

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.31 & 125/SRT/2019

निर्धारणवर्ष/Assessment Year: 2008-09

Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surt [PAN: AAKPS3474Q]	Vs.	The Income Tax Officer, Ward-2(3)(7), Surat.
The Income Tax Officer, Ward-2(3)(7), Surat	Vs.	Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surat [PAN: AAKPS3474Q]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.32 & 126/SRT/2019

निर्धारणवर्ष/Assessment Year: 2013-14

Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surat [PAN: AAKPS3474Q]	Vs.	The Income Tax Officer, Ward-2(3)(7), Surat.
The Income Tax Officer, Ward-2(3)(7), Surat	Vs.	Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surat. [PAN: AAKPS3474Q]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.33 & 127/SRT/2019

निर्धारणवर्ष/Assessment Year: 2014-15

Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surat [PAN: AAKPS3474Q]	Vs.	The Income Tax Officer, Ward-2(3)(7), Surat.
The Income Tax Officer, Ward-2(3)(7), Surat	Vs.	Kamal Kishore Soni 311, Tulsi Appartment, 3 rd Floor, Somnath Mahadeo Ni Sheri, Mahidarpura, Surat [PAN: AAKPS3474Q]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Prakash Jhunjhunwala, C.A.
राजस्वकीओरसे /Revenue by	Shri Ritesh Mishra, CIT/DR & Mrs. Anupama Singla – Sr. DR
सुनवाई की तारीख/ Date of hearing:	20.10.2021
उद्घोषणा की तारीख/Pronouncement on:	16.11.2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

These six cross appeals filed by the Assessee and Revenue are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. Since these cross appeals filed by the Revenue and Assessee, pertain to same assessee, and identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. First, we shall take assessee's appeal in ITA No. 31/SRT/2019 for Assessment Year 2008-09 and revenue's appeal in ITA No. 125/SRT/2019 for Assessment Year 2008-09. The assessee in his appeal in ITA No. 31/SRT/2019, has raised the following revised grounds of appeal:

1. On facts and circumstances of the case and in law, Ld. CIT(A) erred in upholding the validity of notice u/s 148 issued, beyond 4 years, without following the 1st Proviso to Section 147 and without having reason to believe of escapement of income, thereby consequential reassessment order passed u/s 147 is bad-in-law.

2. On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the disallowance @ 5% of alleged non-genuine purchase of diamonds at Rs.91,28,553/-.

3. The Ld. CIT(A) ought to have estimated the profit reasonably @ 0.25% of disputed transactions, since the entire purchases disclosed in P&L A/c corresponding to sales had been held as non-genuine in the assessment.

The appellant craves leave to add, amend, alter, and/ or withdraw any of the grounds of appeal at the time of hearing.”

4. Succinct facts are that Assessee before us is an individual and filed original return of income for Assessment Year 2008-09, declaring total income at Rs.5,13,013/- on 29.09 2008. The return of income was processed u/s 143 (1) of the Act. Subsequently, information was received from the Director of Income Tax (Inv)-II, Mumbai regarding specific information in the case of beneficiaries of accommodation entries related to Shri Pravin Jain Group wherein details of the beneficiaries, who have taken bogus purchases / sales accommodation entries in the Assessment Year (AY) 2008-09. As per the information received from Investigation DDIT, Mumbai, the search and seizure operation u/s 132 of the Act was carried out in the case of group cases of Pravin Jain Group involved in providing accommodation entries through benami concerns. During the year, the assessee had carried out transactions with the company i.e. M/s Casper Enterprise Pvt. Ltd., M/s Ansh Merchandise Pvt. Ltd., M/s Jasoda Exports, M/s Kailash International, M/s Kunal Gems, M/s Mahalaxmi Trading Co., M/s Minal Corporation, M/s Mohit International, M/s Natasha Enterprises, M/s Pratik Irnpex, and M/s Vijay & Company, which is run by the Shri pravin Jain, the king persons of the Pravin Jain Group. The Assessee had received accommodation entries pertaining to bogus purchases of Rs.73,03,27,096/- which was nothing but accommodation entry, as no real business was carried out by the concerns of Shri Pravin Jain Group as the bogus nature was confirmed in the statement recorded on oath by Shri Pravin Jain, the Main operator of the group. It was further stated that the entities of this group were operated solely with the purpose of facilitation of fraudulent transactions which includes providing accommodation entries of bogus purchases / sales.

5. The specific and important information received as above, has been subjected to the verification. After formation of reason to believe that the purchase bill of diamonds received by assessee are bogus in nature and escaped assessment due to failure on the part of the assessee to disclose fully and truly all the material facts necessary for the purpose of assessment, the case was reopened u/s 147 of the Act after obtaining the necessary satisfaction of the competent authority. The notice u/s 148 of the Act was issued on 30.03.2015. The assessee vide its letter dated 20.08.2015, had requested to treat the original return of income filed on 29.09.2008, as the return of income filed in response, to notice u/s 148 of the Act for A.Y. 2008-09. Subsequently, notice u/s 142(1) of the Act was issued and served upon the assessee. The assessee vide, letter dated 01/08/2015 has requested for copy of reasons recorded, which was provided to the assessee in view of the Hon'ble Supreme Court judgment in the case of GKN Driveshafts (India) Ltd. (259 ITR 19). Notices 143(2) and 142(1) of the Act were issued and served to the assessee.

6. Thereafter, assessing officer has examined the details and documents filed by the assessee. During the year under consideration, the assessee was engaged in the business of trading of diamond. During the re-assessment proceedings, the assessee had furnished details of parties from whom diamonds have been purchased from Pravin Jain group. The details of which are as under:-

Sr. No.	Name of the entity of Shri Pravin Jain	Amount (in Rs.)
1	M/s. Ansh Merchandise Pvt. Ltd	2,37,56,410/-
2	M/s. Jasoda Exports	4,60,17,345/-
3	M/s. Kailash International M/s.	2,86,17,695/-
4	M/s. Kunal Gem's	19, 51,89, 210/-
5	M/s. Mahalaxmi Trading Co.	3,12,99,737/-
6	M/s. Minal Corporation	2,06,00,058/-
	M/s. Mohit International	18,34,94,341/-
8	M/s. Natasha Enterprise	13, 45,09, 500/-
9	M/s. Pratik Impex	2,58,17,982/-
10	M/s. Vijay & Co.	4,10,24,818/-
	Total.	73,03,27,096/-

The assessing officer has gone through appraisal report prepared after the conclusion of search/ survey and search related proceedings. The appraisal report contains details and exhaustive confession statement of principal operator, the statement of some of the directors / partners / proprietors of the fictitious company run buy them and confessional statements given under section 131 of the Income Tax Act which was based on incriminating evidences found during the search and seizure. The assessing officer noted that what is appearing in the books of accounts is unreal whereas most of the transaction in cash is happening outside the books of accounts. In the view of the above, the books of the accounts were rejected under sub section 2 of Section 145 of the Income Tax Act. Based on these facts, assessing officer made addition of Rs.18,25,71,074/- (i.e. 25% of the bogus purchases of Rs.73,03,27,096) under section 69 C of the Act.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld CIT(A) who has restricted the addition to 5% of the impugned purchases. Before ld CIT(A) the assessee has also argued that reopening of assessment under section 147 of the Act is bad in law, as the reopening of assessment was after four years and the assessee had disclosed all material facts fully and truly before the assessing officer during the original assessment proceedings. However, ld CIT(A) rejected the contention of the assessee observing as follows:

“7.3.1. This ground of appeal to validity of re - opening of the case u/s 147 of the Act and issuance of notice u/s 148 of the IT Act. I have perused the submission of the AR and considered verbal arguments. It is seen from the records that the AO had received report from the Investigation Wing, Mumbai, which indicated that the appellant was beneficiary of accommodation entry operators. The said accommodation entry operator has admitted before the Investigation Wing that they had given bogus purchase to many persons including the appellant. Based on this report, the ld. assessing officer had “reason to believe” that income was escaped the assessment. In the facts and circumstances, I am convinced that the re-opening in this case is justified. Further, in his submission and verbal arguments, the AR contested that the assessment is not made as per Law. The ld. AO has not provided the copy of statement, material etc. which he has relied upon, to the appellant, thereby denying the appellant, an opportunity to counter the same.

The AR further submitted that this is against the principle of natural justice and strikes at the validity of the assessment completed.

*7.3.2 On examination of the records and as stated by the ld AO the incriminating material/ papers pertaining to the suppliers not with the ld AO, So, there is no question of providing copy to appellant. It is also seen that opportunity to cross examine was not provided to the appellant. It is further seen that the ld AO has not made any independent enquiries of his own. He has just relied on the report of Investigation Wing, Mumbai. The Hon'ble Supreme Court in the case of **Andaman Timber Mart (281 CTM 241)** has categorically held that "not furnishing the copy of material proposed to be relied upon, to the assessee **invalidates** the assessment proceedings. The Hon'ble Gujarat High Court in the case of **Legal Representatives of late Laxmanbhai S Patel (327 ITR 290)** also emphasizes the same ratio. Furnishing of copies of material collected by the ld. AO to the assessee is a statutory requirement as provided in Section 142(3). This requirement is emphasized by the various decisions quoted by AR in this submission (*Supra*).*

7.3.3 Requirement of giving materials proposed to be relied by the ld. AO to the appellant is a statutory requirement, failure to do it is fatal to the assessment as held in many judicial pronouncements such as; (Gangaram v/s CIT 5 ITR 464-488 – Gurmuh Singh v/s CIT 12 ITR 692 713--- International Forest v/s CIT 101 ITR 721 ITO V/s Ponkunnam 102 ITR 336 Narayan v/s CIT 20 ITR 287; in ITR 361; Nagulokonda v/s CIT 31 ITR 781; Thomakutty v/s CIT 34 ITR 501 Koyanmankutty v/s ITO 58 ITR 871; Radheylal v/s CIT 4 IN THE CASE OF 454; Gargi v/s CIT 96 ITR; Hirji v/s CIT 105 ITR 286 (sec 271).

However, quashing reopening and assessment on this ground would mean that the appellant is given undue benefit of mistakes by an individual officer. This is neither fair nor equitable for the revenue. Hence, this ground is not allowed."

8. Aggrieved by the order of the ld CIT(A), the assessee is in appeal before us.
9. Shri Prakash Jhunjhunwala, Learned Counsel for the assessee begins by pointing out that reassessment proceedings were initiated, beyond 4 years, without following the first proviso to section 147 of the Act and without having reason to believe that income has escaped assessment. He pointed out that if an assessment for any year has been completed u/s 143(3), then no action shall be taken u/s 147 after the expiry of 4 years from the end of relevant assessment year unless income chargeable tax has escaped

assessment by reason of the failure on the part of the assessee on account of the following reasons -

(a) to file a return u/s 139 or in response to notice u/s 142(1) or u/s 148;
or

(b) to disclose fully and truly all material facts necessary for that assessment year.

In the assessee's case the original assessment for assessment year 2008-09 was completed under section 143(3) of the Act on 30.11.2010 and at the time of original assessment, assessee had disclosed fully and truly all material facts necessary for that assessment. The reopening, in the assessee's case is being done by AO after expiry of 4 years, therefore, the reassessment proceedings are not valid and the same should be quashed.

10. On the other hand, Ms. Anupama Singla, Learned DR for the revenue submitted that assessing officer has initiated the reassessment proceedings based on the information received from the Investigation Wing. There is no defect in the reasons recorded by the assessing officer. She further pointed out that statement of some of the directors / partners / proprietors of the fictitious company run buy them and confessional statements given under section 131 of the income tax Act which was based on incriminating evidences found during the search and seizure, hence reopening of assessment was done on valid reasons, therefore the reassessment proceedings should not be quashed.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that the assessee has challenged the validity of reopening of assessment u/s 147/148 of the Act, which goes to the root of the matter.

Therefore, first of all we should examine the reasons recorded by the assessing officer, which is reproduced below:

“Reasons for reopening of notice u/s 148 of the I.T. Act

The facts of the case is that a search and seizure action was carried out by the Investigation wing, Mumbai in the Pravinkumar Jain group of cases on 01.10.2013, which resulted in collection of evidences and other findings, which conclusively proved that the said Pravin Kumar Jain Group of Mumbai had, through benami concerns, run and operated by them provided accommodation entries to various parties in respect of bogus unsecured loans and bogus purchase. The document seized from the premise of Shri Pravin Kumar Jain was found to be containing accounts of these benami entries right from 2006-07 onwards.

2.It is gathered from the evidences seized that, this group had indulged in giving such accommodation entries of about approx. Rs.8897/- Crores Shri Pravin Kumar Jain has admitted the entire nature of bogus transactions in his statement recorded u/s 132(4) of the IT Act, 1961. It was also stated by the dummy partners/directors/proprietors of the entities of this group that they are closely known and associated with Shri Pravin kumar Jain and that they were made directors/proprietors of the entities of this group at the direction of Shri Pravin Kumar Jain the entities were managed and controlled by Shri Pravin Kumar Jain. It was further admitted by the dummy directors/proprietors of the entities of this group that they were merely employees of the above groups and their family and that they were employees of Shri Pravin Kumar Jain and that they were looking after miscellaneous office work like depositing cheques in banks, handing over parcels to clients, making date entry, etc. and they were paid lump sum salary in cash. The said bogus concerns were not doing any genuine business.

3.From the details and evidences made available, it has come to light that during FY.2007-08, the assessee Shri Kamalkishor A Soni, Prop. of Komal Gems, has received following bogus bills for purchases (i.e. Bogus Sale bills issued by the bogus concerns of Pravin Kumar Jain).

<u>Name of the entry provider</u>	<u>Amount (in Rs.)</u>
<i>M/s Ansh Merchandise P Ltd. (AABCN8176E)</i>	<i>23756410/-</i>
<i>M/s. Jasoda Exports (AANPV6131A)</i>	<i>46017345/-</i>
<i>M/s. Kailash International (AFSPA5222K)</i>	<i>28617695/-</i>
<i>M/s. Kunai Gems (AAOPV6312K)</i>	<i>195189210/-</i>
<i>M/s. Mahalaxmi Trading Co. (AFSPA5223J)</i>	<i>31299737/-</i>
<i>M/s. Minal Corporation.(AKKPM5471D)</i>	<i>20600058/-</i>
<i>M/s. Mohit International (AIXPP8680Q)</i>	<i>183494341/-</i>
<i>M/s. Natasha Enterprises (AIPPP6372H)</i>	<i>134509500/-</i>
<i>M/s. Pratik Impex. (AHRPM8494Q)</i>	<i>25817982/-</i>
<i>M/s. Vijay & Co (ACGPL2365M)</i>	<i>41024818/-</i>
	<i>Total: 66,24 84,296/-</i>

Hence the assessee has booked aggregate bogus purchase of Rs.66,34,84,296/-.

4. *The evidences and material found during the course of search and survey in the case a Shi Pravin Kumar Jain prove giving of accommodation purchase entries of Rs.66,34,84,296/- to the instant assessee. It is prima facie apparent that the assessee has utilized such bogus entries to suppress his profits.*

5. *In view of the above fact, I have a reason to believe that there escapement of income to the tune of Rs.66,34,84,296/- in hands of the Assessee for the year under consideration, within the meaning of section 147 of the Act. I am satisfied that the case of the assessee is a fit case for action u/s 147 of the Act an issue of notice u/s 148 of the I.T. Act.*

Date: 26.03.2015

(REMESAN K.P)
Income Tax Officer Ward, 2(3)(7),
Surat”

12. We note that in the assessee's case under consideration the original assessment was framed u/s 143(3) of the Act, on 30.11.2010, for the assessment year 2008-09. We note that reassessment proceedings in the assessee's case have been initiated on 26.03.2015, which is after 4 years from the end of the assessment year 2008-09. In assessee's case the four years elapsed on 31.03.2014. However, the reassessment proceedings were initiated on 26.03.2015. Therefore, it is clear that the reassessment proceedings have been initiated after 4 years from the end of the relevant assessment year 2008-09. As per first proviso to section 147 of the Act, if the assessee has disclosed fully and truly all material facts during the original assessment proceedings the reassessment should not be initiated.

13. We note that in order to get the benefit of first proviso to section 147 of the Act, the assessee has to disclose fully and truly all material facts necessary for that assessment year 2008-09. Therefore, we should examine the facts that whether assessee has disclosed fully and truly all material facts necessary for assessment year 2008-09. For that, first of all, we should examine the original assessment u/s 143(3) of the Act for assessment year 2008-09. The relevant part of the original assessment order, which is useful for our analysis, is reproduced below:

“1.The assessee electronically filed the return of income for Assessment Year 2008-09 showing total income of Rs.5,13,010/- on 29.09.2008 vide e-filing

Acknowledgment No. 43373940290908. The case-was selected for scrutiny assessment and a notice under section 143(2) of the I.T Act, dated 27.08.2009 was issued and duly served on the assessee on 18.09.2009. Further, for the purpose of assessment, a notice under section 143(2) of the Income Tax Act, 1961 alongwith a detailed annexed questionnaire dated 02.07.2010 was duly served upon the assessee.

2. In response to the notices issued u/s 143(2) and 142(1) of the income-tax Act, 1961, Sh. Surendra Mehta, C.A duly authorized by the assessee, attended from time to time and furnished details. In the course of assessment proceedings, the copies of final accounts and Tax Audit Report u/s 44AB of the Income Tax Act, 1961 have been requisitioned. The details and other documents filed and furnished during the course of assessment proceedings as well as those filed along with the return of income have been scrutinized and discussed with the Ld A.R. of the assessee. Also the books of accounts and records have been examined on a random and test-check basis.

3. After affording full and adequate opportunity to the assessee through its authorized representative, the assessment proceedings have been completed and in consequence upon the conclusion of proceedings and hearing of evidences, assessment is made by this order.

4. The assessee is engaged in the business of trading of polished and rough diamonds and advancing funds, on interest. The Ld AR has furnished relevant details and information, on the basis of which and all other submissions, this assessment is being made.

5. In light of the above facts and circumstances, and after carefully going through the submissions and return of income, books of accounts and other documents furnished by the assessee, the assessee was requested vide Letter No. SRT/DCIT C.6/KAS/SCN/2010-11, Dated 22.10.2010, to show cause why the income should not be re-computed with the alterations made as under:

*"...2.During the **course** of assessment proceedings,' it has been found that the following expenses have been claimed **in the P&L Account**:*

<i>Expenses Head</i>	<i>Amount (In Rs.)</i>
<i>Car Expenses</i>	<i>99174</i>
<i>Vehicle Loan Interest</i>	<i>28583</i>
<i>Depreciation on Car</i>	<i>65825</i>
<i>Conveyance</i>	<i>8500</i>
<i>Interest on Car Loan</i>	<i>35166</i>
<i>Telephone Expenses</i>	<i>7423</i>
<i>Travelling Expenses</i>	<i>18205</i>
Total	2,62,876

Kindly furnish necessary evidence in respect of business connection of the above-mentioned expenses and also rule out the element of personal usage with evidence. Failure to furnished adequate supporting evidence will lead to the disallowance of 15% of expenses, i.e. Rs.39,431/- on account of involvement of personal element in expenditure"

6.The reply and submission of the assessee has been received and duly considered in the body of this assessment order. These submissions and replies of the assessee have been thoroughly analysed. After due deliberation and thorough reasoning of the issues at hand, the undersigned is of the following considered opinion.”

14. From the above original assessment order framed by assessing officer under section 143(3) of the Act, dated 30.11.2010, it is vivid that during the original assessment proceedings, assessee had submitted books of accounts, and each and every documents and evidences as required by the assessing officer and assessee had extended full cooperation during the assessment proceedings, hence there was no failure on the part of the assessee to disclose fully and truly all material facts.

15. We also note that in reasons recorded u/s 147 of the Act, the assessing officer did not mention anywhere that he has not satisfied that during the original assessment proceedings under section 143(3) of the Act, assessee has not submitted books of account, documents, evidences and explanations. That is, the assessing officer, has nowhere recorded findings to the effect that assessee has failed to disclose fully and truly all material facts necessary for assessment year 2008-09. At the cost of repetition we state that in the assessee`s case under consideration, the relevant assessment year is 2008-09, and four years elapsed as on 31.03.2014. However, assessing officer had reopened the assessment on 26.03.2015, which is after four years, hence it is abundantly clear that assessee`s case was reopened after the expiry of four years from the end of the relevant assessment year, 2008-09. The settled position of law is that if an assessment for any year has been completed u/s 143(3) or u/s 147, then no action shall be taken u/s 147 after the expiry of four years from the end of relevant assessment year unless income chargeable tax has escaped assessment by reason of the failure on the part of the assessee.

16. We have examined the original assessment order framed by assessing officer under section 143(3) of the Act and note that there is no allegation that the assessee has failed to disclose fully and truly, all material facts necessary

for assessment. As we noted that the re-opening is beyond a period of four years and the original assessment was completed u/s 143(3) of the Act and therefore in the light of the decision of the Hon'ble Calcutta High Court in the case of *Amiya Sales and Industries vs. ACIT* reported in 274 ITR 25 (Cal.), the reopening of assessment is bad in law. We note that there is change in opinion as the assessee has disclosed all the material facts in its return of income, and submitted Balance Sheet along with annexures, bills vouchers, invoices and other evidences as required by the assessing officer and the Assessing Officer had considered the same while completing the original assessment u/s 143(3) of the Act dated 30.11.2010.

17. We are very much conscious of Hon'ble Gujarat High court's landmark decision in the case of *Kantibhai Dharamshibhai Narola*, [2021] 125 taxmann.com 348 (Guj) wherein the Hon'ble Court has held that there cannot be any action under Section 147 of the Act after the expiry of a period of four years from the end of the relevant assessment year until and unless the income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make disclosure of all the material facts truly and fully necessary for assessment. The important findings of the Hon'ble Court is reproduced below:

“38. We have noted above that the assessee was already assessed under the provisions of Section 143(3) of the Act 1961 vide order dated 31st December 2013. Accordingly, the first proviso in Section 147 of the Act 1961 has a direct bearing on the issue on hand. It is stated therein that there cannot be any action under section 147 of the Act after the expiry of a period of four years from the end of the relevant assessment year until and unless the income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make disclosure of all the material facts truly and fully necessary for assessment. In the present case, we have already held that initiation of the proceedings under Section 147 of the Act was based on the borrowed satisfaction. Thus, it is implied that the Assessing Officer has not applied his mind to arrive at the conclusion that there was of failure on the part of the assessee to disclose fully and truly all the material facts. In other words, mentioning by the Assessing Officer that the assessee has failed to disclose all material facts in the reasons recorded is not sufficient enough. Rather the Assessing Officer is under the obligation to arrive at such conclusion that the assessee failed to disclose all material facts necessary for the assessment after applying his mind and verification of the facts. But the Assessing Officer has not done so. In holding so we draw support and guidance from

the judgment of the Bombay High court in case of Gateway Leasing (P.) Ltd vs. ACIT reported in 117 taxmann.com 442 where it was held as under:

“35. Having discussed the above, we may once again revert back to the reasons furnished by Respondent No. 2 for re-opening of assessment under Section 147 of the Act. After referring to the information received following search and seizure action carried out in the premises of Shri Naresh Jain, it was stated that information showed that Petitioner had traded in the shares of M/s. Scan Steels Ltd., and was in receipt of Rs. 23,98,014.00 and therefore, Respondent No. 2 concluded that he had reasons to believe that this amount had escaped assessment within the meaning of Section 147 of the Act.

36. First of all it would be evident from the materials on record that Petitioner had disclosed the above information to the Assessing Officer in the course of the assessment proceedings. All related details and information sought for by the Assessing Officer were furnished by the petitioner. Several hearings took place in this regard where-after the Assessing Officer had concluded the assessment proceedings by passing assessment order under Section 143 (3) of the Act. Thus it would appear that Petitioner had disclosed the primary facts at its disposal to the Assessing Officer for the purpose of assessment. He had also explained whatever queries were put by the Assessing Officer with regard to the primary facts during the hearings.

37. In such circumstances, it cannot be said that Petitioner did not disclose fully and truly all material facts necessary for the assessment. Consequently, Respondent No. 2 could not have arrived at the satisfaction that he had reasons to believe that income chargeable to tax had escaped assessment. In the absence of the same, Respondent No. 2 could not have assumed jurisdiction and issued the impugned notice under Section 148 of the Act.”

39. The entire basis for reopening the assessment is on the premise that there was a cash transaction of a huge amount, and having regard to the same, there was no true and full disclosure. We have already explained that this issue of cash transaction is nothing but a mere guess, and at the cost of repetition, the transaction of sale was not with K.Star Corporation. M/s. K.Star Corporation, in the present case, is the second buyer.

40. In our opinion, there is no escapement of income chargeable to tax. The conditions precedent for resorting to reopening of the assessment under Section 147 of the Act 1961 are not satisfied in the present case.”

18. Based on the facts narrated above, we note that in the assessee`s case in the reasons supplied to the assessee, as noted by us in above para no.11 of this order, there is no whisper, what to speak of any allegation, that the assessee had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of

income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period, as explained above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. Hence, we note that reasons recorded by the assessing officer is not in accordance with the scheme of section 147 of the Act, therefore, we quash the reassessment proceedings initiated under section 147 of the Act, and allow the appeal of the assessee in ITA No.31/SRT/2019, for A.Y. 2008-09.

19. Since we have allowed the appeal of the assessee on technical grounds therefore, we do not adjudicate assessee's grounds raised on merits. The appeal filed by the Revenue in ITA No.125/SRT/2019, for A.Y. 2008-09 becomes infructuous, as we have quashed the reassessment proceedings.

20. Now we shall take ITA No. 32/SRT/2019 for A.Y. 2013-14 (Assessee appeal), ITA No. 126/SRT /2019 for A.Y. 2013-14 (Revenue appeal), ITA No. 33/SRT/2019 for A.Y. 2014-15 (Assessee appeal), and ITA No.127/SRT/2019 for A.Y. 2014-15, (Revenue appeal) .

21. These are the cross appeals filed by the assessee and Revenue. In these appeals common and identical issues are involved. In assessment year 2013-14, the assessing officer made disallowance at the rate of 25% of bogus purchases, on appeal, Id CIT(A) has restricted the addition to 5% of bogus purchases. The Revenue is in appeal before us that addition made by the assessing officer should be sustained, whereas the Assessee is in appeal before us that addition on bogus purchases may be sustained at the rate of net profit declared by the assessee in audited books of accounts. In assessment year 2014-15, the assessing officer made disallowance of entire purchases made from benami concerns, on appeal, Id CIT(A) has restricted the addition to 5% of bogus purchases by relying on the judgment of the Hon`ble High Court of Gujarat in the case of Mayank Diamond Pvt. Ltd reported in 2014 (11) TMI

812 (Guj). The Revenue is in appeal before us that addition made by the assessing officer should be sustained, whereas the Assessee is in appeal before us that addition on bogus purchases may be sustained at the rate of net profit declared by the assessee in audited books of accounts.

22. During the course of hearing, learned Counsel informed the Bench about the gross profit rate and net profit rate, assessment year-wise, which is reproduced below:

Assessment Year	Gross Profit rate	Net profit rate
2008-09	0.63%	0.10%
2013-14	2.23%	0.26%
2014-15	3.72%	0.82%

23. We note that in all the assessment years, the net profit ratio declared by the assessee is less than 1% and gross profit ratio is less than 5%. Hence, these all appeals are covered by the judgment of this Coordinate Bench in the case of Pankaj K. Choudhary, in ITA No.1152/AHD/2017 (AY 2007-08), order dated 27.09.2021, wherein it was held as follows:

“21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ .78% and net Profit @ .02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs. 1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs, 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the ld CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon’ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon’ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to

prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.”

24. Respectfully following the above binding precedent, we restrict the disallowance @ 6% of impugned purchases/disputed purchases. Therefore, grounds of appeal raised by the assessee are dismissed and grounds of appeal raised by the Revenue is partly allowed.

25. In the result, appeals of the assessee for assessment years 2013-14 and 2014-15 are dismissed and appeals of Revenue are allowed to the extent indicated above.

The order announce on 16/11/2021 as per Rule 34(5) of Income tax (Appellate Tribunal) Rules, 1963.

Sd/-
PAWAN SINGH
(JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 16/11/2021
SAMANTA

Sd/-
Dr. A. L. SAINI
(ACCOUNTANT MEMBER)

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

// TRUE COPY //

By order

Assistant Registrar/Sr. PS/PS
Surat