> *"That notice issued u/s 148, subsequent order passed u/s 147 and impugned order passed by Ld CIT-Appeals all are bad in law, because of non fulfillment of mandatory jurisdictional conditions specified under the Act"*

3.0 The Ld. Authorised Representative (AR), at the outset, drew our attention to the reasons recorded u/s 148 of the Act. Elaborating his case, the Ld AR further drew our attention to a letter dated 04/12/2012 addressed to the DCIT, Central Circle – 9, New Delhi and issued by the Income Tax Officer, Ward 15 (1), New Delhi and referring to the said letter, it was argued by the Ld. AR that when the reasons were recorded by AO, the basic information and material which was required to reopen the case

was itself not available with the AO at that relevant time. It was submitted that in the said letter it is clearly stated that the AO had made the impugned reopening merely and solely on the basis of a letter of the CIT-Central without anything more. It was submitted by the Ld. AR that in this very same letter it is mentioned that everything which was required to be available at the time of recording of reasons was asked for first time namely:

i) *Copy of statements recorded during the course of search/survey/assessment proceedings of the person who has/have admitted that he/she/it was/were engaged in providing accommodation entry*
ii) *Copies of all bank accounts for FY 2004-2005 showing the transaction*
iii) *Copies of all documents which indicate that the person searched/surveyed were engaged in business of providing accommodation entries*
iv) *Copies of affidavit/return of income/balance sheet of entry operator for the relevant period*
v) *Any other document which can prove that the assessee assessed in this ward has either given entry or taken accommodation entry*
vi) *Any other document which could be considered that the same will be helpful in framing the assessment so that the order stand legally justified in the eyes of law*

3.1 It was argued by the Ld. AR that in view of the aforesaid letter, the reopening was based on the borrowed satisfaction of CIT Central II, New Delhi and was without an independent application of mind. Various case laws were relied upon by the Ld. AR in this regard.

3.2 It was further argued by the Ld AR that firstly the reasons in the present case do not state as to what was the exact information received from the investigation wing/CIT-Central *vis a vis* assessee's subject transaction of Rs. 600,000/- so as to *prima facie* treat the same as an accommodation entry. It was submitted that reasons recorded merely stated general and vague facts of one search u/s 132 of the Act on one Shri Aseem Gupta without bringing out anything specific to correlate the said search operation on Shri Aseem Gupta with the assessee so as to implicate the assessee. It was submitted by the Ld. AR that the reasons recorded did not divulge certain crucial facts viz: i)existence of statement, if any, recorded of Shri Aseem Gupta during said search operation u/s 132 of the Act; ii) whether the said statement (if any) mentioned and correlated the assessee's impugned transaction; iii) existence of incriminating material (if any) unearthed from said search operation u/s 132 of the Act;

iv) correlation of the said incriminating material to assessee's subject transaction; v) inquiry, if any, made by the AO on the subject matter with respect to the information received by the AO from another wing prior to the reopening of case u/s 148 of the Act; vi) any specific and particular tangible material to form valid belief to implicate the assessee's transaction as accommodation entry; and vii) live nexus between the search on Shri Aseem Gupta and the inference to hold the assessee's transaction as accommodation entry. It was submitted that these crucial facts were missing *vis a vis* the reasons recorded.

3.3 The Ld. AR pleaded for quashing of the reopening being based on invalid and unlawful reasons based on borrowed satisfaction and were grossly lacking independent application of mind.

3.4 Various case laws were also relied upon by the Ld. AR which were namely:

i) Delhi ITAT G bench decision in SBS realtors case order dated 01/04/2019;
ii) Hon'ble Delhi High court decision in case of G&G Pharma Limited 384 ITR 147
iii) Hon'ble Delhi high court decision in case of Sabh Infrastruture Limited 398 ITR 198

iv) Hon'ble Delhi high court decision in case of Meenakshi overseas 395 ITR 677

v) Kolkata Bench ITAT decision in case of Rozelle Sales & Services Pvt. Ltd. order dated 30/08/2019

4.0 The Ld. Senior Departmental Representative (Sr. DR) vehemently supported the reasons recorded in the present case and countered the arguments of the Ld. AR. It was argued that merely some kind of correspondence of the AO with the DCIT, Central Circle 9, New Delhi, subsequent to the reopening cannot be the basis to infer absence of required material at the stage of issuance of notice u/s 148 of the Act.

4.1 The Ld. Sr. DR also stated, relying on the Hon'ble Delhi High Court's judgment in the case of Sonia Gandhi (order dated 10/09/2018), that in Para 70 it is held that:

> *"70. The entire premise of the reassessment notices in this case is that the nondisclosure of the taxing event, i.e. allotment of shares (and the absence of any declaration as to value) deprived the AO of the opportunity to look into the records. In the case of Mr. Rahul Gandhi, no doubt, the assessment originally completed, was under Section 143 (3). Had he disclosed in his returns or any related documents about the event (share acquisition) the primary fact would have been on the record; the AO's subsequent action in pursuing that aspect or letting go of it, after inquiry might well*

have justified the charge of a second and impermissible opinion on the same subject. However, that is not the case. The TEP and investigation reports – of subsequent vintage (after completion of Mr. Gandhi's assessment), therefore, constituted tangible material which in terms of the ruling in Commissioner of Income Tax vs. Kelvinator of India Ltd 320 ITR 561 (SC) justified reassessment. In the case of the other two assessees (Ms. Sonia Gandhi and Mr. Oscar Fernandes) the returns filed by them were processed under Section 143 (1). Such instances are not treated as "assessments". Zuari Estate Development & Investment Co Ltd (supra) is an authority on the subject."

4.2 Heavily relying on aforesaid observations of the Hon'ble Delhi High Court it was sought to be argued by the Ld. Sr. DR that no interference need be made in perfectly valid and justified reopening made in the present case. The Ld. Sr. DR prayed for the rejection of arguments of the Ld AR of assessee.

5.0 In the rejoinder, the Ld AR submitted that the assessee's case is not adversely affected by the aforesaid judgment in Sonia Gandhi's case (supra). It was argued by the Ld AR that the aforesaid judgment did not *firstly* deal with the aspect of lack of independent application of mind. Secondly, on the aspect of absence of tangible material and live nexus in the impugned reasons, it was submitted that there was no similarity

to the reasons in the case of Sonia Gandhi (supra) which were based on nondisclosure of the taxing event, i.e. allotment of shares. Thirdly, it was submitted that non existence of requisite material in possession of the AO at the time of recording of reasons was manifest from the letter dated 4th December, 2012 and clearly distinguished the assessee's case from Sonia Gandhi's case (supra).

6.0 We have heard the rival submissions and have also perused the material on record. There is no doubt that for validity of any action u/s 147 of the Act, it is *sine qua non* that the reasons recorded itself give rise to an honest belief that income of the assessee concerned has escaped assessment and without this valid jurisdiction u/s 147 cannot be assumed. Further, we are of the considered opinion that to adjudicate on the validity of the reopening proceedings u/s 147, the only reference that can be made is to the reasons recorded and as provided to the assessee without anything more. It goes without saying that reopening u/s 148 of the Act is an extra ordinary jurisdiction and cannot be equated with normal and regular scrutiny proceedings u/s 143(2) of the Act. It is well settled in law that reasons, as recorded for reopening the assessment, are to be examined on a standalone

basis. Nothing can be added to the reasons recorded, nor can anything be deleted from the reasons recorded. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, inter alia, observed that *".....It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons.*"Their Lordships added that *"The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence...."*. Therefore, the reasons are to be examined only as they were recorded by the competent officer before the issuance of the notice.

6.1 The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment. The reasons should not merely disclose need for an inquiry which may result in detection

of an income escaping assessment. Undoubtedly, at the stage of recording the reasons for reopening the assessment, all which is necessary is the formation of a *prima facie* belief that an income has escaped the assessment and it is not necessary that the fact of the income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something tangible which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that income has escaped assessment. Merely because detailed investigation was not carried out, and if so, could have led to detection of income escaping assessment, cannot be the reason enough to hold the view that income has escaped assessment.

6.2 It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping assessment and the factors which indicate a legitimate suspicion about income escaping assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to

further inquiries which may lead to detection of an income which has escaped assessment. Therefore, there has to be some kind of a cause and effect relationship between the reasons recorded and the income escaping assessment. While dealing with this aspect of the matter, it is useful to bear in mind the observations made by the Hon'ble Supreme Court in the case of ITO Vs Lakhmani Mewal Das [(1976) 103 ITR 437] that, *".....the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation*

of the belief relating to escapement of the income of the assessee from assessment."

6.3 While determining the validity of re-assessment proceedings, it is necessary to examine as to whether there was any "reason to believe" to have had assumed the jurisdiction for re-assessment proceedings. The term "reason to believe" cannot be considered or evaluated in a water tight compartment and the scope and applicability may vary from case to case, depending upon the facts and circumstances. The power under sections 147 / 148 comes into existence if the AO had reason to believe that income has escaped assessment. Formation of reason to believe that income escaped assessment has to be that of a prudent person. The reasons for such belief have to be recorded in writing on the basis of material in the possession of AO. While the phrase "reason to believe" is wide in its import, it cannot include a mere suspicion or *ipse dixit* of the AO. The belief of the AO should lead him to form an honest and reasonable opinion based on reasonable grounds. This proposition has been laid down by the Hon'ble Supreme Court in the judgments of ITO vs. Lakhmani Mewal Das (supra) and Navinchandra Mohanlal Parik vs. WTO (124 ITR 68). The reasonability of the grounds which

lead to the formation of belief warranting reopening is tested from the point of view of whether or not they are germane to the formation of belief that income escaped assessment and after four years, an additional condition that escapement of income was due to fault of the assessee in not fully and truly disclosing the material facts at the time of original assessment is also to be fulfilled.

6.4 The Hon'ble Supreme Court, endorsing the Full Bench decision of the Hon'ble Delhi High Court in CIT vs. Kelvinator of India Ltd., held in its order reported in 320 ITR 561, *".....that Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have link with the formation of belief."* Therefore, if the fresh tangible material which the AO has in his possession is relevant to have nexus to the formation of belief then, of course, the AO would have the necessary jurisdiction to take action under the Act. What is required to be examined is not the adequacy or sufficiency of the grounds but the existence of belief. In our view, all that requires examination is as to whether there was some material which gave rise to *prima facie* view that income has escaped assessment and

the belief was formed in good faith or was it mere a pretence for initiating action u/s 147/148 of the Act.

6.5 In the instant appeal before us, the reasons recorded are required to be examined in light of the settled judicial precedents. The impugned reasons are being reproduced here in under for a ready reference:

"Return of income declaring income of Rs 72,222 was filed on 31-10-2005 and processed u/s 143(1).

Search & survey operation were undertaken at various residential and business premises of Shri Aseem Kumar Gupta CA & group and other beneficiary group of cases on 26.03.2010. When confronted with the evidences gathered Shri Aseem Kumar Gupta admitted to have provided accommodation entries to several beneficiaries with help of several bank accounts opened in the name of several proprietary concerns and companies in which either he himself or his employees were director or proprietor.

The general modus operandi of Shri Aseem Kumar Gupta was to accept cash from the beneficiaries. The cash was deposited in the bank accounts and cheques were then issued to the beneficiaries. In order to disguise his transactions as genuine, Shri Aseem Kumar Gupta has been following layering of accounts whereby cash was introduced by him in various bank accounts in name of proprietary concerns of his employees and beneficiaries and cheques were issued from his intermediary companies after routing the funds from several intermediaries.

Shri Aseem Kumar Gupta has stated on oath (at the time of search as well as during assessment proceedings) that cash and other unexplained deposits made in various bank accounts of entities controlled by him belonging to the beneficiaries should be taxed in

the hands of respective beneficiaries. The evidences gathered at the time of search further corroborates the assertion made by Shri Aseem Kumar Gupta that he was merely providing accommodation entries. Accordingly cash and other unexplained deposits appearing in the bank accounts of entities controlled by Shri Aseem Kumar Gupta were taxed in hands of Shri Aseem Kumar Gupta, his companies and proprietorship concerns on protective basis. It is appropriate that the cash and other deposits belonging to beneficiaries should be substantively taxed in the hands of beneficiaries themselves.

As per information received from the office of CIT-Central II New Delhi the assessee M/s Raghvi Finance P Ltd has taken following accommodation entries from following person (beneficiary) as per details hereunder:

Name of beneficiary	*Amount (Rs)*	*Cheque/DD No*	*Date*	*Bank detail*	*Name of the company used for providing accommodation entry*
Raghvi Finance Limited	*600,000*	*584196*	*17.06.2004*	*Corp Bank Pitampura N.D*	*Moderate Credit Corp Limited*

In view of the report recd from o/o CIT (Central) II New Delhi and in view of facts narrated above it is clear that the assessee has not disclosed fully and truly all material facts necessary for assessment for that assessment year. I have therefore reason to believe that the sum of Rs 6lacs chargeable to tax has escaped

assessment. Thus the same is to be brought to tax u/s 147/148 of the I.T. Act, 1961

Notice u/s 148 may be issued if approved

I.P.Madan

Income Tax officer

Ward 15(1) New Delhi"

6.6 As it is very clear that even though at the stage of recording of reasons, the AO is not supposed to make final conclusion but nevertheless whatever is stated in reasons that itself on its own without reference to any other extraneous material must lead to honest and genuine belief *vis a vis* income escaping assessment from a reasonable man point of view.

6.7 In our considered view, the Ld AR has correctly argued that the reasons in present case are based on borrowed satisfaction of CIT (Central)/income tax investigation wing which is loosely referred to as *"Aseem Gupta search operation u/s 132 of the Act"*. Here it is important to highlight the striking features of the reasons recorded case which show that the reasons are based on borrowed satisfaction only: firstly reasons start with some search operation conducted on one Shri Aseem Gupta on 26.03.2010. What are the important findings of said search

operations *qua* the assessee's subject transaction herein namely: i)existence of statement, if any, recorded of Shri Aseem Gupta during said search operation u/s 132 of the Act; ii) whether the said statement (if any) mentioned and correlated the assessee's impugned transaction; iii) existence of incriminating material (if any) unearthed from said search operation u/s 132 of the Act; iv) correlation of the said incriminating material to assessee's subject transaction; v) inquiry, if any, made by the AO on the subject matter with respect to the information received by the AO from another wing prior to the reopening of case u/s 148 of the Act; vi) any specific and particular tangible material to form valid belief to implicate the assessee's transaction as accommodation entry; and vii) live nexus between the search on Shri Aseem Gupta and the inference to hold the assessee's transaction as accommodation entry are left to guess work and nothing is divulged from the reasons recorded on the above said aspects which make the reasons-recording exercise as invalid on well-settled parameters of section 148 of the Act. Second aspect which is notable in the reasons recorded is that there is no intelligible and rational connection in the reasons recorded and a mere conclusion is drawn from un-narrated information which does

not fulfil the legal requirement u/s 148 of the Act. What we notice is that the reasons recorded mention conclusions drawn by the CIT-Central/investigation wing only which is taken as good enough to draw reasons recorded u/s 148 of the Act. We are fully conscious of the fact that the investigation wing of the Income Tax department is very important organ and arm collecting lot of significant information/s under the Act. However, the requirement of recording the reasons u/s 148 of the Act is vested in the AO only and nobody else. In the present case, the AO should have given relevant details in the reasons recorded *vis a vis* the crucial aspects of information shared by the CIT Central/ investigation wing (if any) which in his own independent opinion led him to formulate the belief for assuming jurisdiction for re-assessment and *sans* which we cannot approve the present reasons as valid and correct.

6.8 Further, notably, nowhere in the reasons (supra) the AO has shed any light on as to whether any specific statement of Shri Aseem Gupta or any other person was there to warrant assumption of jurisdiction in assessee's case except some general allegations. Moreover, not a single document is mentioned and referred to in the reasons recorded wherefrom the stated

allegation, as levelled in the reasons, can be supported. These are fatal errors which strike at the very foundation of the validity of the re-assessment proceedings. The Ld CIT (A), in his adjudication on the validity of the reasons recorded, has simply stated that since the AO has taken care of the procedure to be followed as dictated by the Hon'ble Supreme Court in the case of GKN Driveshaft (259 ITR 19) nothing more was required to be seen and looked into. This observation, to our mind, is a very casual way of dealing with the detailed arguments of assessee made before him.

6.9 Taking a holistic view on the facts of this case, we are of the considered view that reopening in the present case cannot be approved on the basis of the reasons recorded and the same is held to be without authority of law. From the aforesaid reasons it is apparent that other than the information given by the CIT(Central)/DIT (inv) there is no other material the AO collected after preliminary enquiry which could have enabled him at the time of recording of reasons to come to a conscious and independent conclusion that "income of the assessee has escaped assessment". The information given by CIT(Central)/DIT(Inv) can only be a basis to ignite/trigger "reason to suspect" for which

reopening cannot be resorted to for the purpose of further examination to be carried out by him in order to strengthen the suspicion to an extent which can form the belief in his mind that income chargeable to tax has escaped assessment. It has to be kept in mind that the allegations levelled by the CIT(Central)/DIT (Inv.) can only raise suspicion in the mind of the AO and the same does not meet the requirement of law for reopening of the assessment. The term 'reasons to believe' is not synonymous to 'reason to suspect'. 'Reason to suspect', based on an information can trigger an enquiry to find out whether there is any substance or material to substantiate that there is merit in the information adduced by the CIT(Central)/DIT(Inv.) and, thereafter, the AO has to take an independent decision to re-open or not. The AO should not act on the dictates of any other authority like in the present case the AO has acted on the mere information from the CIT (Central)/DIT(Inv.) because then it would be borrowed satisfaction.

6.10 ITAT Delhi 'G' Bench had an occasion to consider an identical issue in the case of SBS Realtors (P) Ltd in ITA No. 7791/Del/2018 for Assessment Year 2009-10. Vide order dated 01.04.2019, the co-ordinate Bench held as under:

" 6. From a perusal of the above reasons, it is seen that the Investigation Wing has supplied certain information to the Assessing Officer with regard to receipt of cheques by the assessee from various companies who are considered to be S.K. Jain group companies by the Investigation Wing. As per the Investigation Wing, the above cheques paid by S.K. Jain group companies were accommodation entries to M/s SBS Realtors Pvt. Ltd. i.e., the assessee. However, what is the material found during the course of search of S.K. Jain group cases which had led to form the belief that all those companies are providing accommodation entries is not mentioned in the reasons recorded. It is also not mentioned whether any of the directors of the above companies have provided accommodation entries to M/s SBS Realtors Pvt.Ltd. It is also not mentioned whether any document was found which led to the belief of giving of accommodation entries by those twelve companies to the assessee. On receipt of above information, the Assessing Officer compared the figures in the balance sheet of the assessee filed for assessment year 2009-10 and he found that the share capital has increased by Rs. 2,35,00,000/-. After recording the above factual finding, the Assessing Officer has concluded "The same has escaped assessment on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment for the AY 2009-10. In order to verify the genuineness, identification and creditworthiness of the aforesaid transaction the case needs to be reopened u/s 147 of the I.T. Act 1961." The conclusion of the Assessing

Officer at the end of the reasons recorded as noted above is contradictory. In the first two lines, the Assessing Officer has recorded the finding that the sum of Rs. 2,35,00,000/- has escaped assessment but in the last two lines, he has recorded that the case is being reopened to verify the genuineness, identification and creditworthiness of the aforesaid transactions. If the case is being reopened for the purpose of verification of the genuineness, how can there by satisfaction of escapement of income. Any satisfaction with regard to escapement of income or otherwise can be recorded only after the verification of genuineness, identification and creditworthiness of the transaction and not earlier. Thus, we are of the opinion that the Assessing Officer has reopened the case under Section 147 for the purpose of verification of genuineness, identification and creditworthiness of the transactions mentioned in the information supplied by the DIT (Investigation) and this is what the Assessing Officer has concluded at the end of the reasons recorded for issue of notice under Section 148. Now, the question remains whether an assessment can be reopened under Section 147 for the purpose of verification of genuineness, identification and creditworthiness of any transaction. In our opinion, the reply is clearly NO.

7. Thus, if the Assessing Officer considered it necessary to ensure that the assessee has not understated the income, he can issue the notice under Section 143(2). However, proviso to above Section provides the time limit within which such

notice can be issued. Once that time limit is expired, in our opinion, the Assessing Officer cannot invoke Section 148 just for the purpose of verification. Therefore, in our opinion, in the case under consideration, the reopening of assessment for the purpose of verification of genuineness, identification and creditworthiness of the transaction is not permissible under law and is liable to be quashed.

8. The learned counsel for the assessee has also mentioned that the notice has been issued mechanically without application of mind and the satisfaction by the Assessing Officer is only the borrowed satisfaction of the Investigation Wing. The Assessing Officer, without applying his mind, has simply on the basis of information of the Investigation Wing jumped to the conclusion that there is escapement of income. From a perusal of the aforesaid reasons, we do not find any application of mind by the Assessing Officer for reaching to the conclusion that there was escapement of income except the information from the Investigation Wing. After getting the information from the Investigation Wing, the Assessing Officer compared the figures in the balance sheet and has found that the assessee has issued share capital of `2,35,00,000/-. The issue of share capital by itself is not sufficient to reach to the conclusion of escapement of income. The Investigation Wing has alleged that 12 companies who have given cheques to the assessee company were accommodation entries. However, the basis of such allegation is not mentioned in the reasons recorded. Whether such conclusion is reached by the

Investigation Wing on the basis of statement of director of any company or on the basis of some material seized during the course of search of those companies, is not mentioned in the reasons recorded. Whether there was any material with the Assessing Officer while issuing notice under Section 148 is not clear. Therefore, from the reasons recorded, we do not find any basis for reaching to the conclusion that there was escapement of income by the Assessing Officer. Learned DR has relied upon the decision of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Paramount Communication Pvt. Ltd. – [2017] 392 ITR 444 (Delhi), wherein on the basis of report of the Investigation Wing, Hon'ble Jurisdictional High Court has upheld the issue of notice under Section 148. Their Lordships held as under:-

> *"Held, that having regard to the contents of the notice issued under section 148 of the Income-tax Act, 1961, the findings of the Appellate Tribunal were not sustainable. It constituted reference to tangible material "outside" the record which was information based upon the investigation of the Commissioner of Central Excise. To have required the Revenue to disclose further details regarding the nature of documents or of contents thereof would be rewriting the conditions in section 147 which merely authorised the issuance of notice to reopen with conditions. For the assessment years 2004-05 and 2005- 06, the notes disclosed the source of information, the Directorate of Revenue Intelligence, which had sent information based upon the Commissioner of Central Excise's investigations. To add further conditions to be nature of discussions or reasons that the Officer authorizing the notice would have to discuss in the note or decision was beyond the purview of the courts and*

was not justified. The orders of the Appellate Tribunal could not be sustained. The Appellate Tribunal was directed to hear the Department's appeals on their merits."

9. On the other hand, learned counsel for the assessee has relied upon the catena of judgment before and after the date of above judgment of Hon'ble Delhi High Court wherein the notice under Section 148 simply on the basis of report of the Investigation Wing has been quashed. The same is as under:-

(i) Sarthak Securities Co. P. Ltd. Vs ITO – [2010] 329 ITR 110 (Delhi).

(ii) Signature Hotels P. Ltd. Vs. ITO – [2011] 338 ITR 51 (Delhi).

(iii) PCIT Vs. G And G Pharma India Ltd. – [2016] 384 ITR 147 (Delhi).

(iv) PCIT Vs. RMG Polyvinyl (I) Ltd. – [2017] 396 ITR 5 (Delhi).

(v) PCIT Vs. Meenakshi Overseas Pvt. Ltd. – [2017] 395 ITR 677 (Delhi).

10. Learned DR has also relied upon few decisions of Hon'ble Gujarat High Court. However, when there are large number of decisions of Hon'ble Jurisdictional High Court, the same would be binding on us. Therefore, we consider all the decisions of Hon'ble Jurisdictional High Court relied upon by either side.

11. We find that the earlier decisions of Hon'ble Jurisdictional High Court in the case of Sarthak Securities Co. P. Ltd. (supra), Signature Hotels P. Ltd. (supra) and G And G Pharma India Ltd. (supra) were not brought to the knowledge of their Lordships while deciding the case of Paramount Communication (P) Ltd. (supra). We find that the decision in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt.Ltd. (supra) are subsequent to the decision of Paramount Communication (P) Ltd. (supra). However, it seems that neither in the case of Meenakshi Overseas Pvt. Ltd. (supra) nor in the case of RMG Polyvinyl (I) Ltd. (supra), the decision of Paramount Communication (P) Ltd. (supra) was brought to the knowledge of their Lordships. Thus, there are two views by the Hon'ble Jurisdictional High Court. While in the case of Paramount Communication (P) Ltd. (supra), the issue of notice on the basis of information from Intelligence Wing of the Income Tax Department has been upheld, in the case of Sarthak Securities Co. P. Ltd. (supra), Signature Hotels P. Ltd. (supra), G And G Pharma India Ltd. (supra), RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt. Ltd. (supra), the notice issued on the basis of DIT(Investigation) has been quashed. It is a settled law that when there are two views, the view in favour of the assessee is to be followed and moreover, there are at least two decisions subsequent to the decision of Paramount Communication (P) Ltd. (supra), wherein their Lordships have quashed the notice issued under Section 148 on the basis of information from the Investigation Wing. The facts in the case

of the assessee are almost identical to the facts in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt. Ltd. (supra). Therefore, they would be squarely applicable to the case of the assessee. Consequently, we hold the notice issued under Section 148 of the Act to be invalid for two reasons:-

(i) the notice is issued for the purpose of verification of genuineness, identification and creditworthiness of the transaction, which is not permissible;

(ii) the Assessing Officer has recorded his satisfaction on the basis of mere report from the Investigation Wing. There is no crucial link between the information made available to the Assessing Officer and the formation of belief of escapement of income. There is no basis for coming to the conclusion that the assessee received accommodation entries. The Investigation Wing alleged that the companies which issued cheques to the assessee company are companies of Shri S.K.Jain group and they are entry providers. However, the basis for such conclusion is missing. There is no mention that any document was seized from Shri S.K. Jain group or any director of the 12 companies which have given cheques to the assessee has given the statement that they have provided accommodation entries to the assessee. The Assessing Officer has simply reopened the case on the basis of information provided by the Investigation Wing without any independent application of mind. There is no tangible material which formed the basis for the belief that income has escaped assessment.

12. While taking the above view, we derive support from the latest decision of Hon'ble Jurisdictional High Court in the case of RMG Polyvinyl (I) Ltd. (supra) and Meenakshi Overseas Pvt. Ltd. (supra). In view of the above, we quash the notice issued under Section 148 of the Act and consequently, the assessment completed in pursuance thereto. Accordingly, ground Nos.1, 1.1 and 1.2 of the assessee's appeal are allowed.

13. Since the notice issued u/s 148 is quashed, the assessment order passed in pursuance to such notice is also quashed. Once the assessment order itself has been quashed, the other grounds raised by the assessee in its appeal do not require any adjudication on merits."

6.11 On another identical case, the Hon'ble Delhi High Court in the case of Meenakshi overseas case (supra) has held as under:

"18. It must be noted at the outset that by an order dated 4th November, 2016, this Court had directed that "the file by which reasons to believe for the escapement of income was recorded by the AO for the purpose of reassessment shall be produced for consideration by the Court." The said file has been produced today by Mr. Chaudhary, learned counsel for the Revenue. It is seen that the reasons recorded by the AO

for re-opening the assessment has been extracted verbatim by the ITAT in para 2 of the impugned order.

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 there from.

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

precondition 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.

27. Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the AO for a valid assumption of jurisdiction under Section 147 of the Act to reopen a past assessment.

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36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment. 37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

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38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs."

6.12 Therefore, in view of the facts of the case, we find that the AO has simply relied on the information from the CIT(Central)/DIT(Inv) to form a conclusion about escapement of income, which itself is flawed and cannot pass the test of 'reason to believe' as laid by the judicial precedents as discussed above. We, therefore, hold that since there was no rationale nexus between the information received by the AO with formation of his belief, the initiation of reassessment proceedings stood vitiated and consequently the order passed also was bad in law. The Revenue's reliance in the case of Sonia Gandhi (supra) also does not come to its rescue in as much as there is a complete absence of tangible material and live nexus in the impugned reasons whereas the reasons in the case of Sonia Gandhi (supra) were based on nondisclosure of the taxing event, i.e. allotment of shares. Therefore, in view of our observations and the judicial precedents as aforesaid, we set aside the order of the Ld. CIT (A) and quash the re-assessment proceedings. Since, the re-

assessment proceedings have been quashed no other grounds survive for adjudication.

7.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced in open court on 27th September, 2019.

sd/-	sd/-
(T.S. KAPOOR)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27/09/2019

dragon

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi