

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI JUSTICE P. P. BHATT, PRESIDENT
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Though Video Conferencing)

ITA No. 6723/Del/2018
(Assessment Year: 2009-10)
Through Video Conferencing

Shri Sanjeev Malhotra
10/81, Punjabi Bag West
New Delhi- 110026
PAN AAGPM3216Q

Vs.

DCIT,
Circle-24(2),
New Delhi

(Appellant)

(Respondent)

Assessee by :

Shri Ajay Wadhwa
&

Ms Ragini
Advocates

Revenue by:

Shri H K Chaudhary
CIT DR

Date of Hearing

07/09/2020

Date of pronouncement

23/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

01. This appeal is filed by Mr. Sanjeev Malhotra (the Assessee/Appellant) against the order of THE COMMISSIONER OF INCOME TAX (APPEALS) – 30, New Delhi (The Learned CIT (A)) dated 28/9/2018 for assessment year 2009 – 10 raising following grounds of appeal:-
- i. That the order passed by the CIT (A) dismissing the appeal of the assessee is illegal and bad in law

- ii. That the CIT (A) has grossly erred in not providing sufficient opportunity to the assessee of being heard. The impugned order has been passed in violation of the principle of natural justice.
- iii. That the CIT (A) has grossly erred on facts and in law in rejecting the admission of additional evidences filed by the assessee. The additional evidences filed by the assessee go to the root of the case.
- iv. That the CIT (A) has grossly erred on facts and in law in rejecting the additional grounds of appeal raised by the assessee which the assessee sought to challenge the reopening of assessment u/s 147 and 148 on various grounds and reasons.
- v. That the CIT (A) has grossly erred in upholding the assessment order passed u/s 147/143. The notice issued u/s 148 is illegal, bad in law and without jurisdiction.
- vi. That the reasons recorded by the AO for issuance of notice u/s 148 are illegal, bad in law and contrary to the various judicial pronouncements.
- vii. That the reasons are recorded by one officer and the notice u/s 148 is issued by a different officer and hence the notice u/s 148 is illegal and without jurisdiction. Moreover no valid approval of the higher authority has been taken by the AO before initiating action u/s 147/148.
- viii. That the CIT (A) has grossly erred in law and on facts in upholding the addition of ₹ 4 crores u/s 68 of the IT act. This addition is illegal, bad in law and should be deleted.
- ix. That the CIT (A) has grossly erred in not appreciating the fact that Section 68 cannot be applied to the facts of the present case.

- x. That the CIT (A) has grossly erred on facts and in law in not appreciating that the appellant had furnished evidences to prove that he received the consideration of ₹ 4 crores for sale of shares of Sudarshan overseas Ltd and this transaction is completely genuine and bona fide.
 - xi. That without prejudice, the addition of Rs 4 crore should be allowed to be set-off against the loss incurred on sale of shares of company Sudarshan overseas Ltd.
 - xii. That the various observations made by the AO and CIT (A) are incorrect, unjust, unlawful and based on mere surmises and conjectures.
 - xiii. The explanation given in the evidence/submissions produced, material placed on material available on record has not been properly considered and has not been judicially interpreted.
02. Per application dated 19/6/2017 assessee has made request for admission of the additional grounds. Those additional grounds are as Under:-
- i. That the notice issued u/s 148 and the assessment order passed u/s 147/143 (3) on 24/12/2016 of the income tax act, 1961 are illegal, bad in law, without jurisdiction and barred by time limitation.
 - ii. That AO has erred in reopening the assessment u/s 148 as there was neither any fresh material/tangible material.
 - iii. That on the facts and circumstances reopening has been initiated on the basis of some alleged information and there is no independent application of mind. In fact there are no independent reasons recorded to believe while recording reason.
 - iv. The reasons recorded are incorrect, vague and general in nature and the same have been recorded without any application of mind.

v. That the notice u/s 148 has been issued for verification and examination which is not permitted by law therefore the notice issued u/s 148 is illegal and bad in law.

vi. That the application craves leave to add, amend, alter & or delete any of the above grounds of appeal at or before the time of hearing.

03. At the time of the hearing, the learned authorised representative praying for the admission of the additional ground stated that relevant facts are already on record and no new facts are required to be investigated. It is further stated that the above noted grounds go to the root of the matter and therefore same may be admitted and adjudicated. The learned authorised representative placed reliance on the decision of the Honourable Supreme Court in case of NTPC 229 ITR 383 (SC).

04. The learned CIT DR vehemently objected to the additional grounds raised by the assessee stating that they were not raised before the lower authorities and have never been objected before the learned assessing officer; therefore, these grounds of appeal cannot be admitted at this stage. It is further argued that for the adjudication of these grounds, necessarily, further facts need to be adjudicated. Hence, he submitted that these grounds should not be admitted at all.

05. We have carefully considered the rival contention and perused the application of the assessee for admission of the additional ground. On perusal of the additional ground as well as the main grounds raised in the appeal memo it is apparent that, by these grounds, the assessee is challenging various aspects of the reopening of the assessment. Reopening of the assessment goes to the root of the matter and is a jurisdictional issue. Naturally, for determining the jurisdiction of the reopening of the assessment, no fresh facts are required to be investigated. Even otherwise

- challenge to the reopening of the assessment goes to the root of the matter, therefore before deciding on the merits of the case, this issue needs to be adjudicated. The case of the assessee is properly supported by the decision of the honourable Supreme Court in case of NTPC (supra), therefore, we admit the additional grounds raised by the assessee.
06. Before advertng on the issues involved in appeal, the facts of the case are required to be stated succinctly. Assessee is an individual and having income from salary and house property. He filed his return of income on 31/7/2009 declaring income of ₹ 4,149,840/-. Assessee revised its return of income on 29/9/2009 declaring the same income. The revised return was not filed electronically but was deposited manually with the AO – Circle 9 (1) New Delhi. The case was processed u/s 143 (1) of the income tax act.
07. The learned assessing officer recorded the reason for reopening of the assessment as Under:-

“An STR relating to Sri Sanjeev Malhotra has been received from the ADIT (Inv) Unit- IV , New Delhi vide F. No. ADIT (Inv) / Unit -4 (1) /2015-16/12 dated 11/05/2015.

As per STR information Mr. Parmender Rana opened a saving account on 4/10/2006 as salary account for employer M/S Nirulas Corner House Pvt. Ltd in ICICI bank Ltd. However no salary has been credited in the account since February 2008. In the month of December 2008, there was a large value credit of Rs 4 Crore in the account through RTGS from the Axis bank account of M/s Willy Agrotech Ltd, which were immediately followed by

large value RTGS transfer favouring a person named Sanjeev Malhotra. The account was closed on 7.02.2009. The investigation wing issued summons u/s 131 (1A) to Sri Sanjeev Malhotra requiring to produce the documents/detail/evidence to verify the suspicion rose in the STR. The assessee submitted its reply in response to summons u/s 131 (1A) and was unable to explain the source of funds and the purpose of transfer from M/s Willey Agrotech Ltd to Shri Parmender Rana. Shri Sanjeev Malhotra was director of M/s Willey Agrotech Pvt Ltd till December, 2008 and thereafter the President of the company and ultimately the funds were transferred to his account. The above information has been examined and the transactions involving ₹ 4 crores mentioned in the manner above, constitutes fresh evidence/information in respect of the assessee for the AY 2009 – 10. The assessee has not disclosed any capital gain in the return of income filed for the assessment year 2009 – 10, neither in the original return (filed on 31/7/2009) nor in the revised return (filed on 29.09.2009). No balance sheet was enclosed with these returns to reflect any investment in shares. The case was not selected for scrutiny for the assessment year 2009 – 10.”

08. Based on the above reasons, notice u/s 148 of the act was issued on 30/3/2016. The assessee submitted in response to that notice a letter dated 27/4/2016 accompanying ITR along with computation of income declaring total income of ₹ 3,942,130/- as against return of income of ₹

4,149,840/- declared in the original return of income. The assessee was provided copy of the reasons recorded for reopening of the assessment on 18/11/ 2016. The assessee objected to the reopening of the assessment as per letter dated 18/11/2016 stating that it is not correct to say that assessee has not disclosed any capital gain for these transactions of the share. For this, the assessee put to the notice of the assessing officer that these transactions are duly reflected as sale proceeds of the share and after indexation the loss under the head capital gain amounting to Rs. 123,30,161/- has duly been reflected in revised return of income. The objections raised by the assessee were disposed of as per order dated 8/12/2016. Subsequently the statutory notices u/s 143 (2) read with Section 142 (1) of the act were issued on 11/11/2016. Meanwhile, it has come to the notice of the learned assessing officer that the case of Mr. Parminder Rana who has given ₹ 4 crores to the assessee in the garb of sale consideration of shares sold to him is also assessed with income tax officer Ward 72 (4), New Delhi. Therefore information was sought in the form of certified copy of the statement recorded u/s 131 of Sri Parminder Rana and assessee. Such statements were provided by that AO. Thereafter the assessing officer issued notice to the assessee asking to show cause as to why ₹ 4 crores received by him during assessment year 2009 – 10 in the garb of sale consideration of shares sold to Mr. Rana should not be treated as unexplained credit. The assessee was also provided a statement recorded u/s 131 of Mr. Rana by the ITO Ward 72 (4). The assessee submitted that that assessee has filed revised return with the ACIT Circle 9 (1) New Delhi on 29/9/2009 and it was also filed with ITO salary Ward VI (I) on 28/8/2009 at Chennai. In both these returns, transactions of sale of shares are properly reflected. Assessee also

submitted that in the return filed in response to notice u/s 148 the above sale consideration of Rs. 4 crore is disclosed and claiming a net loss of Rs. 1 23,30,115/- under the head long-term capital gain. Assessee also stated that he was holdings 78,39,200 equity shares of Sudarshan Overseas Limited out of which 40 lakhs equity shares were sold to Mr. Rana for a consideration of ₹ 4 crores @ RS 10 /- per share. The assessee also pointed out that there is a between Mr. Rana and assessee, therefore statement given by Mr. Rana does not hold any value in view of disputes as evidenced by FIR lodged against Mr. Rana. The learned assessing officer rejected the explanation of the assessee. With respect to the revised return, he noted that there is no such loss appearing in the acknowledgement and the revised return is filed manually. No records are available in the ITD system i.e. filing portal of the revenue. He further held that the original return filed electronically cannot be revised by filing manual return. Thus, reopening of the assessment is proper.

09. On the merits of the issue, he noted that claim of loss of Rs 123,30,159/- in return filed in response to notice for reopening is merely an afterthought. He relied on the statement of Mr. Rana where he stated that the receipt of ₹ 4 crores was not part of his income and the said amount was transferred by assessee into his saving account which immediately transferred to the personal saving account of the assessee. He further stated that assessee for his personal gain and benefits and to trap him transferred ₹ 4 crores from Sudarshan Consolidated Ltd (Erstwhile Willey Agrotech Limited) from Axis bank account, Punjabi Bagh, New Delhi through RTGS into his saving account in ICICI bank without his knowledge and consent. Mr. Rana further stated that he has also lodged a formal complaint against the assessee with police. On the basis of the

above statement and information received from the investigation wing, the learned AO observed that the assessee had received an accommodation entry of ₹ 4 crores in account of the assessee which represents unexplained credit under the provisions of the act. The AO further raised an issue that the assessee has changed his income from the income shown in the original return of ₹41,49,84 to ₹ 3,942,130. According to the AO, this raises various serious questions about the working of the assessee. He further stated that the STR information and the operation of the bank account of Mr. Rana, it is clear that the funds were transferred to the account of the assessee through this bank account in the garb of sale consideration of shares. He further noted that assessee did not prove with any documentary evidence as to whether the shares of Sudarshan Consolidated Ltd was of the value of ₹ 4 crores on the date of transfer. The AO noted that the above funds belonging to M/s Willey Agrotech Limited of which the assessee was director and later on President and which was inexplicably transferred to Mr. Rana and ultimately to the assessee. Thereafter, he referred to several judicial precedents and held that the consideration for sale of shares is a bogus claim as it has failed test of genuineness of the share sale purchase transaction. According to him, the parties to whom the sales of shares have been shown receiving of consideration do not have creditworthiness for paying such a huge consideration for purchase of shares and therefore it appears to him that it is assessee's own money from undisclosed sources on which tax has not been paid and brought into the books through sale consideration of shares sold routed through the so-called buyer. Thus, he made an addition of ₹ 4 crores u/s 68 of the income tax act and assessed the assessee to the total income of ₹ 44,149,840 by

passing an order u/s 147 read with Section 143 (3) of the act on 24/12/2016.

10. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. During the course of appellate proceedings assessee filed an application for admission of additional evidence which was sent to the assessing officer for remand report and for verification of those evidences. During the course of remand proceedings summons issued to both assessee as well as Mr. Rana u/s 131 and statement of the both the parties were recorded. The learned assessing officer submitted the remand report which is reproduced by Id CIT – A at page number 7 – 27 of the order. Before the learned CIT – A assessee presented certain additional evidences and made a request for admission of the same which claimed to prove that the statement of Mr. Rana is false. It was further stated that assessee has documents to prove that Mr. Rana is selling the property of the company, getting the bills of exchange discounted and never settle credit facilities for the company and even the signing of the cheques on behalf of the company. It was also stated that he was the managing director and the main person in charge of the Sudarshan Overseas Limited, company whose shares are transacted and entire finance of that company was under his control and supervision. To show this assessee submitted certain evidences that Mr. Rana got the money from a company called Willey Agrotech Ltd. the assessee preferred an application Under rule 46A of the income tax rules which is reproduced by the learned CIT – A at page number 18 – 20 of his order. The learned CIT – A noted that the appellant has not been able to rebut the facts as brought forth by Mr. Rana and find that the money originated from Sudarshan overseas Ltd

controlled by assessee. The money was transferred to account of M/s Willey Agrotech Ltd and from that Mr. Rana and from there it came back to the assessee in the garb of consideration received for sale of shares. He further held that these transactions were carried out with a view to claim capital loss upon indexation. He also noted that the objective of assessee was to build bank balance in the hands of Mr. Rana and it was actually one of the layers in the process of layering. Therefore he upheld the action of the learned assessing officer. Therefore, assessee aggrieved with that order, has preferred this appeal.

11. The learned authorised representative submitted a paper book containing 302 pages and also a written synopsis of his arguments. He explained that the money trail shown by the learned assessing officer is incorrect. He also submitted a detailed flow of the actual money trail of the whole transaction. He also led us to the various documents with respect to the bank account of the various parties to show the actual money trail. After stating the facts he submitted that the reasons to believe are materially incorrect, falls, based on borrowed satisfaction and are mere information with no nexus to the escapement of income and in fact do not even lead to the escapement of income. He referred to the reasons recorded by the learned AO and stated that it merely reproduces the allegation of the investigation wing and there is no independent finding by the AO. He further stated that that the money is transferred from Willey Agrotech Ltd to Mr. Rana and Mr. Rana in turn has transferred the money to the assessee. He further stated that fact recorded by the AO is grossly incorrect that Mr. Sanjeev Malhotra was a director of Willey Agrotech Ltd till 2008. He submitted that he was director till 26th of March 2007 and was never the President of that company as stated by the AO. He

further stated that in the revised return filed by the assessee the assessee has declared the receipt of ₹ 4 crores as sale consideration in respect of sale of shares and has worked out loss of ₹ 1.23 crores. He therefore submitted that the allegation of the learned assessing officer is baseless as assessee has already disclosed the sale consideration and consequent capital loss in the revised return of income. He submitted that there is no allegation on the amount of capital loss incurred by the assessee and therefore the sale consideration as well as the actual cost as well as Indexed cost of those shares are already available in the income tax return and therefore no income has escaped. He further stated that reopening of the assessment cannot be resorted to for the purpose of conducting a verification exercise also in a case where the capital gain has already been disclosed in the revised return filed by the assessee. With respect to the allegation of the learned assessing officer that assessee has not disclosed balance sheet along with the revised return he submitted that assessee is not required to maintain the balance sheet and profit and loss account as per requirement of the law as he does not have any business income. He therefore stated that it is a settled legal position that where the assessing officer proceeded for reopening of assessment on non-existent and factually incorrect reasons and he did not apply his mind independently on information received from investigation wing prior to recording of the reasons, reopening of assessment such case is invalid and unjustified. He referred to the several judicial precedents to support his case. He further stated that reasons to believe do not contain any tangible material having nexus to the escapement of income in the present case and therefore on this count also the reopening of the assessment is invalid. He further stated that the learned assessing officer

though was having a revised return available with the revenue, despite this he reopened the assessment merely on the conclusions drawn on the basis of investigation Wing information and therefore the satisfaction arrived by the assessing officer for reopening is a borrowed satisfaction and on such satisfaction the reopening of the assessment is invalid.

12. On the merits of the addition he submitted that

- i. Rs. 4 Crores was received by the assessee for the sale of shares, the sale of shares are properly documented in the records of the company whose shares are transacted, the sale consideration is received by the assessee, the shares were held in the name of the seller in the annual return of that company, subsequently those shares are appearing in the name of the buyer, proper handing over of the share certificates, their subdivision by the buyer, money trail is clearly demonstrated, therefore the addition u/s 68 cannot be made.
- ii. He submitted that as per the certificate of the chartered accountant dated 10/12/2008 which certified that the loan of ₹ 4 crores was given by Willey Agrotech Ltd [Sudarshan Consolidated Limited] to Mr. Parminder Rana in December 2008 and the bank statement of Willey Agrotech Ltd also shows the above transaction. The Willey Agrotech private limited was owned by the father in law of Mr. Rana and his brother-in-law Mr. Willey Sahni. Therefore, he submitted that the money was transferred in the account of Mr. Rana from a company controlled by Mr. Rana by the name of Willy Agrotech Ltd and not the assessee. He therefore

submitted that the source of money in the bank account of the buyer Mr. Parminder Rana is the Willey Agrotech Limited which is owned, controlled and managed by Mr. Parminder Rana and His family.

- iii. He submitted that assessee was director of Willey Agrotech Limited only up to 26/2/2007 and not 2008 and never president of Willey Agrotech Limited, this fact is wrongly stated by LD AO.
- iv. With respect to the company whose shares are transacted i.e. M/s Sudarshan Overseas Limited; He referred to the various statutory records of that company to show that Mr. Rana was Managing Director of that company. He also submitted that the additional evidences filed before the learned CIT – A clearly shows that Mr. Rana has joined the company on 3rd March 2008. He has also executed a sale deed of immovable property and Moveable property of that company on 24/11/2008. He also submitted that various financial documents of that company are signed by Mr. Rana which clearly shows that he was the man at the helm of the affairs of that company. He also supported this with certified minutes of the meeting where Mr. Rana took the lead as the director of that company.
- v. He further stated that as per agreement dated 1/4/2008 for the sale of shares by the assessee to Mr. Rana, there is an acknowledgement dated 17/4/2008 by Mr. Rana regarding delivery of 20 share certificates for 40 lakhs equity shares and transfer deeds. Annual return of that particular company

from the MCA website clearly shows the transfer of shares from Assessee to Mr. Rana, the annual return of the company showing that assessee holds 7939200 sales of that company, the application by Mr. Rana for splitting of the share certificate held by him in 25 share certificates and such share certificates held by him were cancelled and new five shares certificates were issued. All these applications are signed by Mr. Rana in his capacity as chairman and Managing Director of the company. He further referred to the minutes dated 6/2/2009 of Sudarshan Overseas Ltd which transfers 22 lakh shares of Mr. Rana with share transfer forms.

- vi. With respect to Assessee's role in the company i.e. Sudarshan Overseas Limited, he stated that he was a director from 18/3/1993 to 1 April 2008 only as on 1/4/2008, he sold these shares substantially to Mr. Parminder Rana. He referred to the date of sale of shares as well as the date of ceasing of the directorship of Sudarshan Overseas Limited.
- vii. He further stated that Rs 4 crores were not transferred from King Crop science Ltd to Messer Sudarshan Consolidated Limited as shown by him with respect to the fund flow and the trail of the money. Therefore money trail stated by Mr. Rana, relied by LD AO is factually incorrect.
- viii. With respect to the allegation of the learned assessing officer in remand report dated 8/05/2018 that the property of the company was sold on 24 November 2008 for ₹ 4 crores and the source of ₹ 4 crores emanated from the assessee and all these transactions were carried out to evade capital gain of

Sudarshan oversees Ltd. He submitted that these allegations are absolutely incorrect as same can also be verified from the sale deed dated 24/11/2008 which is executed by Mr. Rana. He referred to the sale deed at page number 111 – 126 of paper book.

13. In view of this he submitted that even on the merits the addition cannot be sustained. He therefore submitted that assessee has clearly disclosed the nature of the transaction, the source of the money, the documents evidencing the sale of the shares, subsequent conduct of the buyer in splitting of the shares, the role of the buyer who is a director of the company from whom the source of money or originated, the loan received by the buyer for purchase of the shares, incorrect facts based on which the addition is made by the learned assessing officer, all these evidences clearly shows the nature and source of the credit with respect to the identity and creditworthiness of the buyer and genuineness of the transaction. In view of this he contested that the addition u/s 68 even on the merits is not proper.
14. The learned departmental representative submitting that the reopening is valid stated that the bank account of Mr. Rana was opened on 4/10/2009 and was closed on 7/2009. In December 2008, there is an RTGS of ₹ 4 crores and therefore it was reported as a suspicious transaction in STR report. Summonses were issued u/s 131 (1A) to the assessee and in response to that summons, assessee was unable to explain the source of fund and the purpose of transfer of fund from M/s Willey Agrotech Ltd to Mr. Rana. He further referred to page number 95 of the paper book wherein on 18 April 2018 the statement of Mr. Rana was recorded. It shows that there was no income from salary and merely a flow of funds

and therefore the bank reported it to be a suspicious transaction. He further submitted the purpose of the transfer was not explained by the assessee. With respect to the revised return he submitted that in column number 3a where current year loss (if any) is required to be shown it is nil. And therefore even in the revised return the assessee has not disclosed the above loss. He further stated that when the original return was filed by the assessee electronically, there was no reason to file revised return manually. In the return of income there was no balance sheet enclosed. Therefore, the STR report coupled with the investigation wing information is a new tangible material received by the assessing officer based on which the reopening has been made and therefore it is a valid reopening of the assessment. He submitted that case of the assessee was never taken up for scrutiny u/s 143 (3) of the act. He relied up RAYMOND WOOLLEN MILLS LTD. V ITO [1999] 236 ITR 34 (SC).

15. On the merits of the addition he referred to the assessment order starting from page number 2 and also explained the design of the transaction of ₹ 4 crores transferred from one company to the other and also referred to the order of the CIT – A that the account of Mr. Rana was used as a layer. He further stated that when Mr. Rana has denied the whole transaction it is clearly an accommodation entry. In case of Mr. Rana a detailed enquiry was made which clearly shows that he does not have any creditworthiness and the sale of shares shown by the assessee is not genuine. He therefore submitted that the addition has been correctly made on the merits. He extensively relied on the order of the learned assessing officer and CIT – A.

16. In rejoinder on the issue of reopening the learned authorised representative submitted that the prima facie escapement must come from the reasons recorded and that is missing in the reasons recorded by the learned assessing officer. He submitted that for non-crediting the salary in account of Mr. Rana the assessee is not responsible and therefore there cannot be the reason for reopening of the assessment in case of the assessee. With respect to the reason that there is an STR report and there is a large credit in the account of Mr. Rana, he submitted that such credit has come in the bank account of Mr. Rana which is from his own company Willey Agrotech Ltd of which he is managing director and owned by his family. Therefore for this reason the assessment of the assessee cannot be reopened. With respect to the various dates of opening of the bank account by Mr. Rana and closing of the bank account by Mr. Rana's own personal affair and for which assessee is not responsible and therefore there is no correlation established by the learned assessing officer with respect to the escaped income of the assessee. He otherwise submitted that when assessee has already disclosed the receipt of ₹ 4 crores in his revised return and has also shown capital loss thereon there is no question of any escapement of income.
17. On the merits in rejoinder he submitted that the various documents produced in the paper book by the assessee and referred by him is on his argument clearly shows that even the source of sources has been established by the assessee. The share certificates and various correspondences entered into by Mr. Rana including the splitting of the share certificates clearly shows that addition is not warranted u/s 68 of the income tax act. He stated that the source of the fund of Rs 4 crore in the bank account of Mr. Rana was from sudarshan Consolidated Ltd. Mr.

Parminder Rana has sold the property of that company. The assessee owned the shares which are demonstrated by the annual returns of the company, out of those holding the assessee has sold shares, the money has been received from Mr. Rana, the source of sale consideration received from Rana is a fund from M/s Willey Agrotech Ltd company owned by Mr. Rana therefore, there is no reason to make any addition in the hands of the assessee. He further relied upon the decision of the Honourable Delhi High Court in 357 ITR 586 stating that the AO was guided only by the reasons recorded for making the addition. He further submitted that in the reasons recorded there is nothing which shows that Mr. Rana has denied the whole transaction. In view of this he submitted that addition is incorrectly made in the hands of the assessee.

18. With respect to the reopening of the assessment the bench raised a very with respect to the decision of the Honourable Supreme Court in case of Rajesh Jhaveri stockbrokers 291 ITR 500 (SC), the learned authorised representative submitted that though there is no assessment made in the case of the assessee u/s 143 (3) of the act, even in case of non-assessment or even in case of assessment u/s 143 (1) of the act there cannot be a reassessment if there are no reason to believe by the assessing officer. It was stated that when the reasons recorded by the learned assessing officer are of factual errors charging from holding that
- i. assessee was a director of Willey Agrotech Ltd till December 2008 and thereafter the precedent of the company
 - ii. assessee has not disclosed any capital gain in the return of income or in the revised return filed on 29/9/2009 wherein in fact assessee has shown the sale consideration of ₹ 4 crores and computed capital loss after indexation thereon

- iii. reopening on the basis that balance sheet was not enclosed with these returns to show any investment in shares, when assessee was not required to prepare balance-sheet where was a need requirement by the law to file such balance sheet or even to maintain it.

He therefore submitted that though AO in the reasons recorded that case was not selected for scrutiny for the assessment year 2009 – 10, even if there is no assessment, there is no reason to believe of the learned assessing officer. He submitted that all the pillars based on which the reopening stands are full of fallacy. He therefore submitted that the decision of the honourable Supreme Court clearly shows that even in no assessment case there has to be proper reason to believe which is a foundation stone for reopening of an assessment even if there is no assessment.

19. We have carefully considered the rival contention and perused the orders of the lower authorities. The ground number (1) of the appeal contesting that the order of the learned CIT – A dismissing the appeal of the assessee is illegal and bad in law is a general ground, for which no arguments advanced before us except on the specific issue on the merits of the addition as well as on the reopening of assessment which are dealt with in other grounds, ground number 1 is dismissed. Ground number (2) of the appeal is with respect to not providing sufficient opportunity to the assessee of being heard by the learned CIT – A and therefore the order of the learned and CIT – A was passed in violation of the principles of natural justice was devoid of any merit as assessee was granted proper opportunity of hearing. No evidences were relied before us on this

ground and therefore same is dismissed. The ground number 12 and 13 is general in nature and therefore same is dismissed.

20. This leaves us with the ground number 4 – 10 of the appeal along with the additional grounds. Ground number (4) – (7) is with respect to the rejection of the additional grounds of appeal raised by the assessee in which the assessee sought to challenge the reopening of the assessment u/s 147 and 148 on various grounds and reasons, as we have already admitted the additional grounds raised by the assessee on the reopening of the assessment where the same would be dealt with along with the additional grounds. Ground number 8 – 10 is with respect to the addition of ₹ 4 crores on the merits of the issue. Thus there are only two issues in this appeal (1) whether the learned assessing officer is correct in assuming jurisdiction u/s 147/148 of the act, (2) if yes, whether the addition of ₹ 4 crores is correctly made in the hands of the assessee.
21. On the first question whether the learned assessing officer is correct in assuming jurisdiction u/s 147/148 of the income tax act, we need to examine that whether there was “reason to believe” that income has escaped assessment. The facts clearly show that the original return filed by the assessee on 31st of July 2009 was not selected for the scrutiny for assessment year 2009 – 10 and therefore as held by honourable Supreme Court in case of ASSISTANT COMMISSIONER OF INCOME-TAX v. RAJESH JHAVERI STOCK BROKERS P. LTD. [2007] 291 ITR 500 (SC) that if the Assessing Officer for whatever reason has “reason to believe” that income has escaped assessment it confers jurisdiction to reopen the assessment. These words should have the following four elements to satisfy the jurisdiction is by the assessing officer:-

- i. some material or materials and not mere fancy, imagination, speculation or suspicion
- ii. and Nexus between such material and the belief of escapement of income from assessment
- iii. on application of mind by the AO to such material
- iv. An inference based on reason is drawn by the AO that income has escaped assessment.

22. In the present case, the reopening of the assessment has been made on precisely following facts/information:-

- i. One Mr. Rana opened a saving account on 4/10/2006 as salary account however which has in the month of December 2008 credit of ₹ 4 crores to RTGS from a company Messer's Willey Agrotech Ltd and followed by RTGS transfer in favour of the assessee and subsequently the account was closed.
- ii. Assessee was a director of Willey Agrotech private limited till December 2008 and thereafter the President of the company.
- iii. The assessee has not disclosed any capital gain either in the original return filed on 31/7/2009 or in the revised return filed on 29/9/2009
- iv. In response to inquiry u/s 131(1A) assessee could not satisfactorily explain the sources of funds.
- v. Assessee did not enclose balance sheet with these returns to reflect any investment in shares.

23. In the present case let us first test whether there was any information i.e. some material was available with the assessing officer. According to us,

the learned AO was having definite information about the assessee that there is a transfer of a sum of ₹ 4 crores from the account of Mr. Parminder Rana in the bank account of the assessee. It was STR information. Such bank account from where the money has been transferred in the account of the assessee is also found in suspicious transaction report. Therefore it is apparent that information available with the AO was a specific, definite and correct. More so this information is also not denied by assessee himself.

24. Now we come to the second aspect whether this information has any live nexus with escapement of income by the assessee. Merely receiving a credit in the bank account cannot per se lead to reason to believe of escapement of income. Now whatever was the credit in the bank account received by the assessee has already disclosed in the revised return filed by the assessee on 29/9/2009 which is placed at page number 19 – 31 of the paper book. In the computation of total income assessee has shown long-term capital loss of ₹ 1,233,0161/- , details attached at page number 30 of paper book which is part of the computation of total income where assessee has shown sales of shares of Sudarshan overseas Ltd in the month of December, 2008. Total consideration received by the assessee is shown to be ₹ 4 crores. The assessee disclosed the purchase price of these shares also at ₹ 4 crores, however the indexed cost of acquisition was at Rs 52,330,161/- which resulted into a long-term capital loss in unlisted security of Rs. 123,30,161/-. If we look at the reasons recorded by the assessing officer placed at page number 32 paper books, the learned AO has specifically stated that assessee has filed a revised return on 29/9/2009 but not disclosed any capital gain in the return of income filed. However, copy of the revised return placed

before us filed on 29/9/2009 for the impugned assessment year clearly shows that assessee has disclosed the above sum in his revised return of income. The argument of the learned DR that in the acknowledgement of the return of income this sum is not shown. He referred to page number 19 where the acknowledgement is placed. Undoubtedly it is not available at the face of the return of income in the acknowledgement of the return of ITR 2 filed by the assessee on 29 September 2019. However there was no such column in the acknowledgement where the carried forward capital losses accrued during the year are required to be shown. Therefore naturally if there is a long term capital loss incurred by the assessee which is required to be carried forward then in the acknowledgement it does not appear for the reason that there was no column - space where it is required to be shown. The learned CIT DR however did not dispute that no such computation of total income was filed by the assessee along with the revised return. Further when Id AO himself has stated that assessee has filed revised return, he should not have only looked at the acknowledgement of ITR -2 but should also have looked at complete return of income. In view of this, it is apparent that when AO has categorically stated in the reasons recorded for reopening of the assessment that assessee has not disclosed the long-term capital gain/loss incurred by the assessee on sale of those shares, but it is found that assessee has given categorically each item of sale of shares in his revised return of income stating the name of the company, the date of sale of shares, the sales price at the time of transaction, the date of acquisition of the shares, the purchase consideration, the indexed cost and the resultant capital loss, it cannot be said that the assessee has not disclosed the capital gain in the revised return of income. Had this revised return been

- examined by the learned assessing officer, it could have been found that assessee has disclosed long-term capital loss on sale of 40 lakhs shares of Sudarshan Overseas Ltd in the month of December, 2008 wherein assessee has shown the long-term capital loss of Rs 1, 23,30,161. The AO could have stated that the long-term capital loss shown by the assessee is bogus but that is not the fact coming out from the reasons recorded. Therefore, it is apparent that in spite of having a material, AO failed to show live nexus with the escapement of income.
25. Further with respect to inquiry u/s 131 (1A) assessee has explained the sources of the funds as generating on account of sale of assets by Sudarshan Overseas Limited for Rs 4 Crores where Mr. Rana [buyer] is Managing Directors of that company, which was transferred by buyer to another company Willey Agrotech Limited which is controlled by Father in law and Brother in law of the buyer, further transferred to buyer from that company. Thus assessee has shown the source of source of funds available with the buyer for payment of sale consideration to assessee. This is further discussed in this order by us when we deal with the issue on merits.
26. Now the second question that arises whether the learned assessing officer has applied his mind to the material available or not. On the first point we have already noted that the transactions were disclosed in the revised return, but the AO stated that same were not disclosed in the revised return on the basis of the acknowledgement as per arguments advanced by the learned DR. The next fact that has been stated by the assessing officer is that assessee was a director of Willey Agrotech Ltd till December 2008 and thereafter the President of the company. This fact is also required to be tested with respect to the facts produced before us.

Assessee was director in the above company from 18 March 1993 to 1 April 2008. He was also an additional director thereafter up to 21st of April 2008. Therefore the reasons stated by the learned assessing officer that assessee was a director of this company till December 2008 is incorrect. The relevant forms as per The Companies Act with the Registrar of Companies (MCA) i.e. form number 32 is placed before us at page number 225 – 228 for cessation of directorship of assessee, which is digitally signed by Mr. Neeraj Kumar Mehta i.e. another director of the company. The form number 32 has also shown an attachment of the resignation letter of the assessee which is also placed at page number 229 of the paper book. The assessee was appointed as an additional director on 20 April 2008 and ceased as additional director with effect from 21 April 2008. This fact is also evident from form number 20 B filed by the company itself i.e. Sudarshan overseas Ltd for the date of AGM held on 29/9/2008, wherein the assessee was shown to have retired from the above company as a director from on 1 April 2008 and subsequently on 21 April 2008 as an additional director. Categorically assessee has shown that he was not a director of the company after 21st of April 2008. Therefore the assertion made by the learned assessing officer that the assessee was director of Sudarshan overseas Ltd till December 2008 is also not correct. Third fact that the AO has stated that assessee was President of the above company subsequently has been denied by the assessee. There is no evidence available that assessee was holding any such post in Sudarshan overseas Ltd. Further on the perusal of the annual return it is apparent that Mr. Parminder Rana, who purchased the shares from the assessee, was appointed as additional director of this company from 1 April 2008.

Further, no evidences were laid before us by the revenue to show that how the learned assessing officer has recorded the fact that assessee was a director in that company i.e. Willey Agrotech Ltd till December 2008 and thereafter the President of that company. Therefore, there is a factual error in the reasons recorded by the AO on this count also.

27. The third fact that has been stated by the AO is that no balance sheet was enclosed with these returns to reflect any investment in shares. First of all the learned authorised representative stated that when assessee has filed form number 2 which is applicable to individuals and HUFs not having income from business of profession. Therefore according to him the assessee is not required to maintain any balance sheet. As the balance sheet is not required to be maintained, same was not required to be enclosed with those returns. We could not be shown any provisions of The Income Tax Act wherein person who is not having any business income is required to maintain the balance sheet and to enclose the same with the return of income. Anyway, the question remains whether the assessee was holding the shares of this company i.e. Sudarshan overseas Ltd or not. For this the annual return furnished clearly shows that assessee was holding 78,39,200 equity shares before the transfer, transferred 40 lakh equity shares in the name of Mr. Parminder Rana . This details are evident at page number 292 of the paper book which is part of the annual return filed by company Sudarshan overseas Ltd for the annual general meeting held on 29 September 2009(as it contained the transaction i.e. change in the shareholding from the last AGM to the AGM held on 29/9/2009). Therefore, as assessee was not required to prepare balance sheet, but, his holding in the company i.e. Sudarshan overseas Ltd is available from the annual return filed by that company

with the Registrar Of Companies. Thus non filing of balance sheet by assessee cannot be a valid reason in the eye of law.

28. Therefore the reason of escapement of income is based on the fact that assessee was director of Willey Agrotech Ltd (sudarshan Consolidated Ltd) up to December 2008 and thereafter its President is found to be incorrect. Another fact that assessee has not disclosed the transaction of the sale of those shares in its revised return of income is also found to be incorrect. The third presumption that assessee has not filed the balance sheet wherein the holding of the shares is not available is also not supported by the law as there was no requirement of preparing balance sheet by the assessee, but, the holding was shown to have been owned by the assessee from the annual return of the investee company and further with all the assertions made by the assessing officer for reopening of the assessment are not supported by any evidence. In view of this, we hold that despite having information, the learned assessing officer has failed to record a reason that there is an escapement of income and further failed to apply his mind on the facts available in the revised return as well as with respect to the directorship of the assessee in Willey Agrotech Ltd.
29. Honourable Gujarat high court in case of Sagar Enterprises V ACIT (2002) 257 ITR 335 (Guj) has held where reopening of assessment on 'irrelevant facts' cannot be sustained. In the present case even the facts are not 'irrelevant' but are incorrect. None of the facts stated in the reasons for reopening are supported by any evidence. Therefore despite information available with the assessing officer he failed to establish live nexus of that information with the escapement of income and also apply the mind with the relevant facts available before him correctly. The honourable Gujarat High Court held that

“That On going through the entire reasons recorded, it can be seen that in the penultimate paragraph, the respondent has further recorded as under:

“Further, the assessee was required to file the return of the income for the assessment year 1991-92 which the assessee has failed. Moreover, it was the duty of the assessee to declare this transaction and to file the return of income for the assessment year 1991-92. The assessee has failed on both these counts. Therefore, the escapement of assessment of income is solely attributable to the assessee.”

Therefore, it is apparent that the factor of non-filing of the return for the assessment year 1991-92 has overweighed with the respondent for arriving at the satisfaction about the failure on the part of the assessee and escapement of assessment of income. On the basis of the same, even for the sake of argument, if the contention raised by Mr. Joshi is taken into consideration, the settled legal position is that in such circumstances, it would not be possible to say with certainty as to which factor would have weighed with the officer concerned and once it is shown that an irrelevant fact has been taken into consideration, to what extent the decision is vitiated would be difficult to say. On this count alone, the petition requires to be accepted.”

30. In view of above facts, we are of the view that there is no ‘reason to believe’ is demonstrated by the learned assessing officer in the reasons recorded for reopening of the assessment, therefore, reversing the order

of the lower authorities, we quash the action of the learned assessing officer in reopening the assessment. Thus ground numbers 4 – 7 of the appeal are allowed.

31. The ground number (3) merely challenges the admission of additional evidences before the learned CIT – A, same does not deserves to be adjudicated in view of our above findings.
32. For the sake of completeness even on the merits of the case, with respect to ground number 8 – 11 assessee has shown:-
 - i. Actual trail of the transaction showing that as per sale deed of immovable property of Rs 1 crore and plant and machinery of ₹ 3 crores totaling to ₹ 4 crores as per deed dated 24th of November 2008 of assets Sudarshan overseas Ltd (subsequently name changed to Rayalseema commodities Ltd) executed by the managing director of that company Mr. Parminder Rana, was received by Sudarshan overseas Ltd from the buyer Messer's origin foods Ltd. According to that agreement the consideration was received by Sudarshan Overseas Limited of Rs 4 Crores. Out of the above sum received, Sudarshan overseas Ltd transferred on 1 December 2008 a sum of Rs 2 crores in three tranches and ₹ 2 crores on 4 December 2008 in three tranches to Messer Willey Agrotech Ltd (subsequently name change to Sudarshan Consolidated Ltd). Subsequently Willey Agrotech Ltd, on 2 December 2008 transferred in three tranches ₹ 2 crores and on 5 December 2008 in three tranches further ₹ 2 crores to Shri Parminder Rana. Further on the 2 December 2008 and on 5 December 2008 in three tranches on each of the day Mr. Rana transferred the sum of ₹ 2 crores in each date to the assessee.

Therefore the source of the fund received by the assessee in his bank account for the sale of shares to Shri Rana was received from his bank account and further the source of money in bank account of the buyer was Willey Agrotech Ltd and source of fund in the account of M/s Willey Agrotech Ltd was from Sudarshan overseas Ltd. In the sale deed so furnished, the permanent account number of Sudarshan overseas Ltd (seller) and of the buyer Messer's origin foods Ltd was mentioned. Despite showing the sources of the funds, the learned assessing officer did not make any enquiry and this trail of the fund is not disputed by revenue.

- ii. On the transaction of the sale of the shares assessee has shown at page number 106 of the paper book an agreement dated first day of April 2008 of the sale of 40 lakh shares of ₹ 10 each for consideration of ₹ 4 crores from assessee to Mr. Rana. These shares were handed over to Mr. Rana on 17 December 2008 in form of 20 share certificates containing 40 lakh shares. This acknowledgement for receipt of share certificates is also signed by Mr. Rana which is placed at page number 108 of the paper book.
- iii. Now it is important to note that who controls Messer Sudarshan overseas Ltd. To substantiate this, the assessee has placed the additional evidences before the learned CIT – A in the form of joining report of Mr. Rana submitted to the board of directors of Sudarshan overseas Ltd on 3rd of March 2008. Mr. Rana executed a sale deed of immovable property of Sudarshan overseas Ltd in favour of Messer's origin foods Ltd for Rs 4 crores as its managing director. Further on 31st of December 2008 he transferred the receivables of Sudarshan overseas Ltd to Global Trade Finance Ltd

of RS 50,36,283 by a deed and further receivable of different invoices were also transferred to the above company amounting to Rs. 1 35,68,999/-, ₹ 30,123,369, Rs 30,007,079/-, Rs 31,682,977, Rs 132,88,589/- Rs 62,640,130, Rs. 30,923,467, Rs. 62,640,130 (two documents). Further Mr. Rana is managing director of Sudarshan overseas Ltd also handed over cheques to Messer's Global Trade Finance Ltd. This all documents are placed before us at page number 122 – 138 of the paper book. Further on 8 December 2008, Mr. Rana also issued 29 cheques of Rs 1 crore each of Axis bank Ltd of Sudarshan Overseas Limited in favour of Global Trade Finance Ltd. All this is produced at page number 139 – 151 of the paper book. Therefore it is evident that Mr. Rana has an authority to issue cheques from Sudarshan overseas Ltd. Therefore, in view of the above conduct of Mr. Rana, it cannot be said that he could not have transferred the funds from Sudarshan overseas Ltd to Messer's Willey Agrotech Ltd.

- iv. Now coming to the fact that who owns and controls Willey Agrotech Ltd, (subsequently the name of this company was changed to Sudarshan Consolidated Ltd). An undisputed fact shows that assessee was a director of this company since its inception to 26th of March 2007. Assessee does not have any shareholding in this company. With effect from first of March 2007, one Mr. Col Rakesh Kumar Sahni was appointed as its managing director. He is holding 15,01,800 shares of Willey Agrotech Ltd. Further on 18 /06/ 2008, one Mr. Willey Sahni was appointed as director of this company. Undisputedly Mr. Rana was not a director of this company. However Mr. Col Rakesh Kumar Sahni is stated to be

father-in-law of Mr. Rana and Mr. Willey Sahni is brother-in-law of Mr. Rana. Therefore, Willey Agrotech Ltd was also controlled by relatives of Mr. Rana. From this company, the money received from Sudarshan overseas Ltd by this company, funds of Rs 4 Crores were transferred to Mr. Rana. This sum so received by Mr. Rana was transferred to the assessee towards purchase price sale of 40 lakh shares of Sudarshan overseas Ltd.

- v. All these transactions are made through banking channel from the companies which are controlled and managed by Mr. Rana and his family. Assessee neither owns any shareholding in Willey Agrotech Ltd and also transferred substantial shareholding from Sudarshan overseas Ltd to Mr. Rana. Therefore the creditworthiness of Mr. Rana for payment of sale consideration of shares cannot be doubted, in absence of any contrary evidences.
- vi. Allegation of the Id AO that transactions are layered is also not sustainable in view of the fact that assessee has shown the sources of the funds with adequate evidences and justification at each of the layer , which cannot be found fault with in absence of any credible contrary evidences.

33. Now coming to the various statements recorded of Mr. Rana by the assessing officer of Mr. Rana as well as by the AO of the assessee where Mr. Rana has denied the transaction and has alleged the assessee of using his name. Similarly assessee has also placed the first information report (FIR) lodged against Mr. Rana on 20 February 2010 and 25 May 2012. Therefore it is apparent that there are contradictory claims by both the parties against each other by filing complaints before the police. Only on this basis genuineness of transaction cannot be denied. Because,

- overwhelming evidences show the existence of the shares of the company with the assessee, sale of shares supported by the agreement, handing over of the certificates, subsequent subdivision of those shares applied by the buyer and executed by the company whose managing Director is the buyer, trail of the funds from the companies controlled by the buyer reaching into the bank account of the assessee, counter complaints by each other and various statements does not have any evidentiary value.
34. The next question is with respect to the value of the shares of the above company which are transferred by the assessee at the face value only i.e. at the rate of ₹ 10/-per share. This is also the purchase consideration at the time of allotment of the shares in the name of assessee. Resultant long-term capital loss is only because of the indexation of the actual cost incurred by the assessee.
35. In view of above facts, the assessee has explained the source of the source of funds available with buyer which is paid to the assessee, supported by the fact of the existence of the assets, its transfer to the buyer by assessee. In view of this the addition made by the learned assessing officer u/s 68 of The Income Tax Act and sustained by the learned CIT – A is not tenable. Accordingly ground numbers 8 – 11 of the appeal are allowed.
36. In the result appeal of the assessee is partly allowed.
- Order pronounced in the open court on 23/10/2020.

Sd/-
(JUSTICE P. P. BHATT)
PRESIDENT

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 23/10/2020

A K Keot

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

ITAT, New Delhi

Date of dictation	23.10.2020.
Date on which the typed draft is placed before the dictating member	23.10.2020.
Date on which the typed draft is placed before the other member	23.10.2020.
Date on which the approved draft comes to the Sr. PS/ PS	23.10.2020.
Date on which the fair order is placed before the dictating member for pronouncement	23.10.2020.
Date on which the fair order comes back to the Sr. PS/ PS	23.10.2020.
Date on which the final order is uploaded on the website of ITAT	23.10.2020.
date on which the file goes to the Bench Clerk	23.10.2020.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	