

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.1060 & 1061/DEL/2015
Assessment Year 2007-08 & 2009-10

J.D. Sons Steel Pvt. Ltd., B-17, First Floor, Nehru Ground, NIT, Faridabad.	v.	ACIT, Circle-II, Faridabad.
TAN/PAN: AAACJ9814A		
(Appellant)		(Respondent)

Appellant by:	Shri Rajesh Jain, CA		
Respondent by:	Shri Umesh Takiyar, Sr.D.R.		
Date of hearing:	05	07	2021
Date of pronouncement:	31	08	2021

ORDER

PER, AMIT SHUKLA, J.M.

The aforesaid appeals have been filed by the assessee against separate impugned order of even date, 10.12.2014 passed by Ld. CIT (A), Faridabad for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the Assessment Years 2007-08 and 2009-10. Since issues involved in both the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidate order.

2. In various grounds of appeal, the assessee has challenged the validity of re-assessment proceedings initiated u/s.148 on various grounds and mainly on the ground that, reasons recorded by the Assessing Officer are vague without

any reference to any material on record and there is no proper nexus or live link between information/material and the formation of these escapement of income. Apart from that, the assessee has challenged the additions made u/s.68 for sums aggregating to Rs.1,25,00,000/- in the Assessment Year 2007-08; and Rs.50 lac in Assessment Year 2009-10.

3. The facts in brief qua the legal issue raised by the assessee in both the years are that, for the Assessment Year 2007-08 the assessee has its filed return of income u/s.139 on 30.10.2007 declaring income of Rs.40,00,030/- which was processed and accepted u/s.143(1). Likewise for the Assessment Year 2009-10, the assessee has filed return of income on 30.09.2009 u/s.139(1) declaring income of Rs.52,90,460/- which was processed u/s.143(1). Thereafter, on the basis of information that the assessee has received accommodation entry of Rs.1,25,00,000/- in Assessment Year 2007-08 and Rs. 50 lac in Assessment Year 2009-10 from Shri Surender Kumar Jain Group cases who was an entry operator, the cases were reopened u/s 147.

3.1 The reasons recorded for Assessment Years 2007-08 and 2009-10 are incorporated as under:

Reasons recorded u/s 148(2) before issue of notice u/s 148(1) of the Income Tax Act, 1961

1.	Name & address of the assesses	M/s J.D. Sons Steels Pvt. Ltd., B-17,1st Floor. Nehru Ground, NIT, Faridabad.
2.	PAN No.	AAACJ9814A
3.	Status	Companu
4.	Ward/ (Circle/Range	Circle-II, Faridabad
5	Assessment year in respect of which it is proposed to issue Notice u/s 148	2007-08

REASONS:

There is an information with the Assessing Officer received from the DIT (Inv.)-II, New Delhi vide letter F. No. DIT (Inv.)-II/ U/s./148/2012-13/269 dated 15.03.2013, that assessee has obtained accommodation entries for Rs. 1.25.00.000/- during the financial year 2006-07 relevant to Asstt. Year 2007-08. from Shri Surendra Kumar Jain group cases, who is an entry provider.

2. Therefore, in view of above. I have reason to believe that the assessee has failed to disclose fully and truly material facts, and hence income of Rs. 1,25,00,000/- as discussed above has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. Accordingly notice u/s 148 for the Asstt. Year 2007-08 is being issued after getting necessary approval of the Additional Commissioner of Income Tax, Range-II, Faridabad

*(Parikshit Singh, IRS)
Asstt, Commissioner of
Income Tax, Circle-II,
Faridabad.*

4.1 Reasons recorded u/s 148(2) before issue of notice u/s 148(1) of the Income Tax Act, 1961

1.	Name & address of the assessee	M/s. J.D. Sons Steels Pvt. Ltd., B-17, 1st Floor, Nehru Ground. NIT, Faridabad
2.	PAN No.	AAACJ98I4A
3.	Status	Company
4.	Ward/Circle/Range	Circle-11, Faridabad
5.	Assessment year in respect of which it is proposed to issue Notice u/s 148	2009-10

REASONS:

There is an information with the Assessing Officer received from the DU (Inv.)-H. New Delhi that assessee has obtained accommodation entries for Rs.50,00,000/- during the financial year 2008-09 relevant to Asstt. Year 2009-10, from Shri Surendra Kumar Jain group cases, who is entry provider.

2. In view of above, I have reason to believe that income chargeable to tax amounting to Rs.50,00,000/- and any other income which subsequently comes to notice has escaped assessment for assessment year 2009-10 within the meaning of section 147 of the Income Tax Act. Accordingly, a notice u/s 148 is being issued for the assessment year 2009-10.

(Pariktshit Singh, IRS)

*Asstt. Commissioner of Income Tax,
Circle-II, Faridabad.*

4. In the impugned assessment order, the ld. Assessing Officer has incorporated certain extracts of report of Investigation Wing, New Delhi on the outcome of such proceedings in the case of Shri Surender Kumar Jain and Shri Virender Kumar Jain and also discussed general modus operandi carried out by these two persons through various entity. Thereafter, Assessing Officer has also extracted certain information pertaining to assessee. Thus, Assessing Officer came to the conclusion that assessee has taken bogus accommodation entry in the form of share application money/share capital. After detailed discussion, he has made an addition of Rs.1,25,00,000/- in the Assessment Year 2007-08 and Rs.50 lacs in the Assessment Year 2009-10.

5. Before the Id. CIT (A), the assessee has challenged the validity of re-assessment proceedings and the reasons recorded by the Assessing Officer which have been rejected by the Id. CIT (A) after observing and holding as under:

“ITA No.1060-D-2015

10. Ground Nos. 1, 2 and 3. Taking up the first issue raised by the appellant is regarding the validity of the reassessment proceedings u/s 147/148. I have considered the facts of the case, observations of the AO and submissions of the appellant. For reopening an assessment made under Section 148 of the Act, the following conditions are required to be satisfied:-

(i) The Assessing Officer must form a tentative or prima facie opinion on the basis of material that there is under-assessment or escapement of income;

(ii) He must record the prima facie opinion into writing;

(iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.

(iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.

(v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. Explanation to the Section stipulates that mere production of books of accounts or other documents from which the

Assessing Officer could have, with due diligence, inferred material facts, does not amount to "full and true disclosure of material facts

11. Coming to the specific facts of the case the AO has recorded the reasons on the basis of the information received from the Investigation Wing. A perusal of the reasons recorded by the AO clearly shows that the appellant has taken accommodation entries from Sh. Surinder Kumar Jain Group of cases during the F.Y. 2006-07. The quantum of entries i.e. 1.25 Crores has been specifically mentioned and thus to this extent the appellant's reliance on a judgment of Delhi K High Court in the case of CIT vs. Insecticides (India) Ltd. 357 ITR 330 (Delhi) can be clearly distinguished from the case of the instant case. In fact in the case of ITO vs. Purshottam Dass Bangur (1997) 224 ITR 362 (SC) the Hon'ble Supreme Court has clearly held that letter from Deputy Director (Investigation) constitutes information and reasons to believe that income have escaped assessment. In fact herein the Hon'ble Supreme Court has also held that merely because the notice was sent on the next day of the receipt of the information from the DDIT (Inv.) does not mean the ITO has not applied his mind. In view of this I have no hesitation in holding that the AO had valid reasons to believe that income had escaped assessment and that the approval u/s 151 was accorded in a mechanical manner. Reliance is also placed on the Judgment of the Hon'ble Supreme Court in the case of PHOOL CHAND BAJRANG LAL AND ANOTHER VS. ITO & ANOTHER 203 ITR 456 (SC) the head note for which reads as below:

"Sufficiency of reasons for reopening assessments is not for the court to judge. Section: 147(a) -failure to disclose truly and fully

material facts - cash loans - originally accepted as genuine subsequent information from ,4.0. of a company that its M.D. has confessed - he or his company has not advanced any loan to any person during the relevant period - subsequent information is definite, specified and reliable. Sufficiency of reasons for formation of belief is not for the court to judge. Reassessment notices are valid. [Applied/followed in- 208 ITR 196 (RAJ) :

208 ITR 266 (DEL); 209 ITR 01 (BOM) :209 ITR 135(BOM) : Assam Forest Products (P) Ltd. - Vs.-CIT : **211 ITR 447 (SC): 214ITR 669 (RAJ) : 221ITR 538 (SC) :226 ITR :52 (GUH): 237ITR 549 (BOM):248 ITR 493 (P&H) :ITO - VS- Selected Dalurband **Coal Co.Pvt. Ltd.** 217ITR 597 (SC) :253 TR **83 (DEL) 257 ITR 481 (Guj)]****

And reliance is placed on honorable Madras High Court in the case of STERLITE INDUSTRIES (INDIA) LTD. v ASS1STANTC.OMMISSIONER OF INCOME-TAX AND ANOTHER [2008)302 ITR275 (MAD.) The head note for which reads as under

Reassessment -Notice—Validity of Notice - Information From Enforcement Directorate showing possible inflation of purchases -notice valid -Income- taxAct,1961, ss.147,148.

12. Perusal of the assessment order specially para 2.2 to para 2.6 also clearly show that the AO had sufficient reasons to reopen the assessment proceedings u/s 147. Thus in view of the above facts and judicial precedents I have no hesitation in holding that t h e AO has rightly reopened erred the assessment proceedings and the approval accorded by the Addl. Commissioner of Income Tax, Range-II, Faridabad has **not** been done in purely mechanical manner. **Thus Ground Nos. 1, 2 and 3 of the appellant are dismissed."**

6. Similarly in A.Y. 2009-10, that is, in appeal no. *ITA No.1061-D-2015*, Ld. CIT(A) has given following reasons to reject the contention of the assessee on validity of reopening u/s 147:-

8. *Ground No.1 and 2. Taking up the first issue raised by the appellant is regarding the validity of the reassessment proceedings u/s.147/148. I have considered the facts of the case, observations of the AO and submissions of the appellant. For reopening an assessment made under Section 148 of the Act, the following conditions are required to be satisfied.*

(i) The Assessing Officer must form a tentative or prima facie opinion or~ the basis of material that there is underassessment or escapement of income;

(ii) He must record the prima facie opinion into writing;

(iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.

(iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the 'Assessing Officer regarding escapement of income.

(v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. Explanation to the Section stipulates that mere production of books of accounts or other documents from which the Assessing Officer could have, with due diligence, inferred material facts, does not amount to "full and true disclosure of material facts".

9. Coming to the specific facts of the case the AO has recorded the reasons on the basis of the information received from the Investigation Wing. A perusal of the reasons recorded by the AO clearly shows that the appellant has taken accommodation entries from Sh. Surinder Kumar Jain Group of cases during the F.Y. 2006-07. The quantum of entries i.e. 50 Lacs has been specifically mentioned and thus to this extent the appellant's reliance on a judgment of Delhi High Court in the case of CIT vs. Insecticides (India) Ltd. 357 ITR 330 (Delhi), Ranbaxy Lab vs CIT 306 ITR 343 (Del) can be clearly distinguished from the case of the instant case. The reasons recorded by the AO are as below:

"There is an information with the Assessing Officer received from the DIT(Invt.)-II, New Delhi that assessed has obtained accommodation entries for Rs.50,00,000/- during the financial year 2008-09 relevant to Asstt. Year 2009-10, from Shri Surendra Kumar Jain group cases, who is entry provider.

2. In view of above, I have reason to believe that income chargeable to tax amounting to Rs.50,00,000/- and any other income which subsequently comes to notice has escaped assessment for assessment year 2009-10 within the meaning of section 147 of the Income Tax Act. Accordingly, a notice u/s 148 is being issued for the assessment year; 2009-10."

10. Perusal of the reasons show that the AO was in possession of information from the Investigation Wing that the appellant had taken accommodation entries to the tune of Rs. 50 Lacs from the Surender Kumar Jain Group and ultimately the addition has been made by the AO on the basis of bogus share application money (accommodation entries) to the tune of Rs. 50 Lacs (10 Lac each from five parties). Thus the appellant's contention that AO has made additions on issues which were not recorded for reopening the assessment are misplaced.

Similarly, his reliance on the case of *Ranbaxy Lab vs CIT* by the Hon'ble Delhi High Court is also misplaced.

11. In fact in the case of *ITO vs Purshottam Dass Bangur* (199/224 ITR 351 (SC) the Hon'ble Supreme Court has clearly held that letter from Deputy Direct: (Investigation) constitutes information and reasons to believe that income has escaped assessment. In fact herein the Hon'ble Supreme Court has also held that merely because the notice was sent on the next day of the receipt of the information from the DDIT (Inv.) does not mean the ITO has not applied his mind. In view of this I have no hesitation in holding that the AO had valid reasons to believe that income had escaped assessment and that the approval u/s 151 was accorded in a mechanical manner. Reliance is also placed on the Judgment of the Hon'ble Supreme Court in the case of *PHOOL CHAND BAJRANG LAL AND ANOTHER VS. ITO & ANOTHER* 203 ITR 456 (SC) the head note for which reads as below:

Sufficiency of reasons for reopening assessments is not for the court to judge. Section: 147(a) - failure to disclose truly and fully material facts - cash loans - originally accepted as genuine subsequent information from A.O. of a company that its M.D. has confessed - he or his company has not advanced any loan to any person during the relevant period - subsequent information is definite, specified and reliable. Sufficiency of reasons for formation of belief is not for the court to judge. Reassessment notices are valid. [Applied/ followed in- 208 ITR 196 (RAJ) : 208 ITR 266 (DEL): 209 ITR 01 (BOM) : 209 ITR 135(BOM) : Assam Forest Products (P) Ltd. - Vs.-CIT : 211 ITR 447 (SC): 214 ITR 669 (RAJ) : 221 ITR 538 (SC) : 226 ITR 352 (6UH): 237 ITR 549 (BOM): 248 ITR 493 (P&H) : ITO - VS- Selected Dalurband Coal Co. Pvt. Ltd. 217 ITR 597 (SC) : 253 ITR 83 (DEL) 257 ITR 481 (Guj)]

12. And reliance is placed on Honorable Madras High Court in the case of *STERLITE INDUSTRIES (INDIA) LTD. v ASSISTANT COMMISSIONER OF INCOME-TAX AND ANOTHER*

[2008]302 ITR275 (MAD.) The head note for which reads as under: Reassessment -Notice—Validity of Notice - Information From Enforcement Directorate showing possible inflation of purchases - notice valid -Income- tax Act, 1961, ss. 147,148.

13. *Perusal of the assessment order specially para 2.2 to para 2.6 also clearly show that the AO had sufficient reasons to reopen the assessment proceedings u/s 147. Thus in view of the above facts and judicial precedents I have no hesitation in holding that the AO has rightly reopened the assessment proceedings and the approval accorded by the Addl. Commissioner of Income Tax, Range-II, Faridabad has not been done in purely mechanical manner. Thus Ground Nos. 1 and 2 of the appellant are dismissed.*

7. Before us, ld. counsel for the assessee submitted that from a bare perusal of the 'reasons recorded' it can be seen that these are purely vague and general and no correlation of reason to believe with any material information on record. The reasons recorded must at least *prima facie* discuss the material having proximate nexus with the escapement of the income. The validity of re-assessment proceedings has to be tested on the basis of material referred to in the reasons recorded alone. Here in this case, what has been mentioned in the reasons recorded has no correlation with material which has been discussed in the assessment order and since all this is not part of reasons recorded, therefore same cannot be considered as relevant material for purpose of considering the validity of reasons recorded.

8. On the other hand, ld. DR after referring to the observation made by the Assessing Officer and ld. CIT(A)

submitted that here in this case the Assessing Officer has discussed the entire details and the investigation report, wherein the assessee was found beneficiary of accommodation entry in the search conducted in the case of Shri S.K. Jain Group. He further stated that the information received from Investigation wing was a valid information/material available with the AO reopening the case. The investigation report received along with the relevant extract of analysis and modus operandi of providing accommodation entries in garb of share application money is elaborately discussed in the investigation report. The annexures received with the report and complete investigation carried through the banks, statements of the accommodation entry providers and beneficiaries of the entries, documents seized from the premises of Sh. S.K Jain and his brother V.K Jain amply establish that bogus accommodation entries in garb of share application money were taken by the assessee. In so far as forming a belief of income escaping assessment and subsequently recording of reasons is concerned, it is seen from above that there was more than sufficient material on record to form the belief that assessee's income had escape assessment for the relevant year. The Investigation report was not some frivolous, cryptic, mundane paper on the basis of which the AO had formed a belief. It was a voluminous report running into hundreds of pages wherein the assessee's role as a beneficiary and the amount taken through various bogus companies of the entry operator Sh. S.K Jain was established

unambiguously and corroborated by statements recorded and bank inquiries conducted by the wing. So, with this background, availability of material on record for forming a prima facie belief of escapement of income is not even questionable. Moreover, it is a settled law that for reopening of assessment, the AO is required only to form a prima facie belief that the income has escaped assessment and no conclusive proof is required for the same. It is during the course of assessment that the AO is required to do so by way of further investigation and inquiries. Further, the objection raised by the assessee regarding non-application of mind by the AO while recording reasons is also baseless and devoid of merit. It can be appreciated in this background that a nationwide search was carried out by the investigation wing on the S. K Jain group and busted the accommodation entry operating racket prevalent in the country involving sum of crores of rupees, beneficiaries running into thousands of individuals and companies. Lot of incriminating material was found which (which I shall refer during course of hearing) was followed by extensive bank inquiries and recording of statements of the involved parties under oath. Thereafter, the information was organized and report was generated which was passed over to the field units for necessary action along with copy of seized annexures of the incriminating material. In case of the assessee the complete details of the amount of accommodation entries taken in garb of share application money taken, the details of bogus companies, the bank where

in the details of the accommodation entry taken by the assessee, details of bank accounts used for the transactions, the middle man/ the agent involved, details of cheque number for each amount etc was passed to the AO. Now on the basis of this material in possession of the AO, the reasons were recorded. So, what further application of mind is necessitated with this background? And precisely what would incorporate application of mind when already such an extensive investigation has been carried out? It is not that as if on the basis of some random dumb paper, the AO had reopened the case without applying his mind. It is a complete investigation report and does not warrant any further investigation at this stage and application of mind is a redundant concept at this stage both theoretically and practically. Further, without prejudice to the above, it is imperative to point out that AO cannot carry out any kind of inquiry, let alone a preliminary enquiry in case of any assessee unless any proceedings are pending against the assessee. So, the statute bars the AO to carry out investigation except when the proceedings are pending. So, if application of mind means further investigation, the law precludes the AO from doing it. In light of above, the Revenue fails to understand as to what does the assessee mean by "Application of mind". Also, it would be appreciated by the Hon'ble Bench that reopening proceedings provided in the statute are for bringing to tax the income of the taxpayer in case it has escaped assessment. The AO can very well drop

the proceedings if he/she is satisfied after inquiry and investigation in the case that no income has escaped assessment which is not the case with scrutiny proceedings wherein there is no provision of dropping the proceedings, once the case is selected for scrutiny. So, belief of AO regarding income escaping assessment, recording of reasons, application of mind should not be taken to hyper-technical level such that it can work as vehicle to vitiate the whole proceedings and resultant assessment which is otherwise very strong on merit.

9. Ld. DR has also relied upon catena of judgments in his written synopsis which on perusal of the same are not relevant. The judgments relied upon by the ld. DR are reproduced hereunder:

1. **Aradhna Estate (P.) Ltd.Vs DCIT f20181 91 taxmann.com 119 (Gujarat)**

Where Hon'ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinized by Assessing Officer during original assessment, reassessment could not be held unjustified.

2. **Pushpak Bullion (P.) Ltd. Vs DCIT f20171 85 taxmann.com 84 (Gujarat)**

Where Hon'ble Gujarat High Court held that where investigation wing of department had during course of investigation in case of a third party found that he was indulged in providing accommodation entries and bogus bills, and assessee had made sizeable purchases from him, reopening notice against assessee was justified.

3. **Ankit Financial Services Ltd. Vs DCIT T20171 78 taxmann.com 58 (Gujarat)**

Where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

4. **Aaspas Multimedia Ltd. Vs DCIT f20171 83 taxmann.com 82 (Gujarat)** where Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party same was justified.

5. **Ankit Agrochem (P.) Ltd. Vs JCIT [2018] 89 taxmann.com 45 (Rajasthan)**

Where Hon'ble Rajasthan High Court held that where DIT informed that assessee- company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

6. **Mona Mahesh Bhojani Vs ITO (2017-TIOL-345-SC-IT)**

SLR dismissed against appeal challenging the judgment, whereby the High Court had held that reopening initiated in case of an assessee who had not filed his return, could not be claimed by the assessee to be based on 'change of opinion'. The Assessee had also challenged the action of High Court in holding that when the AO had tangible material at his command to form a bonafide belief that income chargeable to tax had escaped assessment, the writ court would not interfere with the formation of such belief unless it is shown to be wholly perverse.

7. **Indu Lata Ranqwala Vs DCIT [2017]80taxmann.com102(Delhi)/[2016] 384 ITR 337 (Delhi)/[2016] 286 CTR 474 (Delhi)**

Where Hon'ble Delhi High Court held that where initial return of income is processed under section 143(1), it is not necessary in such a case for Assessing Officer to come across some fresh tangible material to form 'reasons to believe' that income has escaped assessment.

8 **Krishna Developers And Co Vs DCIT (2018-TIOL-51-SC-IT)**

Where Hon'ble Supreme Court held that reopening on the basis of very same reasons on which the AO initially desired to make additions but had failed, was justified, if the original assessment was declared as invalid as having been completed without service of notice on the assessee within the statutory period.

9 **Thakorbhai Maganbhai Patel Vs ITO [2017] 78 taxmann.com 201 (SC)/[2017] 245 Taxman 333 (SC)**

Where Hon'ble Supreme Court dismissed SLP against High Court's ruling where reopening of assessment u/s 147 was held to be valid despite the AO not passing speaking order against objections filed by the assessee.

10. **Thakorbhai Maganbhai Patel Vs ITO [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi)**

Where Hon'ble Delhi High Court held as follows:

“It is true that in the communications, the petitioner has requested for supply of documents. However, the petitioner also raised the objections to the Assessing Officer exercising the powers of reassessment. In true spirit if these communications were examined, the Assessing Officer would have realised that the assessee was objecting to the process of reopening. In terms of decision of Supreme Court in case of GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19/[2002] 125 Taxman 963, the Assessing Officer ought to have disposed of the objections. Ordinarily, we would have insisted on Assessing Officer doing so. However, facts in the present case are somewhat peculiar and no useful purpose would be served in ensuring only cosmetic purpose of completion of formality and then inviting a fresh litigation. Under the circumstances, we have examined the merits of the petitioner's challenge to the reopening also”

11 **Mohammedally Noorbhoy Bandukwala Trust Vs ITO (2017-TIOL-341-HC-MUM-IT)**

Where Hon'ble Mumbai High Court held that assessment cannot be termed as invalid for non consideration of assessee's

objections, if there was undue delay on the part of assessee in objecting to the reasons.

12. Aravali Infrapower Ltd. Vs DCIT (2017-TIOL-42-SC-IT) (Copy enclosed)

where Hon'ble Supreme Court confirmed the decision of High Court, whereby it was held that reopening of assessment is justified, when the bank statements as well as the ITR form disclosing returns, raises more questions than satisfying the queries already raised.

Aravali Infrapower Ltd. Vs DCIT [2017] 77 taxmann.com 322 (Delhi)/[2017] 390 ITR 456 (Delhi)

Where Hon'ble Delhi High Court held that where assessee-company furnished only cheque numbers, but failed to provide bank details of share applicants and it was found that share applicants had meagre income while investing huge sum of Rs. 8 crores, reopening notice was justified

13. Yogendrakumar Gupta Vs ITO (51 taxmann.com 383) (SC)/[2014] 227 Taxman 374 (SC)

Where Hon'ble Supreme Court held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.

14 Raymond Woollen Mills Ltd. v. ITO And Others [236 ITR 34]

Where Hon'ble Supreme Court held that in determining whether commencement 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. The sufficiency or correctness of the material is not a thing to be considered at this stage.

15 R.K. Malhotra ITO Vs Kasturbhai Lalbhai [1977] 109 ITR 537 (SC) (Copy enclosed)

where Hon'ble Supreme Court held that the intimation which the Income-tax Officer received from the audit department would constitute "information" within the meaning of section 147(b).

16 CIT Vs P.V.S. Beedies (P.) Ltd. M9991 103 Taxman 294 (SO/[1999] 237 ITR 13 (SC/[1999] 155 CTR 538 (SC)

Where Hon'ble Supreme Court held that Audit party had merely pointed out a fact which had been overlooked by Assessing Officer and this was not a case of information on a question of law. Reopening of case under section 147(b) on basis of factual information given by internal audit party was valid in law.

17 ACIT Vs Raiesh Jhaveri Stock Brokers (P.) Ltd [2007] 161 Taxman 316 (SC)/[2007] 291 ITR 500 (SC)/[2007] 210 CTR 30 (SC)

Where Hon'ble Supreme Court held that so long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings, even when

intimation under section 143(1) has been issued, ADANI EXPORTS v. DCIT[1999] 240 ITR 224 (Guj) was distinguished.

18. Murlibhai Fatandas Sawlani Vs ITO (2016-TIOL-370-HC-AHM-IT)

Where Hon'ble Gujarat High Court held that it is not open to the assessee to object to the reopening by asking the AO to produce the source from where the AO has gathered the information for forming a belief that income chargeable to tax has escaped assessment.

10. We have heard the rival submissions and also perused the material referred to before us at the time of hearing. From the perusal of the 'reasons recorded' as incorporated above for the Assessment Years 2007-08 and 2009-10, it is seen that Assessing Officer has referred to information received from DIT (Investigation)-2, New Delhi vide letter dated 15.03.2013, that the assessee has obtained accommodation entry for Rs.1,25,00,000/- during the Financial year 2006-07, relevant to Assessment Year 2007-08 from Shri Surender Kumar Jain Group cases who is a entry provider. Similarly, in Assessment Year 2009-10 also wording of the reasons recorded are identical except for that there is no reference of any letter number or date of investigation wing. Simply based on these four lines the Assessing Officer has stated that he has reason to believe that the assessee has failed to disclose fully and truly all material facts and therefore income of Rs.1,25,00,000/- has escaped assessment for Assessment Year 2007-08. For Assessment Year 2009-10 he simply

mentions that he has reason to believe income chargeable to tax amounting to Rs.50 lac and any other income which subsequently comes to the notice has escaped assessment for Assessment Year 2009-10 within the meaning of Section 147.

11. First of all, there is neither any discussion of any investigation report as referred to by the Assessing Officer in the assessment order or any reference of any material from the reasons recorded. It is not clear from the reasons recorded as to what is nature of the accommodation entry; and secondly, from which entity or companies, the assessee had received alleged accommodation entry. It is also not clear, whether it is on account of share application money or loan or any other kind of credit entry from any such entity. It is a well trite law that the reasons recorded at least should disclosed the prima facie material which has proximate or live link nexus with such information or material that the income chargeable to tax has escaped assessment. The Assessing Officer can assume jurisdiction for reopening the assessment only on the basis of material referred to in the reasons recorded and reasons recorded alone is the edifice or foundation of jurisdiction u/s.147. If the reasons recorded are silent or there is no reference of any material, then other extraneous material referred subsequently cannot justify acquiring of jurisdiction for reopening u/s 147. Any annexure or report discussed in the assessment order which is not part of the reasons recorded cannot be construed as material forming belief u/s.147. The formation of reasons to believe

can only be seen on the reason recorded in writing by the Assessing Officer before issuance of notice u/s.148. This proposition has been held so by the Hon'ble Jurisdictional High Court in the case of **CIT vs. Insecticides India Pvt. Ltd.** as reported in **(2013) 357 ITR 330 (Del)**; **Signature Hotels Pvt. Ltd. vs. ITO** reported in **338 ITR 51 (Del)** and **CIT vs. Atul Jain** reported in **(2008) 399 ITR 383 (Del)**.

12. Even if the information received from Investigation Wing was a valid information and material available with the Assessing Officer, then at least Assessing Officer after applying his mind should have brought on record at the time of recording the reasons that assessee has received accommodation entry in the nature of share capital or any bogus entry by any entry provider. The reasons recorded itself goes to show that it is purely based on borrowed satisfaction and without application of mind and such an approach has been frowned by the Hon'ble Jurisdictional High Court in the cases of **PCIT vs. Meenakshi Overseas P. Ltd., (2017) 395 ITR 677 (Del)** and **PCIT vs. RMG Polyvinyl (I) Ltd., 396 ITR 5. Ld.** DR before us has submitted that Assessing Officer has discussed in detail modus operandi in the light of the investigation report, however the reasons recorded did not refer to any such report or material. While considering the validity of the reasons recorded, which is an evidentiary fact and basis, nothing can be read or taken into consideration which has not been stated in the reasons recorded. Hon'ble Delhi High Court in the case of **Signature Hotels (supra)** has

held that even the annexure to the report giving detail of entry did not construe any material. Here in this case there is no whisper of any such material on record in the reasons recorded. Thus, the reasons as incorporated above are not only vague but does not have any live link nexus or connection for the formation of believe is a material on record. Such a vague reference that since information has been received from an investigation wing that the assessee has taken accommodation entry without any reference to any material or nature of entry provided or name of entity who has provided such entry is purely vague and such reasons cannot clothe to the Assessing Officer with the jurisdiction to reopen assessment u/s.147. Accordingly, the entire proceedings u/s.143/147 is *void abinito* and accordingly, the re-assessment proceedings are quashed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31st August, 2021.

Sd/-

[Dr. B.R.R. KUMAR]
ACCOUNTANT MEMBER

DATED: 31st August, 2021

PKK:

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER