IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-I', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.5523/Del./2018
Assessment Year: 2000-01

Shri O.P. Yadav, D-84, Anand Niketan, New Delhi	**Vs.**	DCIT, Central Circle -15, New Delhi.
PAN :AAAPY2870L		
(Appellant)		**(Respondent)**

Appellant by	Shri Kapil Goel, Adv.
Respondent by	Ms. Rakhi Vimal, Sr.DR

Date of hearing	02.09.2020
Date of pronouncement	10.09.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 17/05/2018 passed by the Learned CIT(Appeals)-42, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2000-01 raising following grounds:

> *"Whether the ld. CIT(A) has erred in law and facts of the case in confirming the addition of Rs.10,10,000/- made by the learned A.O. on account of alleged accommodation entries.*
>
> *The assessee retain the right to add/delete/modify any of the above ground(s) of appeal."*

2. The assessee also filed following additional grounds:

1. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the assumption of jurisdiction u/s 147/148 of the Act when reasons recorded in present case as evident from cursory look to the same (enclosed herewith) are based on non independent application of mind and based on borrowed satisfaction only ergo reopening proceedings, resultant assessment order u/s 147/143(3) and CIT-A order may please be quashed as void ab initio.*

2. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the assumption of jurisdiction u/s 147/148 of the Act on basis of invalid reasons as glaring from jurisdictional error made in reasons recording that i) already for block period of 01.04.1995 to 07.03.2002 an assessment is already framed u/s 158BC of the Act vide order dated 25/03/2004 including subject period (order enclosed herewith) which aspect has been aborted from reasons recorded thus vitiating the entire reopening exercise , ii) further in reasons recorded no discussion is there on nature of alleged transaction and somewhere in reasons it is wrongly mentioned that assessee is a company which confirms our plea for invalid reopening and iii) further in reasons recorded no effort is made to throw light on any statement of any person and any prior enquiry u/s 133(6) which led to recording of wrong reasons ergo reopening proceedings, resultant assessment order u/s 147/143(3) and CIT-A order may please be quashed as void ab initio.*

3. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the assumption of jurisdiction u/s 147/148 of the Act when for passing order u/s 143(3) admittedly no return u/s 148 was filed (refer para 6.5 of CIT-A order) then assessment could have been framed u/s 144 and not u/s which is a fatal error ergo reopening proceedings, resultant assessment otder u/s 147/143(3) and CIT-A order may please be quashed as void ab initio.*

To support admission of our legal & Jurisdictional ground, we rely on following case laws:-

i. *Recent Apex court decision in Singhad Technical Society (order dated 29/08/2017) 397 ITR 344*
ii. *Hon'ble Delhi high Court decision in case of Fast Booking (I) Pvt. Ltd., order dated 02.09.2015 (ITA no. 334/2015) (378 ITR 693)*
iii. *Hon'ble Delhi high Court decision in case of Silver Line, order dated 04.11.2015 (ITA no. 578/2015) (383 ITR 455)*
iv. *Hon'ble Punjab and Haryana High Court decision in case of M/s VMT Spinning Co. Ltd., order dated 16.09.2016 (ITA no. 445/2015) (389 ITR 326)*

v. Hon'ble Gujarat high court in case of Jolly Fantasy World Ltd 373 ITR 530

vi. decision of the Hon'ble Bombay High Court in CIT Vs. Lalitkumar Bardia (2017) 84 taxmann.com 213 (Bom),

Our plea that reopening is invalid is supported by following High Court/Apex court decisions considered in decisions enlisted below.

i) Delhi high court decision in case of RMG Polyvinyl 396 ITR 5;

ii) High Court of Delhi in the case of PCIT vs. Meenakshi Overseas P. Ltd. 395 ITR 677 (Del);

iii) High Court of Delhi in the case of PCIT vs. G&G Pharma India Ltd. reported in 384 ITR 147 (Del);

On basis of above discussion we make a humble prayer for i) admission of our legal and jurisdictional additional ground and ii) allowing our appeal by accepting our additional ground in toto and iii) quash the orders passed by Ld AO and Ld CIT-A.

3. In the additional grounds, the assessee has challenged reassessment proceeding on the ground of non-application of the mind by the Assessing Officer, while reopening of the assessment and also on the ground of the satisfaction borrowed from the report of the investigation wing.

3.1 The additional grounds, being legal in the nature and not requiring investigation of new facts, same were admitted in view of the settled law as held in the case of M/s. NTPC vs. CIT reported in 229 ITR 383.

3.2 Briefly stated facts of the case are that the assessee an individual, is proprietor of a concern, namely, M/s Yadav & Company, which was engaged in share trading brokerage. The assessee filed its regular return of income for the year under consideration on 30/10/2000 declaring income of ₹ 12,413/- and agriculture income of ₹ 2,91,334/-. In the case of the assessee, a search under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at his residence on 07/03/2000 and

undisclosed income unearthed therein, was subjected to block assessment proceedings under section 158BC of the Act for the block period from 01/04/1995 to 07/03/2000. The block assessment order was passed on 25/03/2004.

3.3 Subsequent to the block assessment, the Assessing Officer received information from the Investigation Wing that M/s Yadav and company i.e. the proprietary concern of the assessee, had obtained certain bogus/accommodation entries of ₹ 10,10,000/- from M/s R.K. Agrawal & Company. The Assessing Officer recorded reasons to believe that income of Rs.10,10,000/- escaped to tax and after obtaining approval of superior authorities as required under law, he issued notice under section 148 of the Act on 26/03/2007.

3.4 During assessment proceeding, the assessee contended that the bank account in which the alleged bogus /accommodation entries were credited, had already been discussed in the block assessment order and income on commission basis for accommodation entries had been added to the undisclosed income of the assessee. This contention was rejected by the Assessing Officer holding that accommodation entries received from M/s RK Agarwal and company were not discussed in the block assessment order and this was a separate issue pertaining to the year under consideration. The reassessment was completed on 13/12/2007 after making addition of ₹ 10,10,000/-. The assessee challenged the order of the Assessing Officer before the Ld. CIT(A) on legal grounds as well as on merit. The Learned CIT(A) dismissed the appeal of the assessee both on the legal ground as well as on the merit.

4. Before us, both the parties appeared through videoconferencing facility. The Learned Counsel of the assessee filed a paper-book and other documents electronically.

5. The Learned Counsel of the assessee before us pressed additional ground Nos. 1 and 2 only. He referred to the copy of the reasons recorded and submitted that the Assessing Officer has not applied his mind while recording the reasons. The Learned Counsel further submitted that the reasons have been recorded on borrowed satisfaction of the Investigation Wing and no independent inquiries have been made by the Assessing Officer. The learned Counsel also submitted that no reassessment proceeding under section 148 can be invoked after completion of block assessment proceeding under section 158BC of the Act. The Learned Counsel referred to various decisions of the courts in support of his contentions. On the merit of the issue, he submitted that in block assessment proceeding, commission income at the rate of 1.5% of the Rs.10134 lakhs has already been assessed and thus no separate addition should be made in respect of the alleged accommodation entries from M/s RK Agarwal and company and the benefit of the telescoping should be given to the assessee.

6. The Learned DR, on the other hand, relied on the order of the lower authorities and submitted that the contention of the non-application of the mind and borrowed satisfaction are not getting established in the facts of the case. On the merit also, she submitted that the assessee failed to show that those very entries of accommodation have already been assessed in the block

period, and therefore the Assessing Officer is justified in making the impugned addition.

7. We have heard rival submission of the parties and perused the orders of the lower authorities and the material relied upon by the parties. In the additional grounds raised, the learned Counsel of the assessee has challenged validity of the reasons recorded; therefore, it is relevant to reproduce the same for ready reference:

"Enquiries were made by the Directorate of Investigation on the various persons who were indulged- in providing accommodation entries/bogus shares application money/bogus capital gain In the course of enquiries before Investigation Wing these persons had provided the details of various persons to whom such accommodation/bogus entries were provided. Based on the enquiries made, the Directorate of Investigation has provided the details of persons who were beneficiaries of such accommodation/bogus entries in Delhi in the last 5-6 years.

From the report of Investigation Wing, it is noticed that M/s. Yadav & Co was also beneficiaries of such bogus/accommodation entries during the period 1.4.2000 to 31.3.2001. The details of such accommodation/bogus entries are as under:

Sl. No	Name of the Entry provider	Quantum of entry	Date of Transaction	Details of bank from which entry given	A/c. No.	Instrument /Cheque
1	R.K. AGARWAL AND CO.	3,10,000	31st August, 1999	CORPORATION BANK. KAROL BAGH	3097	355383
2	R.K. AGARWAL AND CO.	200000	27th July, 1999	CORPORATION BANK	3097	-355379
3	R.K. AGARWAL AND CO.	200000	3rd August, 1999	CORPORATION BANK	3097	355381
4	R.K. AGARWAL AND CO.	300000	23rd July, 1999	CORPORATION BANK	3097	355378

Assessee Company had filed its return of income for the A.Y. 2000-01 on 31.10.2000 declaring an income of Rs. 12413/- and Agricultural income of Rs. 291334/-. Subsequently, the case was processed u/s 143(1) of the Income Tax Act, 1961.

As per the Report of the Investigation Wing, the modus operandi adopted in that person desirous of introducing his unaccounted money in its books of accounts, handed over the cash plus commission to the Entry Operator, who in turn issues cheques to the beneficiary, after depositing the cash in his accounts.

As per the report of the Investigation Wing, M/s. R.K.. AGARWAL AND CO. is one of the entry Operators providing bogus/accommodation entires.

The assessee company had received Rs. 10,10,000/- on various dates during the period relevant to A.Y. 2001-02 from M/s. R.K. AGARWAL AND CO. which is nothing but the unaccounted money of the assessee i.e. M/s. Yadav & Co., introduced in the books of accounts under the garb of entries received from M/s. R.K.. Aggarwal & Co.

In view of the above, I have reason to believe that income at least, the extent of Rs. 10,10,000/- for the A.Y. 2001-02 had escaped assessment within the meaning of the provisions of Section 147. To bring to tax the income which has escaped assessment, I propose to issue notice under section 148 of the Income Tax Act, 1961.

Since this case has not been taken in the scrutiny u/s 143(3) for the above mentioned assessment year the proposal is being submitted to the Additional Commissioner of Income Tax, Central Range-31, New Delhi within the meaning of section 147 and accordingly proceedings u/s. 148 is to be initiated for the A.Y. 2000 &-01."

7.1 The learned Counsel of the assessee has challenged the validity of the reasons recorded, firstly, on the ground of the non-application of the mind by the Assessing Officer. He has pointed out two alleged incorrectness of the facts recorded by the Assessing Officer. He has referred that in para 3 of the reasons recorded the assessee has been referred as company, whereas the assessee is an individual. In our opinion, this contention of the learned Counsel is not correct. The Assessing Officer has referred the proprietary concern, namely, M/s Yadav and company as company. In the immediate preceding para, the Assessing Officer has reproduced the transaction of M/s Yadav and company with M/s RK Agarwal & Co and thus the reference of the company is towards M/s Yadav and company and the Assessing Officer nowhere mentioning the status of the assessee as company.

Another alleged incorrectness of the fact has been raised by the Learned Counsel in last para of the reasons recorded. He submitted that mention of the fact that case has not been taken in the scrutiny under section 143(3) of the Act is recorded incorrectly. He submitted that block assessment in the case of the assessee has been completed prior to recording of the reasons. In our opinion, this contention of the Learned Counsel of the assessee is also not correct. In the case of the assessee the regular return of income filed was only processed and no "regular assessment" under section 143(3) of the Act was completed. The block assessment under section 158BC has been completed in respect of the undisclosed income unearthed during the course of the search carried out at the premises of the assessee. Under the "block assessment" only incriminating material found during the course of the search can be basis for the block assessment and it is distinct from the "regular assessment". The Assessing Officer has put the facts that no scrutiny assessment u/s 143(3) of the Act i.e. regular assessment was carried in case of the relevant assessment year. In our considered opinion, there is no incorrectness of the fact on the part of the Assessing Officer. The Learned Counsel to support the non-application of the mind has relied on the decision of the Hon'ble Delhi High Court in the case of **Vanita Sanjeev Anand Vs ITO in WP(C) 12359/2018** and **CM APPL 47876/2018**. In the said decision in the reasons recorded, the Assessing Officer recorded that no return of income was filed by the assessee, whereas the assessee indeed filed return of income on 15/07/2011. The Revenue before the Hon'ble High Court argued that this was a mistake in the nature of the clerical

one. The Hon'ble High Court observed that in the recorded reason there was no reference or discussion with respect to the return of income filed by the assessee and it did not seem to be an unintentional error. According to the Hon'ble High Court, in view of the incorrect recording of the facts, the entire basis of the reopening gets vitiated. But in the instant case before us, there being no incorrectness of the facts in the reasons recorded, the ratio of the above decision cited by the learned Counsel is not applicable over the facts of the instant case.

7.2 Another contention to assail the reasons recorded, raised by the Learned Counsel of the assessee is that the satisfaction of the Assessing Officer is borrowed. He submitted that the Assessing Officer has merely relied on the report of the investigation wing to form basis of his reasons to believe and no independent verification has been done invoking section 133(6) of the Act. The learned counsel relied on the decision in the case of PCIT vs Meenakshi Overseas P Ltd 395 ITR 677, wherein Hon'ble Delhi High Court has observed as under:

> *"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."*

7.3 In the present case, the learned Assessing Officer has analysed report of the Investigation Wing and formed basis of the reasons after specific reference of the entries obtained from M/s RK Agrawal and Co. The Assessing Officer has reproduced all the four entries with details of the amount, date of transaction, bank

account from which entry was given, instrument number etc. the Assessing Officer has also mentioned that no scrutiny assessment under section 143(3) of the Act was completed in the case of the assessee and therefore no information relating to the transaction was available on record. The Hon'ble Supreme Court in the case of **ACIT Vs Rajesh Jhaveri Stock Brokers P Ltd 291 ITR 500** *held that at the initiation stage, what is required is "reason to believe" on the established fact of escapement of income. At this stage of issue of the notice, the only question is whether there was relevant material on which a reasonable person could have requisite belief. Whether the material should conclusively prove the escapement is not the concern at this stage.* Relevant finding of the Hon'ble Court is reproduced as under:

> ***"16.*** *Sec. 147 authorises and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in Central Provinces Manganese Ore Co. Ltd. vs. ITO (1991) 98 CTR (SC) 161 : (1991) 191 ITR 662 (SC), for initiation of action under s. 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction [see ITO vs. Selected Dalurband Coal Co. (P) Ltd. (1996) 132 CTR (SC)*

> *162 : (1996) 217 ITR 597 (SC); Raymond Woollen Mills Ltd. vs. ITO (1999) 152 CTR (SC) 418 : (1999) 236 ITR 34 (SC)].*
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> ***17.*** *The scope and effect of s. 147 as substituted with effect from 1st April, 1989, as also ss. 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of s. 147, separate cls. (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under s. 147(a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income-tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under s. 148 r/w s. 147(a). But under the substituted s. 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to s. 147. The case at hand is covered by the main provision and not the proviso.*
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> ***18.*** *So long as the ingredients of s. 147 are fulfilled, the AO is free to initiate proceeding under s. 147 and failure to take steps under s. 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation under s. 143(1) had been issued.*

7.3.1 We also note that Hon'ble Delhi High Court in the case of PCIT Vs. Paramount Communication Pvt. Ltd. (2017), 392 ITR 444 (Delhi.) has held that information regarding bogus purchase by the assessee, received by the DRI from CCE, which was passed on to the Revenue Authorities was tangible material outside the record to initiate valid re-assessment proceedings. The relevant finding of the Hon'ble High Court is reproduced as under:

> *"9. Having regard to the contents of the notice for AY 2003-04, the court is unable to agree with the findings of the ITAT. It constitutes reference to tangible material "outside" the record, i.e. information based upon the investigation of the Commissioner of Central Excise*

> *with respect to the purchases made by the assesses. However, as far as the second issue is concerned, the Court is of the opinion that even the rectified order does not address the issues squarely. Thus, arguendo such arguments could be validly raised. At the same time, the court notices that for both AYs 2004-05 and 2005-06, the note discloses the source of the information, i.e. DRI Local Unit at Jaipur, sending information based upon the Commissioner of Central Excise's investigations. To require the Revenue to disclose further details regarding the nature of documents or contents thereof would be virtually rewriting the conditions in section 147. After all, Section 147 merely authorises the issuance of notice to reopen with conditions. If the Court were to dictate the manner and contents of what is to be written, the statutory conditions would be added as it were. In this context, it needs to be emphasized that the court would interpret the statute as they stand in their own terms, but at the same time being conscious of the rights of the citizens. So viewed, Kelvinator of India (supra) strikes just balance. To add further conditions to the nature of discussion/reasons that the officer authorising the notice would have to discuss in the note or decision would be beyond the purview of the Courts and would not be justified. For the above reasons, this Court is of the opinion that the impugned order - and the consequential order of 05.01.17 cannot be sustained. They are accordingly set aside. The question of law urged by the Revenue is answered in its favour. The parties are directed to be present before the ITAT on 06.03.2017. The ITAT shall proceed to hear the Revenue's appeals on its merits and render decision in accordance with law. All rights and contentions of the parties with respect to the merits are reserved."*

7.3.2 The SLP filed by the assessee against the above decision of the Hon'ble Delhi High Court has been rejected by the Hon'ble Supreme Court in (2017) TIOL-253-SC-IT. Further, Hon'ble Gujarat High Court in the case of **Pushpak Bullion (P) Ltd. Vs. DCIT (2017) 85 taxmann.com 84 (Guj.)** has held that *where Investigation Wing of the department had during the course of investigation in a case of a third party found that he was indulged in providing accommodation entries and bogus bills, and the assessee had made sizeable purchases from him, reopening notice against the assessee was justified.* Relevant para of the decision is reproduced as under:

> *"6. At the stage when we are examining the validity of a notice of reopening of the assessment, the Court would not go into sufficiency of reasons recorded by the Assessing officer and if it is found that the Assessing Officer had tangible materials at his command to form a bona fide belief of income chargeable to tax had escaped assessment, there would be no interference with the Assessing Officer proceeding further with the reassessment. In case of Asstt. CIT Vs. Rajesh Jhaveri Stock Brokers(P.) Ltd. [2007] 291 ITR/161 Taxman 316 (SC), the Supreme Court observed that expression "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is reason to believe but not the established fact of escapement of income. At the stage of issuance of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income was not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer. At this stage therefore, what we have on record and emerging from the reasons recorded is that there is strong prima facie material to suggest that the purchases shown to have been made by the assessee from M/s. Shiyon Enterprises were bogus. The investigation wing of the department had during the course of investigation in case of Shri Chandrakant Patel found materials suggesting that he had indulged in providing accommodation entries and bogus bills. This was further supplemented by the fact that in the current account of M/s. Shiyon Enterprises maintained at Jhaveri bazar branch of Union Bank of India, cheques issued were preceded by substantial cash deposits in the account. The assessee had also maintained bank account in the same branch of the same bank. The assessee had claimed sizeable purchases from such entity during the year under consideration."*

7.3.3 Similar findings have been given by the Hon'ble Gujarat High Court in the case of Ankit Financial Services Vs. DCIT (2017) 78 taxmann.com 58 (Guj.). The Hon'ble Supreme Court in the case of S. Ganga Saran & Sons (P.) Ltd. Vs. ITO (1981) 3 SCC 143 on the issue of adequacy or sufficiency of reasons, has held as under:

"6. It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under Section 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under Section 147(a) are "has reason to believe" and these words are stronger than the words " is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any such escapement was by reason of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid." (emphasis supplied)"

7.3.4 The Hon'ble High Court of Rajasthan in the case of Ankit Agrochem (P.) Ltd. Vs. Joint CIT, Range -1, Bikaner (2018) 89 taxmann.com 45 (Raj.) after considering the decision of Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers (P) Ltd. (supra) held as under:

"15. In our considered opinion, in the instant case where the return filed by the assessee was not subjected to scrutiny assessment, the belief formed by the AO after due examination of the material on record that the income of the assessee chargeable to tax during the relevant assessment year has escaped assessment cannot be said to be arbitrary or irrational or there exists no rational and intelligible nexus between the reasons and the belief. 16. It is true that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the AO regarding the

escapement of the income but then, while recording the reasons for belief formed, the AO is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the AO had cause or justification to know or suppose that income had escaped assessment [vide Rajesh Jhaveri Stock Brockers (P.) Ltd.'s case (supra)]. 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."

7.3.5 The Hon'ble High Court of Gujarat in the case of Aradhana Estate (P) Ltd. Vs. DCIT (2018) 91 taxmannn.com 119 (Gujarat) on the issue of recording of 'reasons to believe' for reopening of assessment held as under:

"8. Section 147 of the Act provides inter-alia that if the Assessing Officer has the reason to believe that any income chargeable to tax has escaped assessment, he may subject to the provisions of section 148 to 153 of the Act, assess or reassess such income. Proviso to section 147 of-course requires that where the assessment under sub-section (3) of section 143 of the Act has been made for the relevant assessment year, no action shall be taken under this section after the expiry of the four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on part of the assessee to make return under section 139 or in response to a notice issued under sub-section (1) of section 142 or 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. In this context, it is well settled that the requirement of full and true disclosure on part of the assessee is not confined to filing of return alone but would continue all throughout during the assessment proceedings also. In this context, the materials on record would suggest that the Assessing Officer had received fresh information after the assessment was over prima facie suggesting that sizeable amount of income chargeable to tax in case of the assessee had escaped assessment and that such escapement was on account of failure on part of the assessee to disclose truly and fully all material facts. The Assessing Officer formed such a belief on the basis of such materials placed before him and upon perusal of such material. This is not a case where the Assessing Officer was reexamining the materials and the documents already on record filed by the assessee along with the return or subsequently, brought on record during the assessment proceedings. It is a case where entirely new set of documents and materials was placed for his consideration compiled in the form of report received from the investigation wing. Such material was perused by the Assessing

> *Officer and upon examination thereof, he formed a belief that the petitioner company had received share application and share premium money from as many as 20 different investor companies who were found to be shell companies and indulging in giving accommodation entries. From our view point, the Assessing Officer had sufficient material at his command to form such a belief. Such materials did not form part of the original assessment proceedings and was placed before the Assessing Officer only after the assessment was completed. Since on the basis of such materials, Assessing Officer, as we have recorded, came to a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the Assessing Officer during the original assessment also would not preclude him from reopening the assessment. His scrutiny during the assessment will necessarily be on the basis of the disclosures made by the assessee."*

7.3.6 The Hon'ble High Court relying the Supreme Court in the case of Rajesh Jhaveri Stock Broker (P) Ltd. (supra) held that at the stage of reopening sufficiency of such reasons is not to be gone. The relevant finding of the Hon'ble Court is reproduced as under:

> *"13. The next contention that the Assessing Officer did not demonstrate any material enabling him to form a belief that income chargeable to tax has escaped assessment is fallacious. The Assessing Officer recorded detailed reasons pointing out the material available which had a live link with formation of belief that the income chargeable to tax had escaped assessment. At this stage, as is often repeated, we would not go into sufficiency of such reasons. In this context, reference can be made to decision of Supreme Court in case of Raymond Woolen Mills Ltd. (supra). In case of Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 291 ITR 500/161 Taxman 316 (SC), it was observed as under :*
>
> > *"The expression reason to believe in section 147 would mean cause or justification. If the Assessing Officer has cause or If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is reason to believe but not the established fact of escapement of income.*

> *At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief is within the realm of subjective satisfaction of the Assessing Officer."*

7.3.7 In the case of Paramount Intercontinental (P) Ltd. Vs. ITO in ITA No. 348 of 2016, the Hon'ble Delhi High Court held as under:

> *"5. The "Reasons to Believe" extracted by this Court in the previous part of this judgment clearly shows that specific information with respect to the nature of the credits received by the assessee from known entry operators had been shown to the AO while recording his satisfaction in the issuance of notice under Sections 147/148. In these circumstances, the reassessment notice could not have been questioned. As to the merits, we notice that in the reassessment proceedings, the assessee was unable to satisfactorily explain the correctness of the entries in question. The share applicants appeared to be not in existence and did not answer summons issued under Section 131 of the Act. Furthermore, given that the findings are concurrent by three lower authorities and relate to questions of fact, this Court is of the opinion that no question of law arises. The appeal is according dismissed."*

7.3.8 In the case of Sky Light Hospitality LLP Vs. ACIT WP(C) 10870/2017 and CM No. 44503/2017, on the sufficiency of 'reason to believe', the Hon'ble Delhi High Court held as under:

> *"9. After going through the reasons, we are satisfied that the "reasons to believe" show and establish a live link and connect with the inference drawn that income had escaped assessment, which is required for issuance of notice under Section 147/148 of the Act. Reasons to believe refer to several facts and information that had come to knowledge and was available with the Assessing Officer. At this stage, when notice is issued under Section 147/148 of the Act, firm and conclusive findings are not required for merits would be examined and thereafter final finding recorded in the assessment order. As long as, there is honest and reasonable opinion formed by the Assessing Officer and the "reasons to believe" are not mere "reasons to suspect", the courts should not interject to stop the adjudication process and scrutiny on merits. Absolute certainty is not required at the time of issue of notice and at the same time, "reasons to believe" must not be based on mere suspicion, gossip or*

> *rumour. The said test and criteria, we have no hesitation in holding, is satisfied in the present case. There is evidence and material on record to justify issue of notice under Section 147/148 of the Act."*

7.4 Relying on the decision of the Hon'ble Supreme Court and Hon'ble High Court referred above we are of the opinion that the Learned Assessing Officer has formed his belief on the analysis of credible information received from the Investigation Wing and satisfaction recorded on said information, cannot be said as borrowed satisfaction. We may also like to point out here that the Assessing Officer can issue notice under section 133(6) of the Act during pendency of the assessment proceeding and not authorised to carry out enquiry invoking section 133(6) of the Act prior to recording of reasons and reopening of the assessment.

7.5 In view of our discussion above, we reject the contention of the Learned Counsel of the assessee that Assessing Officer has not applied mind while recording the reasons and he recorded the reasons on the basis of the borrowed satisfaction.

7.6 Further, the Learned Counsel of the assessee advanced another argument that no notice under section 148 of the Act can be issue after completion of the block assessment proceedings. In support of his contention, he relied on the decision of the Hon'ble Gujarat High Court in the case of clearing Cargo Agency Vs JCIT 307 ITR 1 and the decision of Hon'ble Chattishgarh High Court in the case of ACIT Vs Sunil Kumar Jain, reported in 367 ITR 370. He also relied on the latest decision of the Tribunal in the case of Ishwar chand Mittal in ITA No. 8706/Del/2019 for assessment year 2011-12, wherein the Tribunal has followed above decisions of the Hon'ble High Courts. We find that in the case of clearing

Cargo Agency (supra), the issue of reopening of the block assessment was involved. The Hon'ble High Court in the said case held that once assessment has been claimed under section 158BA of the Act in relation to the undisclosed income for the block period as a result of search, there is no question of the Assessing Officer issuing notice under section 148 of the Act for reopening of such assessments as the said concept is repugnant to the special scheme of the assessment of the undisclosed income of the block period. The relevant finding of the Hon'ble High Court is reproduced as under:

> ***"18.*** *Under s. 158B of the Act "block period" and "undisclosed income" have been defined. Sec. 158BA of the Act opens with non obstante clause and provides that in a case of search initiated after 30th June, 1995 the AO shall proceed to assess the undisclosed income in accordance with provisions of Chapter XIV-B of the Act, notwithstanding anything contained in any other provisions of the Act. Therefore, provisions of s. 158BA(1) of the Act have to be read in conjunction with s. 158BH of the Act. The legislature has provided a special procedure for assessment of search cases and assessment has to be framed in accordance with the provisions of Chapter XIV-B of the Act. On a harmonious reading of both s. 158BA and s. 158BH of the Act it becomes clear that only where a provision is not made in Chapter XIV-B of the Act providing for a special procedure for assessment will other provisions of the Act be made applicable.*
>
> ***19.*** *Sec. 158BB of the Act provides for modality of computation of undisclosed income of the block period. Such undisclosed income of the block period has to be the aggregate of the total income of the previous years falling within the block period. If the different aggregates which are provided for in cls. '(a)' to '(f)' are seen, it becomes clear that the computation of undisclosed income is first made in accordance with the provisions of the Act, thereafter reduction or increase as is provided in different clauses has to be made, and the Explanation indicates the exceptions. Clause (f) under sub-s. (1) of s. 158BB of the Act provides for reducing the aggregate total income computed for the block period by the aggregate of the total income, in case where assessment for undisclosed income had been made earlier under cl. (c) of s. 158BC, on the basis of such assessment. In other words, it only means that where previous assessment has been framed under Chapter XIV-B of the Act the*

aggregate of such total income assessed for the block period in case of a search where block period is a different block period from the earlier block period, while assessing for a subsequent block period, such earlier aggregate has to be deducted. When this provision is read in context of s. 158BC, more particularly the first proviso thereunder, it becomes clear that the legislature does not intend to reopen a block assessment. Any such interpretation would run counter to the legislative intent as noted hereinbefore from the contemporaneous exposition through the Memorandum Explaining the Finance Bill as well as various circulars issued by CBDT explaining different amendments.

20. *Sec. 158BC of the Act itself indicates that where legislature wanted to incorporate other provisions of the Act a specific mention has been made when a provision has been made for adopting ss. 142, 143, 144 and 145 of the Act. Contra, where legislature does not want a provision, not falling within Chapter XIV-B of the Act, to be resorted to, the two provisos under cl. (a) of s. 158BC of the Act have specifically made this clear. The first proviso stipulates that no notice under s. 148 is required to be issued for the purpose of proceeding under Chapter XIV-B of the Act. The second proviso stipulates that no person, who has already furnished a return under s. 158BC(a) of the Act, shall be entitled to file a revised return as provided for in s. 139(5) of the Act. Thus, these provisions are inherent indicators in the special procedure scheme to show that s. 158BH of the Act has limited application.*

21. *Time-limit for completion of block assessment has been provided in s. 158BE of the Act. It indicates that the same has to be within one year/two years from the end of the month in which the last of the authorizations for search under s. 132 of the Act was executed etc. For the present, it is not necessary to refer to the other provisions of the said section. However, Expln. 2 as appearing in s. 158BE of the Act gives an indication as to what would be the date on which an authorization shall be deemed to have been executed. Under cls. (a) and (b) of Expln. 2 different points of time have been specified. But in no case, can one envisage the applicability of period of limitation prescribed under s. 153 of the Act for completion of assessments and reassessments. The Revenue cannot contend that for the purpose of reassessing the so-called escaped undisclosed income Revenue will resort to the limitation under s. 153 of the Act, because undisclosed income has to be assessed in the manner provided and by adopting the procedure provided in Chapter XIV-B of the Act. Nor is it possible to resort to limitation under s. 158BE of the Act because the said period of limitation has already expired. At the cost of repetition in this context one has to refer to the language employed in s. 158BA of the Act where there is a positive mandate to the AO to assess the undisclosed income in accordance with the*

provisions of Chapter XIV-B of the Act, notwithstanding anything contained in any other provisions of the Act. As against that s. 158BH states that except as otherwise provided in Chapter XIV-B of the Act, all other provisions of the Act shall apply to assessment made under Chapter. Therefore, once period of limitation has been prescribed under s. 158BE of the Act the time-limit for completion of assessment of undisclosed income has to be as provided under the said section. If the contention of Revenue is accepted s. 158BE becomes unworkable. The limitation prescribed from the date of last of the authorizations, or in case of requisition under s. 132A of the Act, has already expired. This is one more inherent pointer which flows on a conjoint reading of the provisions of Chapter XIV-B of the Act to indicate that legislature does not intend to reopen assessments completed under Chapter XIV-B of the Act assessing the undisclosed income by adopting the special procedure provided in the said Chapter.

***22.** There is one more aspect of the matter. Entire Chapter XIV-B of the Act relates to assessment of search cases, viz., undisclosed income found as a result of search. One cannot envisage escapement of undisclosed income once a search has taken place and material recovered, on processing of which undisclosed income is brought to tax. Sec. 147 of the Act itself indicates that the same is in relation to income escaping assessment and applies in a case where either income chargeable to tax has escaped assessment by virtue of either non-disclosure by way of non-filing of return, or non-disclosure by way of omission to disclose fully and truly all material facts for the purpose of assessment, or processing of material already available on record, if the same is within stipulated period of limitation. Therefore, to contend that undisclosed income has escaped assessment despite an assessment having been framed under Chapter XIV-B of the Act by adopting the special procedure prescribed by the said Chapter is to contend what is inherently not possible. It cannot be a case of non-filing of return considering the provisions of s. 158BC of the Act. It cannot be a case of non-disclosure of material facts considering the fact that everything which was undisclosed has already been unearthed at the time of search and the definition of "undisclosed income" itself indicates that not only what has been seized or recovered, but even income or property which has not been or would not have been disclosed for the purpose of the Act has been roped in. Furthermore, s. 158BB of the Act also provides not only for requisition of books of accounts or other documents, but on the basis of evidence found as a result of search and such other materials or information as are available with the AO, undisclosed income of the block period shall be computed. Therefore, even if, assuming for the sake of argument, some income has not been disclosed in the return furnished under s. 158BC of the Act, the AO is bound to assess all undisclosed income after*

processing the entire material available with AO. The AO cannot be heard to state that undisclosed income has escaped assessment because the officer failed to apply his mind to the material available on record, there being no lack of disclosure.

23. *The last of the amendments made by Finance Act, 2002 as explained in CBDT Circular No. 8 of 2002, dt. 27th Aug., 2002 further goes to support the stand of the petitioners. The legislature has provided that the block assessment of undisclosed income is to be based not only on the evidence found at the time of search, but also on the basis of material and information gathered during the inquiries made after the search proceedings. However, on the basis of evidence found during the search proceedings certain further inquiries are undertaken by the AO resulting in collection of material or information gathered during such inquiries. The assessment for the block period shall also include computation of such income as a consequence of such inquiries. Thus, there would be no scope for any income escaping or remaining undisclosed when the special procedure laid down by Chapter XIV-B of the Act is resorted to. The contention, on behalf of the Revenue, that there might be income which might have yet escaped assessment from the block assessment cannot be accepted because the scheme itself provides for bringing to tax all undisclosed income, whether recovered during the course of search proceedings or recovered in the course of post-search inquiries made on the basis of material collected during search. Hence, the legislative intent is clear. Once a block assessment is framed the same is final unless and until disturbed in an appropriate proceeding taken before the higher forum.*

24. *The provisions of Chapter XIV-B of the Act, more particularly s. 158BG of the Act provide for a situation where no order of assessment for the block period shall be passed without the previous approval of either the CIT or Director (as the case may be) in respect of search cases. In other words, not only the AO cannot be an officer below the rank of an Asstt. CIT, etc., but the order of assessment framed is scrutinised by the highest officer in the hierarchy to ensure that : (1) no undisclosed income escapes assessment, and (2) there is no high pitched assessment, only for the sake of making an assessment. It would not be open to Revenue to contend that despite material being available on record the same escaped scrutiny at the hands of two officers, one of them being a superior officer in the hierarchy.*

25. *As already noted hereinbefore, the entire scheme for bringing to tax income which has escaped assessment under ss. 147 to 153 of the Act specifically relates to a specific assessment year and different time-limits are provided at different stages which are all inter-linked and commence from the end of the relevant assessment*

year. The definition of "assessment year" as provided in ss. 2(9) of the Act means the period of 12 months commencing on the first day of April every year. This definition cannot by any stretch of imagination be made applicable to the term "block period" which has been defined by s. 158B(a) of the Act. On a plain reading the concept of block period cannot take within its fold the meaning of an assessment year. Similarly, the term "assessment year" by its very definition, cannot be read to mean "block period".

26. *In light of this specific distinction in the statutory scheme brought about by specific definitions of the two terms, "assessment year" and "block period", the submission on behalf of Revenue that the term "assessment year", wheresoever it appears in the group of ss. 147 to 153 of the Act, be substituted by the term "block period" cannot be accepted, because on a plain reading of the said provisions, viz., s. 147 to s. 153 of the Act, the entire scheme becomes unworkable. The principles of interpretation also do not permit such an exercise.*

27. *It is well-settled that a Court is not empowered to either add words to a statute or substitute words while interpreting a provision. The Court can only read and interpret the language employed by the statute. Only in the event of a provision not conveying the intended meaning, in other words, a plain reading resulting in absurd situation, can the Court import words to make sense out of the provision. However, at the same time, even a purposive interpretation does not permit the Court to substitute the statutory language unless and until the provision as it stands would not result in the provision being workable. If the language of the statute is capable of a plain meaning without doing violence to the language, it is not open to add any words therein so as to give meaning which one or the other side thinks to be more appropriate.*

28. *In the present case none of the exceptional contingencies exist. As already noticed, on a plain reading it becomes discernible that there are two separate streams of procedure provided by the legislature : (1) under Chapter XIV of the Act which provides for "procedure for assessment", and (2) under Chapter XIV-B of the Act which provides for "a special procedure for assessment of search cases". Only in the event the special procedure for assessment has not provided for some procedure for assessment can one refer to the procedure under Chapter XIV of the Act. Therefore, the interpretation sought to be placed by Revenue on the provisions of the Act so as to read in the term "block period" for the purpose of invoking and applying ss. 147 to 153 of the Act cannot be countenanced. Neither does a plain reading of the provisions permit such an exercise, nor is there any lacuna in the provisions which is required to be filled up.*

29. *In Chapter XIV-B of the Act the only place where one finds the use of the term 'assessment year' is in the definition of the term 'block period'. This itself indicates that if the 'block period' was equivalent to 'assessment year' the definition of block period would not have provided that 'block period' means period comprising previous years relevant to 10/6 assessment years. To put it differently, reference to the number of assessment years is only a means, a measure to indicate and specify the period of previous years which would comprise block period. Revenue, therefore, cannot contend successfully that wherever the term 'assessment year' is used in the group of sections from ss. 147 to 153 of the Act the said term has to be replaced by the term 'block period'. Furthermore, the amendment which is retrospectively made in the definition of the block period by the Finance (No. 2) Act, 1996, itself indicates that originally the term block period meant as consisting of 10 previous years prior to the previous year in which the search was conducted and also the period of current previous year upto the date of search, but, before adoption of uniform previous year, in case of different assessees, 'block period' would be different depending on the accounting period adopted in terms of s. 3 of the Act. To obviate this situation the definition of block period was amended. This becomes clear from Circular No. 762, dt. 18th Feb., 1998 issued by CBDT extracted hereinbefore.*

30. *The apex Court decision on which great emphasis has been placed on behalf of Revenue in fact goes to support the view adopted in the present case. The controversy before the apex Court was in relation to the rate of tax which was to be applied to the undisclosed income assessed in terms of Chapter XIV-B of the Act. The apex Court itself has observed, as can be seen from the portion wherein emphasis is supplied by this Court, that the Supreme Court was concerned mainly with computation of undisclosed income under s. 158BB(1) of the Act. This Court has already noticed that s. 158BH of the Act provides for invoking other machinery provisions to an assessment made under Chapter XIV-B of the Act and does not require other provisions of the Act to be applied to a block assessment to be made under Chapter XIV-B of the Act.*

31. *The apex Court decision also provides for a harmonious construction on the basis of reading of the mode of computation provided in Chapter IV of the Act and provided under Chapter XIV-B of the Act by stating that s. 158BH inter alia provides that other provisions of the Act shall apply if there is no conflict between the provisions of Chapter XIV-B of the Act and other provisions of the Act. This becomes clear from the extracted portion wherein emphasis has been supplied. To put it differently, in a situation where there is a conflict between the provisions of block assessment procedure prescribed under Chapter XIV-B of the Act and other provisions of*

> *the Act, it will be the special procedure prescribed under Chapter XIV-B of the Act which has to prevail.*
>
> ***32.** As already noticed hereinbefore, the entire scheme under Chapter XIV of the Act, more particularly from ss. 147 to 153 of the Act pertaining to reassessment, and the special procedure for assessing the undisclosed income of the block period under Chapter XIV-B of the Act are not only separate and distinct from each other, but if an effort is made to incorporate the scheme under Chapter XIV of the Act for the purpose of assessment of the block period there is a conflict between the provisions which becomes apparent on a plain reading. In the circumstances, as per established rules of interpretation, unless and until a plain reading of the two streams of assessment procedure does not result in the procedures being independently workable, only then the question of resolving the conflict would arise. But to the contrary, in the present case, in light of provisions of s. 158BH of the Act, once there is a conflict between the two streams of procedure, as laid down by the apex Court, provisions of Chapter XIV-B of the Act shall prevail and have primacy.*
>
> ***33.** Thus, viewed from any angle, the stand of Revenue does not merit acceptance. Once assessment has been framed under s. 158BA of the Act in relation to undisclosed income for the block period as a result of search there is no question of the AO issuing notice under s. 148 of the Act for reopening such assessment as the said concept is abhorrent to the special scheme of assessment of undisclosed income for block period. At the cost of repetition it is required to be stated and emphasized that the first proviso under s. 158BC(a) of the Act specifically provides that no notice under s. 148 of the Act is required to be issued for the purpose of proceeding under Chapter XIV-B of the Act."*

7.7 As regard to the decision in the case of Sunil Kumar Jain (supra), the citation of ITR stated by the Learned Counsel was not found to be correct and it was found reported at 266 CTR 0354. In the case of Sunil Kumar Jain (supra) the Hon'ble Chattisgarh High Court observed as under:

> *"20. The Suresh-Gupta case is related to the block assessment but the question whether sections 147/ 148 of the Act were applicable in the block assessment or not, was not involved therein. However,*

in Peerchand case, this very question was involved and was answered in favour of the Department.

Sections 147/148 Should Be Strictly Construed

21. Kangia, Palkhivala and Vyas on The Law and Practice of IncomeTax, Volume-II, Ninth Edition, page 1826 explains the scope of the section 147 of the Act as follows:

This section imposes no charge on the subject but deals merely with the machinery of assessment, Bhimraj v CIT 32 ITR 289, affirmed in 41 ITR 221 (SC); Radhakant v. Johri 39 ITR 182; Chhaganlal v ITO 46 ITR 351, 357; Dalmia v CIT 194 ITR 700, affirmed in 236 ITR 480 (SC) on another issue; CIT v Saraf 207 ITR 217; Sardar Harvinder v ACIT 227 ITR 512; and in interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable.CIT v Mahaliram 8 ITR 442, 448 (PC); CIT v Sun Engg. Works 198 ITR 297 (SC); and s.1 under Interpretation of the Income Tax Act; This, however, does not mean thatthe section is to be liberally construed; since the reopening of an assessment is a power of an extraordinary nature, the section should be strictly construed., New Kaiser-I-Hind v CIT 107 ITR 760, 764; ITO v MewalalDwarkaprasad 176 ITR 529 (SC). It is in this light that sections 147/148 are to be construed ie they are to be construed strictly.

22. Section 147 of the Act is titled as 'Income Escaping Assessment'. It provides that if the Assessing Officer has reason to believe that any income chargeable to the tax has escaped in any assessment year, he could re-assess the income subject to fulfilling other conditions mentioned in that section.

23. Section 148 is titled as 'Issue of notice where income has escaped assessment'. It provides issuance of notice before making the assessment, re-assessment or re-computation under Section 147 of the Act.

24. Section 147 of the Act uses the words 'in any assessment year[1]; it does not use the words 'in any assessment year or for any block period'. Had it used the words 'in any assessment year or for any block period' the matter would have been different but in absence of these words, can we read these words in the section when they are not there. If we do so, then wifi it be not stretching the words too far?

25. Often the block assessment is in respect of the years for which the assessment has already been done under the Act. The block assessment is a kind of re-assessment, on the basis of material

found in the search. This is also indicated by first proviso to section 158J3C (a) of the Act.

26. Section 158BC is titled as 'Procedure for Block Assessment'. The first proviso (see below), "The relevant portion of the proviso is as followsto section 158BC(a) of the Act provides that for the purpose of proceedings under Chapter XIVB of the Act, no notice under section 148 of the Act is required to be issued.

27. In case sections 147/ 148 of the Act are applicable to the block assessment, it will amount to reassessment of the reassessment proceeding.

28. Section 147 of the Act has not used the word 'the block period'. The reason seems to be simple that the block assessment itself is the re-assessment proceedings. There was no necessity for providing reassessment of the reassessment proceedings.

29. The Gujarat High Court has considered this question in detail in Cargo Clearing Agency (Gujarat) v. Joint Commissioner of Income Tax {(2008) 218 CTR (Guj) 541} (the Cargo-Clearing case) and has held that sections 147/ 148 of the Act are not applicable to the assessment under Chapter XIVB of the Act. We agree with the same and are unable to subscribe to the view taken by the Gauhati High Court in the Peerchand case.

30. The material for notice for reassessment under section 148 of the Act is the same as was for passing order under section 263 of the Act. The order under section 263 of the Act has been set aside by the Tribunal on the ground that the initial order passed by the AO was not prejudicial to the interest of the Revenue.

31. In view of above, the CIT-A has held that once the order under section 263 has been set aside, the same material cannot be used for notice under section 148 of the Act. However, neither the Tribunal has gone into this question nor this case has been admitted on the same. Thus, we refrain from expressing our view on this point or any other findings recorded in favour of the Assessee by the CIT-A.

'Provided that no notice section 148 is required to be issued for the purpose of proceeding under this Chapter:'

CONCLUSIONS

32. Our conclusion is, that sections 147/148 of the Act for reassessment are not applicable to the assessment under Chapter XIVB of the Act."

7.8 We do agree with the ratio of the Hon'ble High Court's in above cases, however in the instant case, the Assessing Officer has reopened regular assessment and not block assessment. The regular assessment and block assessment are both separate proceedings and even can run parallel. Therefore, the ratio of the above cases do not apply on the instant case.

7.9 Further, in the case of Ishwar Chand Mittal (supra) the issue was that in the garb of the reassessment preceding the Assessing Officer sought to verify the same details which were already available on record and duly considered verified in the course of proceeding under section 153A of the act. But in the instant case, before us, the Assessing Officer has noted that the assessee has failed to substantiate that relevant accommodation entry transactions were already considered in the block assessment proceedings.

7.10 In view of the above discussion, we also reject the contention of the Learned Counsel of the assessee that no notice under 148 of the Act can be issued in the case of the assessee in view of the block assessment completed prior to issue of notice u/s 148 of the Act.

7.11 The additional grounds No. 1 & 2 of the appeal raised by the assessee are accordingly dismissed. The third ground was not pressed; accordingly same is dismissed as not pressed.

8. As far as merit of the case is concerned, the learned Counsel of the assessee referred to the order of the block assessment and submitted that in the block assessment, commission income at the rate of 1.5% has been assessed on the transaction of Rupees 10134 lakhs. According to him, the transaction in question in the

present proceeding also covered in those transactions. He also submitted that once commission income has been assessed in case of the accommodation entries in the block assessment order, addition for the entire amount of accommodation entries cannot made in the present proceedings under section 147 of the Act. On being specifically asked by the Bench, to demonstrate, as how and where the accommodation entries received from M/s RK Agrwal & Co have already been included in the amount of rupees 10134 of accommodation entries considered in the block assessment order. But the Learned Counsel neither could clearly state that the entries of 'RK Agrwal and Company' stands already appear in the entries considered in the block assessment order, nor he could file any documentary evidence to support his claim. Further the contention that only commission income should be assessed in case of the accommodation entries from M/s RK Agrwal & Co was also not convincing as possibility of entire amount of accommodation entries as unexplained cash credit under section 68 cannot be denied, in addition to the commission earned on accommodation entries of ₹ 10134 lakhs. The onus is on the assessee to discharge the responsibility of substantiating that in case of RK Agrwal and company only commission income was earned. The assessee has neither produced those parties for statement alongwith documentary evidences to support that only commission income was earned. In view of the failure on the part of the assessee to discharge his onus, the addition made by the Assessing Officer is sustained and we reject the contention of Learned Counsel of the assessee seeking telescoping of the addition with the income already assessed in the black

assessment order. The ground of the appeal of the assessee is accordingly dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10th September, 2020.

Sd/-	***Sd/-***
(H.S. SIDHU)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 10th September, 2020.
RK/-(D.T.D.S.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi