

IN THE INCOME TAX APPELLATE TRIBUNAL
 "G" Bench, Mumbai
 Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)
 ITA Nos.3968 & 3969/Mum/2016
 (Assessment Years: 2007-08 & 2011-12)

DCIT,CC-1(4) Room No.902, 9 th Floor Old CGO Building, M.K.Road Churchgate, Mumbai-400 020	Vs.	Sikkim Ferro Alloys Limited 2 nd Floor, Apsara Cinema Bldg Dr.D.B.Marg, Grant Road(E) Mumbai-400 007
PAN/GIR No. AAGCS8115B		
(Revenue)	:	(Assessee)

&

ITA Nos.3245&3246/Mum/2016 and ITA Nos.2062&2063/Mum/2018
 (Assessment Years: 2007-08,2010-11 & 2011-12)

Sikkim Ferro Alloys Limited 2 nd Floor, Apsara Cinema Bldg Dr.D.B.Marg, Grant Road(E) Mumbai-400 007	Vs.	DCIT,CC-1(4) Room No.902, 9 th Floor Old CGO Building, M.K.Road Churchgate, Mumbai-400 020
PAN/GIR No. AAGCS8115B		
(Assessee)	:	(Revenue)

Assessee by	:	Shri D.C.Bothra & Shri R. K. Singh
Revenue by	:	Shri Manpreet S Duggal

Date of Hearing	:	28.05.2021
Date of Pronouncement	:	11.08.2021

ORDER

Per Shamim Yahya, A. M.:

These cross appeals by the Revenue and the Assessee are directed against the respective orders of the learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short) pertain to the respective assessment years.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

3. First we take up AY 2007-08, the grounds of assessee appeal read as under:-

1. That on facts and circumstances of the case and in law the Ld.CIT(Appeals) has erred in retaining the disallowance @3.55% of the alleged bogus purchases and working out average gross profit in erroneous manner therefore disallowance retained by Ld.CIT(Appeals) being wrong on facts and bad in law same may kindly be deleted.

4. The grounds of appeal raised by the revenue read as under:

(i) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition to the extent of average G.P. of three previous years as against the addition of Rs.4,93,60,854/- made by the Assessing Officer on account of peak credit of bogus purchases ignoring the fact that in the process of purchases from open market from one dealer and obtaining bills from other dealer, the deployment of unaccounted money is involved which was quantified by taking peak credit."

(ii) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting addition of Rs.18,01,043/- being commission @ 1% on total bogus purchases amounting to Rs.18,01,04,399/- ignoring the fact that for availing bogus bills, the assessee would have incurred commission and the same was confirmed by the statements of various parties recorded during the search."

5. Brief facts of the case are that assessee belongs to M/s Tirupati Group of Companies. A search operation u/s 132(1) of the Act was conducted in the case of Tirupati Group of companies. The AO noted that the assessee company is engaged in the business of trading of materials used for Stainless Steel melting and Stainless Steel finished products, fiat products and rolled products i.e. Round Bar, coils, sheets, plates, bright bars, wire rods, billets, etc. From the details of purchases made by the assessee, AO noted that, the assessee has-made purchases from the following parties which are declared as hawala dealers by the Sales Tax Department:

1. Aakash Ferromet Pvt. Ltd.
2. Adhunik Steel Corporation
3. Arihant Trading Co.
4. New Steel (India)
5. Moksh Trading Co.

During the course of assessment proceeding, the Ld. AR of the assessee company was issued a show cause and asked to prove the genuineness of the transactions, on account of purchases made, during the year under consideration along with the documentary evidence such as Ledger Confirmation, Bills, Lorry Receipts, Delivery Challans, Weighing Bridge Receipts, etc.

The AO further noted that in the meanwhile, a survey action was conducted on the assessee company on 26.12.2012 by the Investigation Team, Mumbai. During the course of survey action, it was found that, the assessee has made purchases from the alleged parties (who have provided accommodation entries without actual delivery of goods). The purchases made from alleged parties are as under:

F.Y.	Name of concerns from purchases has been made	Amount (Rs.)
2006-07	Aakash Ferromet Pvt. Ltd.	5,58,60,854
2007-08	Aakash Ferromet Pvt. Ltd.	12,25,900
2008-09	Aakash Ferromet Pvt. Ltd.	1,24,66,864
2008-09	Adhunik Steel Corporation	2,31,44,379
2008-09	Arihant Trading Company	1,36,76,530
2009-10	New Steel (India)	3,10,52,844
2009-10	Arihant Trading Co	1,71,39,699
2010-11	Moksh Trading Co	92,04,193
	Total	18,01,04,399

6. Upon AO enquiry in this regard, assessee referred to the details given in the survey and response thereto. The assessee also stated that statement given by proprietor of M/s. Arihant Trading company was general in nature that no adverse inference has been given by Investigation Officer. Assessee also denied that it was aware of as to

how investigation was done by Sales tax department. Assessee further submitted that since purchases are from local, lorry owners normally do not given any lorry receipts. Assessee also placed reliance upon case laws in this regard. However, the AO was not satisfied. He proceeded to add peak credit involved in the transactions and held as under:-

- a. Upon analyzing the submissions and details, it was observed, during the course of survey as well as scrutiny proceeding, that the assessee failed to produce the supporting documents i.e. proper delivery' challan, transport receipt, GRNs, Storekeeper register or acknowledgement of receiving goods from the above subject.
- b. Further, the payment pattern shows that there is delayed payment to these bogus parties when compared to the payment to other parties.
- c. It is observed that the purchases are bogus and the sales are genuine and the assessee company has resorted to cash purchases from undisclosed parties from open market but they have obtained accommodations entries from these alleged parties.
- d. As the assessee company was unable to substantiate the purchases made from alleged 4 concerns as mentioned in para 7.3, hence, the purchases made from these parties are proved to be not genuine. Moreover, the actual purchases must have been done from undisclosed parties in the market in cash and the total amount in each year represents a cash purchases made by the assessee company.
- e. Looking to the facts of the assessee company's case, it is seen that, the assessee has made cash purchases from open market and to absorb these types of transactions, the assessee has taken only bills from the above mentioned hawala dealers without taking actually delivery of goods. By doing this, the assessee has incorporated SHAM transactions in the books of accounts as purchases. To conceal the illegality of these types of transactions, the assessee has converted these transactions into the valid / genuine transactions by making payment to hawala dealers through proper banking channels. However, it is a common sense, one can pay to another upto the extent of cash available with him. The assessee is not the exception for the same. For finding the involvement of cash in these types of transactions, I hereby applied the scientifically proven method of peak credit balance standing in the account of the bogus traders as creditors, to estimate the appropriate amount of bogus purchases taken by the assessee company from the bogus hawala traders mentioned supra.
- f. The peak credit balance method is about the highest credit balance standing in the account of the creditor when the bogus purchases from the party and the cheque payment thereof is routed through the books of account and normal banking channels, in a circular motion, over and over again, in such a manner that the bogus purchases are made from the same party repeatedly and the payment thereof is also made to the r A same party in a given year, so as to show a distorted and exaggerated picture of the total amount of purchases taken from the bogus party. In such a scenario, to avoid the exaggerated amount of total purchases taken from the bogus party, a scientific method of peak credit balance is applied whereby only the highest credit balance as appearing in the account of the creditor is only added back to the income of assessee invoking the principle of natural justice.

- g. After carefully going through the accounts of sundry creditors, the peak credit balance in the accounts of the bogus traders cum creditors from whom the assessee has taken bogus purchase bills was worked out. The bogus purchase during the year under consideration from bill providers is Rs.5,58,60,854/- .
- h. From the above findings and on the basis of Sales Tax Department (Maharashtra) findings regarding these alleged parties, it is inferred that the assessee has resorted to cash purchases in the open market, and the payments were done through cheques to the alleged parties, the peak credit balance shows the cash in the hands of each assessee. Hence, the peak credit is also calculated. The peak credit in the case of assessee company is Rs.4,93,60,854/-. Hence, an amount of Rs.4,93,60,854/- is added back to the total income of the assessee. The penalty proceedings have been initiated u/s 271(1)(c) of the IT Act, 1961, separately for concealing the particulars of total income and filing inaccurate particulars of income.

7. The AO further made unaccounted commission expenses addition as under:-

From the statements of various bogus purchase billers as mentioned above, it is seen that, the assessee company has made bogus purchases from / with the help of these persons and their concerns. In return of which, the assessee company has paid certain amount to them as commission / fees. This fact has been confessed by the above mentioned bogus billers/ mediators in their respective statements. The assessee company has made total bogus purchases of Rs. 18,01,04,399/- .

8.2. Generally, as per the market practices the billers / mediators are charging commission / fees ranging between 0.50% to 2% of the transaction value as commission / fees to give bogus bills / accommodation entries. Looking to the prevailing market rate for this and, as the peak credit is worked out in the year under consideration, I am satisfied that the assessee company has paid commission / fees at the rate 1 % on the bogus purchases as unaccounted commission expenses. Considering to this, in the case of assessee company, Rs. 18,01,043/- (1% of Rs. 18,01,04,399/- /-) is added to the income for the year under the consideration as the expenses incurred out of the books. The penalty proceedings have been initiated u/s 271(1) (c) of the I.T Act, 1961 separately.

8. Against this above order, assessee appealed before Ld.CIT(A). Ld.CIT(A) referred to the statements during survey, which he found to be in favour of the assessee. He referred to his test check in this regard of the documents. He also noted that AO has not disputed the sales, but he observed that AO has rejected the books of accounts. He referred that assessee has furnished copy of bank accounts and payments to suspicious parties. He did note that that payments made which were made in multiple of 5 lacs, 10 lacs and 20 lacs and he also noted that the payments made through

banking channels. He noted that this aspect has been dismissed by the AO and no investigation has been found to be made in this regard and no evidence is brought on record to show that the money was routed back to the assessee. Thereafter, Ld.CIT(A) found that without doubting corresponding sales, corresponding purchases should not be doubted, he extended this to the fact that corresponding production should also not be held to be bogus. He referred to several decisions including that of jurisdictional High Court in case of Nikunj Exim Enterprises Pvt.Ltd. Finally he set aside the AO's assessment of peak credit and held that addition should be average of three years GP @3.55%. He also proceeded to delete the addition on commission expenses credited by the AO on the reasoning as under:-

4.2 In Ground No.4, the appellant has challenged the addition of commission expenses of Rs.18,01,043/-. An the impugned order, the AO noted that for availing such bogus bills, the appellant would have incurred commission expenses @ 1% and observed that the fact that such transactions involved payment and receipt of commission was confirmed by the statements of various parties recorded during the search. Considering that the rate of commission in this trade ranged from 0.5% to 2.0%, the AO estimated commission @1% on the total bogus purchases of Rs. 18,01,04,399/-and added back an amount of 18,01,043/-. In appeal it has been argued that the said addition is based purely on estimate without any evidence of any such expense having been incurred by the appellant. I have considered the issue at hand. As in the preceding grounds it has been decided that the purchases is question have not been shown to be bogus, the addition on account of estimated commission expenses is consequently deleted.

9. Against this order, assessee and revenue appeals are in before us. We have heard both parties and perused the record. Ld. Counsel of the assessee submitted that without doubting the sales purchases cannot be held to be bogus. He further submitted that this ITAT in the case of group party i.e an individual Kamlesh Manohar Kanurngo in ITA No.3242,3243 & 3244/Mum/2016 and others has on similar facts directed that addition should be restricted to 2% of the purchases. Hence, he submitted that similar order should be passed in this case.

10. Upon careful consideration, we note that AO has noted that assessee has been showing huge amount of bogus purchases. He also referred to various findings in the search and survey action. The AO has noted that assessee failed to produce the supporting documents i.e. proper delivery challans, transport receipt, GRNs, storekeeper register etc. He also noted that payment pattern shows that there is delay in payment to these bogus parties when compared to the payment to other parties. AO has found that assessee has indulged in sham transactions, and the AO has made addition peak credit involved. He has mentioned that by making bogus payment by cheque assessee has routed the money back. Hence, AO has made the impugned additions. Ld.CIT(A) on the other hand has noted that though AO has by implication rejected the books of accounts, but he has not doubted the sales. Here, we note that Ld.CIT(A) has misled himself. When, he is finding that AO has rejected the books of account, there is no question of holding that AO has not doubted the sales. Moreover, there is no examination of sales as such. Moreover Ld.CIT(A) has even noted in his order that the so called payments to the said parties were in round figures in multiples of 5 lacs, 10 lacs, 15 lacs and 20 lacs, as noted above. He has held that AO has not done further investigation that the money is routed back. We may gainfully refer to the observation of Ld.CIT(A) in this regard as under:-

The appellant has furnished copy of its bank account showing that payments to the suspected parties were made through banking channels e.g. 18.09.2006 - Rs.10,00,000/- to Aakash Ferromet; 28.09.2006 - Rs.5,00,000/- to Aakash Ferromet; 08.02.2007 - Rs.5,00,000/- to Aakash Ferromet; 13.02.2007 - Rs.5,00,000/- to Aakash Ferromet etc. { from Union Bank Account}. Similarly payments are made from the account with South Indian Bank e.g. 06.02.2008 - Rs.20,00,000/- Aakash Ferromet; 07.02.2008 - Rs.20,00,000/- Aakash Ferromet; 08.02.2008 - Rs. 20,00,000/- Aakash Ferromet; 12.02.2008 - Rs.20,00,000/- Aakash Ferromet etc. Thus the fact that payments are made through banking channels is evident. However, though this aspect has been dismissed by the AO, no further investigation has been found to be made in this regard and no evidence is brought on record to show that the money was routed back to the appellant. As such in the face of these facts, the appellant's arguments have considerable force.

11. Here, we note that on these facts of Ld.CIT(A) was of the opinion that some more investigation was required. In our considered opinion, the same should have been

conducted by the Ld.CIT(A) himself as his powers are coterminous with that of AO. In this regard, we note that Hon'ble Supreme Court in the case of Kapoor chand Shimal 131 ITR 451 has held that it is the duty of the appellate authority to correct the errors in the orders of the authorities below and remit the matter with or without direction, unless prohibited by law. Here, we note that even after noting that the payments are in multiple of large amounts with no relationship whatsoever with the invoice value, Ld.CIT(A) has not made any further investigation. Moreover, the examination of the bank statement and the concerned party ledger account shows that payments have a pattern of huge payments periodically and AO also has noted that time lag between payment is not in accordance with what is there in other account. Moreover, the examination of the financials of the assessee shows that against an issued capital of Rs.5 crores, there is share premium account of 57.6 crores. The assessee company also has received Rs.35.48 crores share premium during the year also. There are loan and advances without detail of Rs.25.36 crores and sundry debtor of Rs.24.45 crores. Ld.CIT(A) has all these documents before him. The circular movement needed to be examined, when the addition made by the AO was in term of peak credit. It was incumbent upon Ld.CIT(A) to examine this aspect and in our considered opinion, the Ld.CIT(A) has erred in over looking these aspects. As regards reliance upon the decision of Kamlesh Kanurngo case referred above, we find that there is no finding such as one given by us hereinabove. Moreover, the said case and was of an individual, but this is a case of corporate assessee. Hence, reliance upon the said case does not help the case of the assessee. In our considered opinion, the interest of the justice demands that the issue be remitted to the file of Ld.CIT(A) to examine the issue, we note that in light our observations hereinabove. Accordingly, the issue is remitted to Ld.CIT(A). Needless to add, assessee should be granted adequate opportunities.

12. For AY 2010-11 and 2011-12 also, on merits, the parties are aggrieved by the disallowances of bogus purchases done by the AO and Ld.CIT(A) respectively. Since,

facts are identical and the appeals were argued by reference to AY 2007-08 only, we find that our adjudication for AY 2007-08 hereinabove applies mutatis mutandis and hence, the issue of addition on account of bogus purchases stands remitted to the file of Ld.CIT(A) for AY 2010-11 & AY 2011-12.

13. The Assessee for AY 2010-11 and 2011-12 has raised a common ground which reads as under:-

1. That on facts of the case and in law the Ld. CIT(Appeals) has erred in upholding the validity of the reassessment proceeding initiated by the Ld. AO u/s.147 by issue of notice u/s. 148 merely on change of opinion, on wrong facts and in unlawful manner.

14. The above ground as to validity of assessment was also raised before the Ld.CIT(A) for AY 2010-11 and Ld.CIT(A) has adjudicated the issue as under:-

8.2 I have noted that in the case at hand, the information was received from DGIT (Investigation), Mumbai that the appellant has taken accommodation entries from three parties, the details of which are tabulated as under:-

Sr. No.	Name of the Party	Hawala TIN	Hawala PAN	Amount (Rs.)
1.	New Steel (India)	27030085243V	AGWPP5068K	3.10 Cr.
2	Apex Ferromate Pvt. Ltd.	27040739260V	AAICAOG13Q	7.30 Cr.
3.	Arihant trading Company	27G70GG8443V	AVLPP4843Q	1.71 Cr.
TOTAL				12.11 Cr

8.3 A perusal of the above tabular data reveals that the appellant had taken accommodation entries to the tune of Rs. 12.11 Crores, during the year under consideration. I have also noted that the AO has duly recorded the reason before

reopening the case u/s 148 of the Act, which have been duly reproduced on page 2 of the assessment order.

8.4 The appellant has been duly provided with the reasons for reopening the assessment by the AO, vide letter dated 11.02.2015. The objections filed by the AR vide letter dated 26.03.15 has been disposed of by the AO, vide a speaking order dated 30.06.15.

8.5 The Section 147 authorizes and permits the Assessing Officer 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 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. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.

8.6 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. 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. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction *ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 21 7 ITR 597 (SC)*; *Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)*.

8.7 The Hon'ble Apex Court in the case of *ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) (291 ITR 500)* has categorically stated that "reason to believe" does not mean that the reason for re-opening should have been factually ascertained by legal evidence or conclusion before the re-opening of an assessment.

8.8 Any fresh information received by the A.O. can entitle him to issue notice u/s.148, if on the basis of such information he has prima facie reason to believe that income has escaped assessment. So much so that it was held by the Hon'ble Supreme Court in *ClaggettBrachiCo.Ltd. vs CIT 177 ITR 409 (SC)* that an information obtained during assessment proceedings of a subsequent year can also validate the proceedings initiated u/s.147 for earlier year. Similarly, Hon'ble Bombay High Court in the case of *Anusandhan Investments Ltd. vs. M.R .. Singh, DCIT, 287 ITR 482* held that a notice issued u/s.148 based on assessment of subsequent assessment year is valid even if the appeal is pending for such assessment.

8.9 Further, it is the duty of the assessee to disclose full and true materials to the A.O. but for which the A.O. could initiate the reassessment proceedings. It has been held by the Hon'ble Supreme Court in *Shri Krishna P. Ltd. 221 ITR 538, 549* that

every disclosure is not and cannot be treated to be a true and full disclosure. A disclosure may be a false one or a true one. It may be a full disclosure or it may not be. The Hon'ble Supreme Court held that a partial disclosure may very often be a misleading one. Therefore, what is required is a full and true disclosure of all material facts necessary for making assessment for that year.

8.10 The Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd. VS. ITO 236 ITR 34, 35 (SC)* has held that for determining whether initiation of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. It further held that the sufficiency or correctness of the material is not a thing to be considered at this stage.

8.11 The present case is not one of change of opinion as alleged by the appellant. Question of change of opinion arises when the AO forms an opinion and decides not to make an addition and holds that the appellant was correct in his stand.

8.12 The Supreme Court in *Malegaon Electricity Co. (P) Ltd. vs. CIT (1970) 78 ITR 466 (SC)* has observed, as under :

It is true that if the ITO had made some investigation, particularly if he had looked into the previous assessment records, he would have been able to find out what the written down value of the assets sold was and consequently he would have been able to find out the price in excess of their written down value realized by the assessee. It can be said that the ITO if he had been diligent could have got all the necessary information from his records. But that is not the same thing as saying that the assessee had placed before the ITO truly and fully all material facts necessary for the purpose of assessment. The law casts a duty on the assessee to 'disclose fully and truly all material facts necessary for his assessment for that year'.

8.13 When there is no discussion on the issue in the Assessment order and no details were called for by the AO or filed by the assessee on the issue, no finding either positive or negative can be said to have been arrived at during the course of original assessment proceedings. Hence, there is no question of change of opinion as held in the following judgements:

1. *Kalyanji Mavji & Co. vs. CIT 102 ITR 287 (SC)*
2. *Esskay Engineering P. Ltd. vs. CIT 247 ITR 818*
3. *ITO vs. Purushottam Das Bangur & Anr. 224 ITR 362 (SC)*

8.14 In Writ Petition, No.903G of 2007, *Honda Siel Power Products Ltd. vs. CIT & Anr.* Decision dt. 14th Feb. 2011 (reported at (2011) 52 DTR (Del) 353-Ed.) it was held:

'10 The term 'failure'¹ on the pan of the assessee is not restricted only to the IT return and the columns of the IT return or the tax audit report. This is the first stage. The said expression 'failure to fully and truly disclose material facts' also relate to the stage of the assessment proceeding, the second stage. There

can be omission and failure on the part, of the assessee to disclose fully and truly material facts during-the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the AO complete and correct information and details it is required and under an obligation to disclose. Burden is on the assessee to make full and the true disclosure.

8.15 Further, in the case of *Piaggio Vehicles P. Ltd. VS. DCIT 290 ITR 377 (Bom)*, the Hon'ble Jurisdictional High Court held that in a case of reopening after 4 years subsequent to scrutiny assessments, contradiction was discovered between Tax Audit report and Return of income, it was a case of omission and/or failure on the part of the assessee to disclose fully and truly all facts for computation of its income. It is also held by Hon'ble Supreme Court in the following cases that facts which could have been found by the ITO by further probing are covered under failure to disclose fully and truly all material facts.

8.16 In the case of *Coca Cola India Vs. ACIT &Ors. (2009) 221 CTR 0225 : (2009) 17 DTR 0066 : (2009) 309 ITR 0194 : (2009) 177 TAXMAN 0103*, the Hon'ble Punjab & Haryana High Court has held that notice u/s 147 should be held as bad in law, only if extraneous or absurd reasons are recorded by the AO. It was further held by the Hon'ble Court that whether or not the material should be finally taken into account for reassessment is a separate matter, which has to be dealt with during the course of reassessment proceedings. The relevant portion of the judgment in this regard is reproduced as under: -

"Objection of counsel for petitioner is two fold :- (a) Reference to inapplicable provision ofs. 92 as it stood prior to amendment w.e.f. 1st April, 2002 and (b) irrelevance of order of the TPO under Chapter X passed in respect of a subsequent assessment year. Applicability of s. 147 requires formation of opinion that income escaped assessment. The said provision is not in any manner controlled by s. 92 nor there is any limit to consideration of any material having nexus with the opinion on the issue of escapement of assessment of income. Interference with the notice for reassessment is called for only where extraneous or absurd reasons are made the basis for opinion proposing to reassess. Apart from the fact that the AO has given other reasons, it cannot be held that the material relied upon by the AO for proposing reassessment is irrelevant. Whether or not the said material should be finally taken into account for reassessment is a matter which has to be left open to be decided by the AO after considering the explanation of the assessee. It can only be mentioned that having regard to relationship of the petitioner to its associate company, it cannot be claimed that the price mentioned by it must be accepted as final and may not be looked at by the AO. There is no infirmity in the notice proposing reassessment. The AO will be at liberty to pass an appropriate order of assessment, subject to the rights and remedies of the assessee. Order of TPO can certainly have nexus for reaching the conclusion that income has been incorrectly assessed or has escaped assessment. In the present case, the said material came to the notice of the AO subsequent to the assessment. There is no grievance that provisions of ss. 148

to 153 have not been followed. In such a situation, it cannot be held that the notice proposing reassessment is vitiated merely because one of the reasons referred to order of TPO.— Raymond Woollen Mills Ltd. vs. ITO &Ors. (1999) 152 CTR (SC) 418 : (1999) 236 ITR 34 (SC) and Phool Chand Bajrang Lal vs. ITO (1993) 113 CTR (SC) 436 : (1993) 203 ITR 456 (SC): AIR 1993 SC 2390 relied on."

8.17 In view of the above binding precedents of the Hon'ble Supreme Court, I am of the view that the AO had valid reasons to initiate reassessment proceedings which were duly recorded and communicated to the appellant. Thus, there was new material on the record of the AO on the basis of which the earlier assessment order has been re-opened rightly by the AO u/s 147 of the Act.

15. Against the above order assessee is in appeal before us. We have heard both the parties and perused the record. No separate argument was placed orally by Ld. Counsel of the assessee on this issue. We note Ld.CIT(A) has taken a correct view of the matter. On the facts and circumstances, it cannot be said that reassessment is a change of opinion here. It is trite that there has to be an opinion first only then there can be issue of change of opinion. Moreover it is also settled law that at the time of notice escapement need not be proved to the hilt. We agree with Ld.CIT(A) that AO had valid reason for reopening. The case laws referred by Ld.CIT(A) also germane. Upon careful consideration, we do not find any infirmity in the same. Hence, we uphold the same.

16. In the result, all these appeals are allowed for statistical purpose.

Order pronounced in the open court on 11.08.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated :. 11.08.2021

Thirumalesh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT- concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai