IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI LALIET KUMAR, JUDICIAL MEMBER
&

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.6357/Mum/2019
(**Assessment Year :2010-11**)

M/s. Intime Realty Private Limited B-306-309, Dynasty Business Park, J.B. Nagar Opp. Sangam Cinema, Andheri(E) Mumbai – 400 059	Vs.	DCIT-CC-3(4) Mumbai 19th Floor, Air India Building, Nariman Point Mumbai
PAN/GIR No.AABCI9177N		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Dharmesh Shah
Revenue by	Shri R.A. Dhyani
Date of Hearing	**01/12/2021**
Date of Pronouncement	**06/12 /2021**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.6357/Mum/2019 for A.Y.2010-11 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-51, Mumbai in appeal No.CIT(A)-51/IT-271/DCIT-CC-3(4)/2017-18 dated 09/08/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated

30/06/2016 by the ld. Dy. Commissioner of Income Tax, Central Circle-3(4), Mumbai (hereinafter referred to as ld. AO).

2. The assessee has raised a ground challenging the validity of assumption of jurisdiction u/s.147 of the Act.

3. We have heard rival submissions and perused the materials available on record. At the outset, the ld. AR submitted that the assessment for A.Y.2010-11 was reopened by the ld. AO after obtaining the prior approval of the ld. PCIT in terms of Section 151 of the Act. But he vehemently submitted that the approval u/s.151 of the Act sanctioned by the ld. PCIT was a mechanical approval without due application of mind as the ld. PCIT in the prescribed proforma in response to Question No.13 as to whether he satisfied with the reasons recorded by the ld. DCIT that it is a fit case for issuing notice u/s.148 of the Act, the ld. PCIT had merely replied "Yes, it is a fit case for issue of notice u/s.148". The ld. AR submitted that similar sanction u/s.151 granted by the ld. PCIT was subject matter of adjudication by this Tribunal in the case of sister concern of the assessee i.e. in the case of Seawoods Hospitality and Realty Pvt. Ltd., vs. DCIT in ITA No.92/Mum/ 2019 for A.Y.2010-11 dated 28/10/2020 wherein this Tribunal had quashed the re-assessment proceedings as the same has been initiated without obtaining proper sanction in terms of Section 151(1) of the Act from the ld. PCIT who had given approval in a mechanical way.

4. Per contra, the ld. DR vehemently relied on the orders of the ld. CIT(A) in this regard.

5. We find that the assessee company is engaged in the business of investment in shares and had filed its return of income for the A.Y.2010-11 originally u/s.139 of the Act on 06/10/2010 declaring total loss of Rs.4,15,968/-, which was duly processed u/s.143(1) of the Act. Pursuant to

the survey conducted in the business premises of the assessee u/s.133A of the Act on 21/11/2013 wherein it was observed that assessee had received substantial amount towards issue of shares at a very high premium without any justification or basis, notice u/s.148 of the Act was issued on 19/01/2016. Since, the said assessment was sought to be reopened beyond a period of four years from the end of relevant assessment year, approval was sought to be obtained from ld. PCIT through the ld. Addl. CIT in terms of Section 151 of the Act in the prescribed proforma. For the sake of convenience, the said prescribed proforma is reproduced hereunder:-

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 148 AND FOR OBTAINING THE APPROVAL OF THE COMMISIONER OF INCOME TAX / CENTRAL BOARD OF DIRECT TAXES

1	Name & Address of the assesse	:	M/s. Intime Realty Pvt. Ltd. 106, Sagar Shopping Centre, J.P. Road, Mumbai-400058
2.	Permanent Account No.	:	AABCI 9177N
3.	Status	:	COMPANY
4.	District/Circle	:	Cen. Cir-3(4), Mumbai
5.	Assessment Year in respect of which it is proposed to issue notice u/s 148	:	A.Y. 2010-11
6.	The Quantum of income which has escaped assessment	:	Rs. 1,95,00,000/
7.	Whether the provisions of Sec. 147(a) or 147(b) are applicable or both the sections are applicable	:	Only 147(c)
8.	Whether the assessment is proposed to be made for the first time. If the reply is in the affirmative please state	:	No
(a)	Whether any voluntary return has already been filed; and	:	YES
(b)	If so, the date of filing the said return	:	06.10.2010
9.	If the answer to item 8 is in the negative, please state:		
(a)	The income originally assessed	:	N.A.
(b)	Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	:	N.A.
10.	Whether the provisions of Section 150(1) are applicable. If the reply is in the affirmative the relevant facts may be stated against item No.11 and it may also be brought out that provisions of Section 150(2) would not stand in the way of initiating proceedings under section 147.	:	No
11	Reasons for the belief that income has escaped assessment	:	As per Annexure

Date: 08-01-2016

(DEEPIKA ARORA)
DCIT CC-3(4), Mumbai.

12 Whether the Addl. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148

Date:

Addl. Commissioner of Income-Tax
Central Range-3, Mumbai

13 Whether the Pr.Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148

Date:

Pr. Commissioner of Income-Tax
Central -2, Mumbai

5.1. We find from the perusal of the aforesaid proforma, the ld. PCIT had merely accorded approval in a mechanical manner which has not been appreciated by the various High Courts. The various High Courts have held that approval granted in the aforesaid mechanical manner is not with proper application of mind by the competent authority and hence, the re-assessment should be quashed on that count. We also find that the identical issue had cropped up before this Tribunal in the case of Seawoods Hospitality and Realty Pvt. Ltd., vs. DCIT in ITA No.92/Mum/2019 wherein the re-assessment was quashed for the same reason by observing as under:-

> ***"ITA No.92/Mum/2019 (A.Y.2010-11) – Seawoods Hospitality and Realty P. Ltd.,***
>
> *2. Though the assessee has raised several grounds, we find that it has raised a legal ground challenging the validity of reopening of the assessment. Hence, we proceeded to address the legal issue raised by the assessee on the validity of reopening of assessment.*
>
> *3. We find that the assessee is a private limited company engaged in the business of investment in shares and securities. The return of income for the A.Y.2010-11 was filed by the assessee on 15/10/2010 which was duly processed u/s.143(1) of the Act. The said return was not selected for scrutiny by issue of notice u/s.143(2) of the Act and as such, the said assessment became final. Subsequently a notice u/s.148 of the Act dated 14/01/2016 was issued by the ld. AO on the ground that income of the assessee had escaped assessment with regard to issue of share capital and share premium in the sum of Rs.3,35,00,000/- which in the opinion of the ld. AO was bogus, as certain fresh tangible information had emanated out of the search and seizure operation u/s.132 of the Act carried out in Mahavir Group of cases. As an off shoot of that search, a survey action was also carried out u/s.133A of the Act in the business premises of the assessee, based on which for the aforesaid reasons recorded for reopening of assessment, notice u/s.148 of the Act dated 14/01/2016 was issued.*
>
> *3.1. In response to the said notice, assessee filed a letter dated 18/02/2016 requesting the ld. AO to treat the original return of income filed on 15/10/2010 as the return filed in response to notice u/s.148 of the Act. The assessee on receipt of reasons recorded for reopening of assessment also filed objections to the same before the ld. AO. The ld. AO disposed off the objections by way of a separate speaking order dated 19/02/2016 rejecting the contentions of the assessee. Thereafter, the ld. AO proceeded*

to frame re-assessment u/s.143(3) r.w.s.147 of the Act on 13/06/2016 wherein the share capital and share premium received by the assessee in the sum of Rs.3,35,00,000/- was added as unexplained cash credit u/s.68 of the Act.

4. The ld. AR at the outset argued that the notice u/s.148 of the Act in the instant case for the A.Y.2010-11 was apparently issued beyond four years from the end of the relevant assessment year which requires a sanction of approval to be accorded by the Pr. Commissioner of Income Tax (PCIT in short) in terms of Section 151(1) of the Act. In this regard, he placed on record as part of the paper book and drew our attention to the page 1 of the case law paper book containing approval sought by the ld. AO before the ld. PCIT u/s.151(1) of the Act for reopening of assessment in the case of the assessee in the prescribed proforma on 08/01/2016. The said proforma was sent by the ld. AO to the ld. PCIT through proper channel i.e ld. Additional Commissioner of Income Tax on 08/01/2016. The ld. AR specifically drew our attention to reply given by the ld. AO in response to question No.7 of the prescribed proforma by mentioning Section 147 (b) which he stated that the said provision has been omitted from the statute long back. He also argued that the Additional Commissioner as well as Pr. Commissioner while affixing their signature did not mention the date of granting of approval in terms of Section 151 of the Act for reopening of assessment in the prescribed proforma. The ld. AR vehemently argued that the ld. PCIT had not applied his mind at all in the instant case for according approval and granted mechanical approval by simply stating "yes, it is a fit case for issue of notice u/s.148". The ld. AR argued that the reasons recorded for reopening the assessment were done by the ld. AO only on 14/01/2016 which was subsequent to sending the proforma dated 08/01/2016 for seeking approval to the ld. PCIT. The reasons recorded are enclosed in page 7 of the paper book filed by the assessee. This clearly goes to prove that the ld. PCIT while according sanction in terms of Section 151(1) of the Act, had not applied his mind and had given a mechanical sanction for reopening the case even when the reasons recorded for reopening the assessment were not even placed before him by the ld. AO. Infact, in question No.11 of the prescribed proforma, the reasons recorded for reopening the assessment is one of the main question mentioned therein for which the ld. AO has replied "As per Annexure" and the said annexure is enclosed in page 7 of the paper book which is nothing but the reasons recorded for reopening the assessment which is dated on 14/01/2016. Hence, the ld. AO could not have sent the proforma for approval u/s.151(1) of the Act to the ld. PCIT on 08/01/2016 with the reasons recorded for reopening of assessment. The ld. AR placed reliance on the following decisions in support of its contention that where the ld. PCIT gave the mechanical approval for reopening of assessment without due application of mind in terms of Section 151(1) of the Act, the said re-assessment requires to be quashed:-

(a) *Co-ordinate Bench decision of this Tribunal in the case of Avani Premises Pvt. Ltd., vs. ITO in ITA No.1664/Mum/2019 for A.Y.2008-09 dated 09/01/2020.*

(b) Decision of Hon'ble Delhi High Court in the case of PCIT vs. N.C. Cables Limited reported in 391 ITR 11 (Del)

(c) Decision of the Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P.Chaliha & Others reported in 79 ITR 603 (SC)

(d) Decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. S.Goyanka Lime and Chemical Ltd. reported in 231 Taxman 73. SLP of revenue before the Hon'ble Supreme Court was also dismissed in 237 Taxman 378.

(e) Co-ordinate Bench decision of this Tribunal in the case of Astra Exim Pvt. Ltd., vs. ITO in ITA No.277/Mum/2018 for A.Y.2007-08 dated 31/08/2018.

5. The ld. AR also placed on record the copy of the Hon'ble Jurisdictional High Court in the case of Smt. Kalpana Shantilal Haria vs. ACIT in WP (L) No.3063 of 2017 dated 22/12/2017 to drive home the point that where in the prescribed proforma, the ld. AO had wrongly mentioned the Section 147(b) and which has been accorded sanction by the ld. JCIT, then the same would not be a curable defect u/s.292B of the Act and that the approval has been sanctioned by the competent authority without due application of mind and hence, reopening should be quashed.

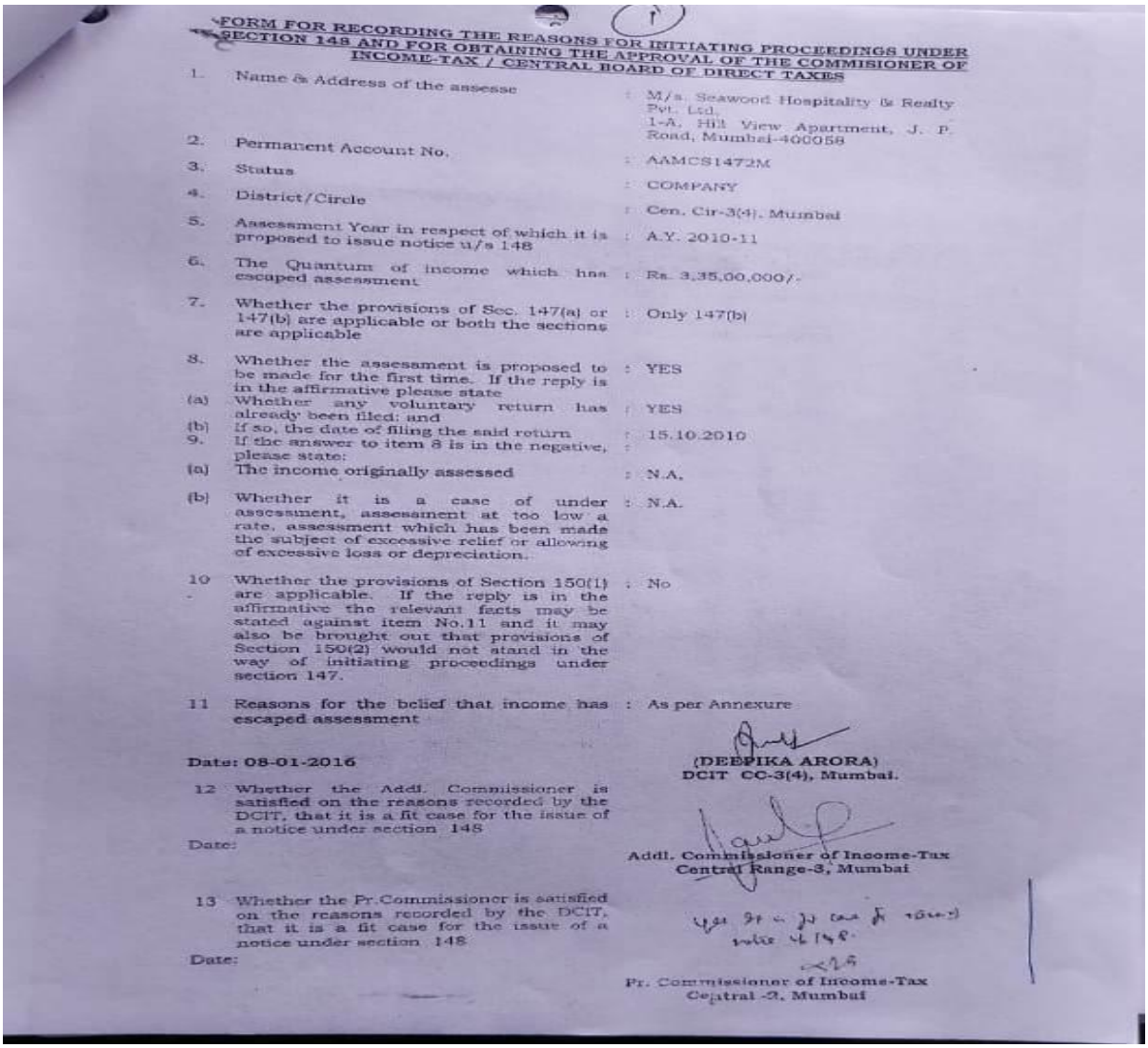
5.1. Per contra, the ld. DR filed a written submission through email on 06/10/2020 on the merits of the addition and also on the arguments advanced by the ld. AR. The ld. DR placed reliance on the decision of the Hon'ble Andhra Pradesh High Court in the case of P. Munirathnam Chetty and P.Satyanarayana Chetty reported in 101 ITR 385 where according to the ld. DR, the Hon'ble High Court had observed as under:-

> *"Where the ITO has given elaborate reasons for reopening in his report to the CIT, mere "yes" endorsement to the CIT would amount to his satisfaction".*

5.2. The ld. DR also placed reliance on the following decisions in support of his contention that reopening of assessment could be made where information has been received from external agencies as under:-

- *"Sterlite Industries(lndia) Ltd. V/s. ACIT (MAD) (302 ITR 275) where it was held that information from Enforcement Directorate showing possible inflation of purchases ' notice issued u/s.148 valid'.*
- *In AGR Investment Ltd. v/s, Addl.CIT & Anr.(Del) (333 ITR 146)*
- *Shalimar Buildcon (P) Ltd. Vs ITO ITAT Jaipur (136 TTJ 701) wherein it was held that information from investigation Wing ' notice u/s. 148 issued on the basis of such letter'."*

5.3. We find that the reopening in the instant case has been made beyond four years from the end of the relevant assessment year which requires sanction of approval from the ld. PCIT u/s.151(1) of the Act. We find from page 1 of the Case Law Paper book filed by the assessee before us containing proforma in the prescribed format seeking sanction of approval u/s.151(1) of the Act, that the said proforma was sent by the ld. AO to the ld. PCIT through proper channel i.e. Additional CIT on 08/01/2016. For the sake of convenience, the entire proforma is reproduced herein:-



FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 148 AND FOR OBTAINING THE APPROVAL OF THE COMMISIONER OF INCOME-TAX / CENTRAL BOARD OF DIRECT TAXES

1.	Name & Address of the assesse	:	M/s. Seawood Hospitality & Realty Pvt. Ltd. 1-A, Hill View Apartment, J. P. Road, Mumbai-400058
2.	Permanent Account No.	:	AAMCS1472M
3.	Status	:	COMPANY
4.	District/Circle	:	Cen. Cir-3(4), Mumbai
5.	Assessment Year in respect of which it is proposed to issue notice u/s 148	:	A.Y. 2010-11
6.	The Quantum of income which has escaped assessment	:	Rs. 3,35,00,000/-
7.	Whether the provisions of Sec. 147(a) or 147(b) are applicable or both the sections are applicable	:	Only 147(b)
8.	Whether the assesament is proposed to be made for the first time. If the reply is in the affirmative please state	:	YES
(a)	Whether any voluntary return has already been filed: and	:	YES
(b)	If so, the date of filing the said return	:	15.10.2010
9.	If the answer to item 8 is in the negative, please state:	:	
(a)	The income originally assessed	:	N.A.
(b)	Whether it is a case of under assessment, assesament at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation.	:	N.A.
10	Whether the provisions of Section 150(1) are applicable. If the reply is in the affirmative the relevant facts may be stated against item No.11 and it may also be brought out that provisions of Section 150(2) would not stand in the way of initiating proceedings under section 147.	:	No
11	Reasons for the belief that income has escaped assessment	:	As per Annexure

Date: 08-01-2016

(DEEPIKA ARORA)
DCIT CC-3(4), Mumbai.

12 Whether the Addl. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148

Date:

Addl. Commissioner of Income-Tax
Central Range-3, Mumbai

13 Whether the Pr.Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148

Date:

Pr. Commissioner of Income-Tax
Central -3, Mumbai

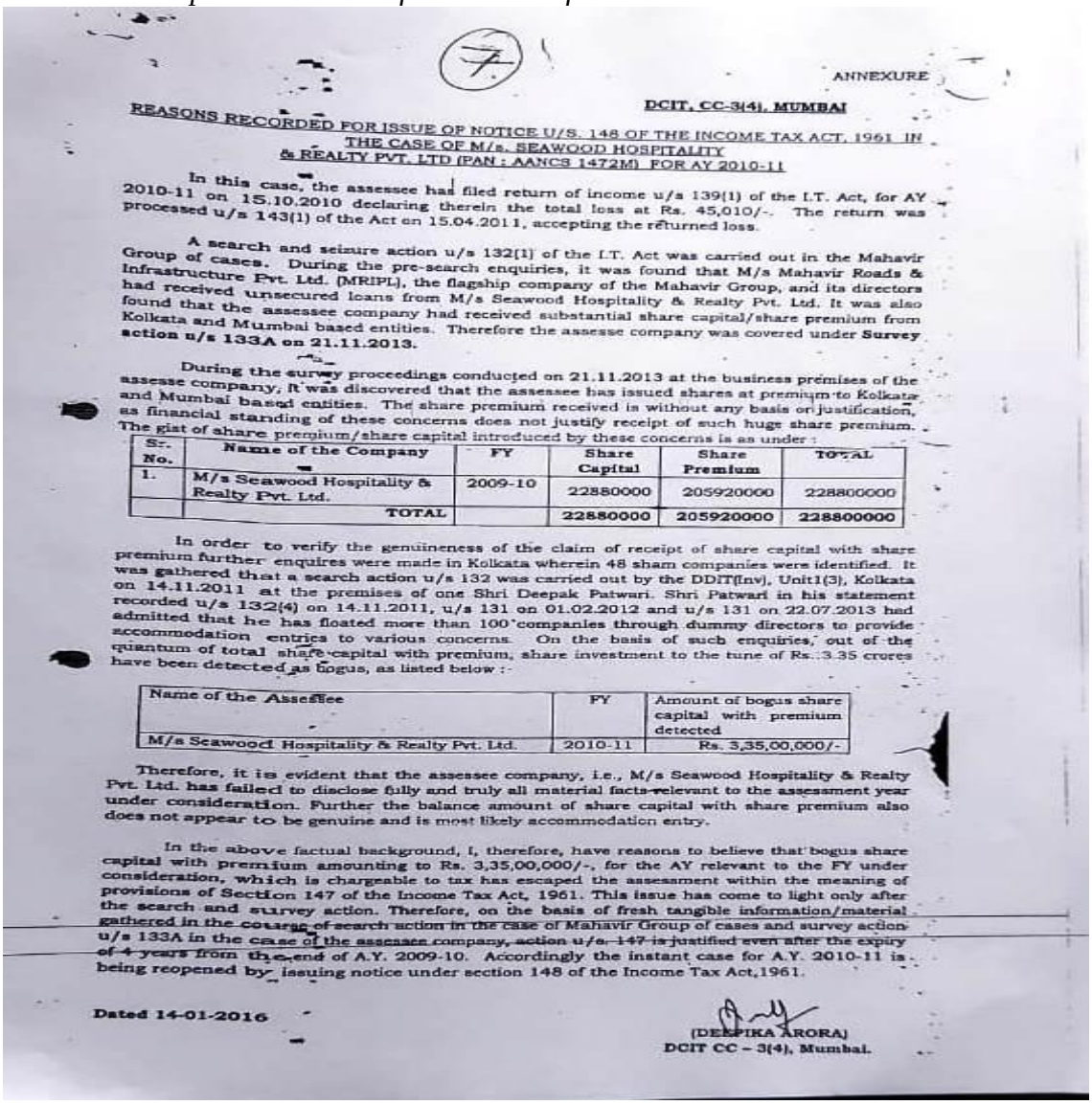
5.4. From the aforesaid proforma, it could be seen that question No.7 specifically mandate the ld. AO to mention whether the provisions of Section 147(a) or 147 (b) or both the sections are applicable. In response thereto, the ld. AO had mentioned only 147(b). We find that the provisions of Section 147(b) has been omitted from the statute book long back and was certainly not in force for A.Y.2010-11. We find that the ld. CIT(A) without looking into these facts had accorded a mechanical approval without due

application of mind. We find that reliance placed by the ld. AR on the decision of Hon'ble Jurisdictional High Court squarely clinches the issue before us in this regard in the case of Smt. Kalpana Shantilal Haria vs. ACIT referred to supra, wherein it was held that:-

> *"6. The grievance of the petitioner is that there is no proper sanction in view of non application of mind by the Joint Commissioner of Income Tax. The Assessing Officer has invoked a provision of law to sustain the impugned notice which is admittedly not in the statute and the Joint Commissioner has yet approved it.*
>
> *7. Mr. Chanderpal, learned Counsel appearing for the Revenue tendered a copy of the letter dated 19th December, 2017 issued to the petitioner* ***wherein the Assessing Officer has stated that the words "147(b)" were inadvertently filled in the prescribed form, instead of Section 147 of the Act while obtaining the sanction from the Joint Commissioner of Income Tax. It is further submitted on behalf of the Revenue that the same is a curable defect under section 292B of the Act.*** *Therefore, the impugned notice cannot be held to be bad for mere incorrect mentioning of section on account of the mistake.*
>
> ***(emphasis supplied by us)***
>
> *8. There can be no dispute with regard to the application of Section 292B of the Act to sustain a notice from being declared invalid merely on the ground of mistake in the notice. However, the issue here is not with regard to the mistake / error committed by the Assessing Officer while taking a sanction from the Joint Commissioner of Income Tax but whether there was due application of mind by the Joint Commissioner of Income Tax while giving the necessary sanction for issuing the impugned notice. It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be an mechanical approval without examining the proposal sent by the Assessing Officer.* ***Prima facie, it appears to us that if the Joint Commissioner of Income Tax would have applied his mind to the application made by the Assessing Officer, then the very first thing which would arise is the basis of the notice, as the provision of law on which it is based is no longer in the statute. Non-pointing out the mistake / error by the Joint Commissioner of Income Tax on the part of the Assessing Officer is prima facie evidence of non-application of mind on the part of the sanctioning authority while granting the sanction.****"*
>
> ***(emphasis supplied by us)***

5.5. From the aforesaid proforma, it is also evident that the question No.11 mandate the ld. AO to specify the reasons which enabled him to form the belief that income of the assessee had escaped assessment and in reply

to the said question, the ld. AO had mentioned "As per Annexure". The said annexure containing the reasons recorded for reopening the assessment is enclosed in page 7 of the paper book of the assessee which is reproduced herein for the sake of convenience:-



ANNEXURE

DCIT, CC-3(4), MUMBAI

REASONS RECORDED FOR ISSUE OF NOTICE U/S. 148 OF THE INCOME TAX ACT, 1961 IN THE CASE OF M/s. SEAWOOD HOSPITALITY & REALTY PVT. LTD (PAN : AANCS 1472M) FOR AY 2010-11

In this case, the assessee had filed return of income u/s 139(1) of the I.T. Act, for AY 2010-11 on 15.10.2010 declaring therein the total loss at Rs. 45,010/-. The return was processed u/s 143(1) of the Act on 15.04.2011, accepting the returned loss.

A search and seizure action u/s 132(1) of the I.T. Act was carried out in the Mahavir Group of cases. During the pre-search enquiries, it was found that M/s Mahavir Roads & Infrastructure Pvt. Ltd. (MRIPL), the flagship company of the Mahavir Group, and its directors had received unsecured loans from M/s Seawood Hospitality & Realty Pvt. Ltd. It was also found that the assessee company had received substantial share capital/share premium from Kolkata and Mumbai based entities. Therefore the assesse company was covered under **Survey action u/s 133A on 21.11.2013.**

During the survey proceedings conducted on 21.11.2013 at the business premises of the assesse company, it was discovered that the assessee has issued shares at premium to Kolkata and Mumbai based entities. The share premium received is without any basis or justification, as financial standing of these concerns does not justify receipt of such huge share premium. The gist of share premium/share capital introduced by these concerns is as under :

S.. No.	Name of the Company	FY	Share Capital	Share Premium	TOTAL
1.	M/s Seawood Hospitality & Realty Pvt. Ltd.	2009-10	22880000	205920000	228800000
	TOTAL		22880000	205920000	228800000

In order to verify the genuineness of the claim of receipt of share capital with share premium further enquires were made in Kolkata wherein 48 sham companies were identified. It was gathered that a search action u/s 132 was carried out by the DDIT(Inv), Unit1(3), Kolkata on 14.11.2011 at the premises of one Shri Deepak Patwari. Shri Patwari in his statement recorded u/s 132(4) on 14.11.2011, u/s 131 on 01.02.2012 and u/s 131 on 22.07.2013 had admitted that he has floated more than 100 companies through dummy directors to provide accommodation entries to various concerns. On the basis of such enquiries, out of the quantum of total share capital with premium, share investment to the tune of Rs. 3.35 crores have been detected as bogus, as listed below :-

Name of the Assessee	FY	Amount of bogus share capital with premium detected
M/s Seawood Hospitality & Realty Pvt. Ltd.	2010-11	Rs. 3,35,00,000/-

Therefore, it is evident that the assessee company, i.e., M/s Seawood Hospitality & Realty Pvt. Ltd. has failed to disclose fully and truly all material facts relevant to the assessment year under consideration. Further the balance amount of share capital with share premium also does not appear to be genuine and is most likely accommodation entry.

In the above factual background, I, therefore, have reasons to believe that bogus share capital with premium amounting to Rs. 3,35,00,000/-, for the AY relevant to the FY under consideration, which is chargeable to tax has escaped the assessment within the meaning of provisions of Section 147 of the Income Tax Act, 1961. This issue has come to light only after the search and survey action. Therefore, on the basis of fresh tangible information/material gathered in the course of search action in the case of Mahavir Group of cases and survey action u/s 133A in the case of the assessee company, action u/s. 147 is justified even after the expiry of 4 years from the end of A.Y. 2009-10. Accordingly the instant case for A.Y. 2010-11 is being reopened by issuing notice under section 148 of the Income Tax Act,1961.

Dated 14-01-2016

(DEEPIKA ARORA)
DCIT CC – 3(4), Mumbai.

5.6. ***We find from the aforesaid annexure containing the reasons recorded for reopening of assessment year, the same was prepared by the ld. AO only on 14/01/2016 whereas the proforma was sent in the prescribed format by him on 08/01/2016 itself.*** *Actually, the reasons recorded for reopening of assessment is supposed to go alongwith proforma in the prescribed format before the ld. CIT while according the sanction of approval u/s.151(1) of the Act. The aforesaid decision clearly goes to prove that at the time of seeking of approval in the prescribed proforma dated 08/01/2016, the ld. AO had not even recorded the reasons for reopening of assessment and that there was absolutely no other material available before the ld. PCIT to apply his mind and come to a conclusion that it is a fit case for reopening of assessment. Hence, it could be safely concluded that the approval given by the ld. PCIT for reopening is only a mechanical approval without due application of mind on his part. One more strange point which we note from page 1 of the case law*

paper book containing the prescribed proforma for reopening is that the ld. PCIT had not even mentioned the date and his name while according approval in the prescribed proforma.

5.7. From the aforesaid proforma, it could be seen that the ld. PCIT had only mentioned for question No.13 as under:-

> *"Question Number 13. Whether the Pr. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148.*
>
> *Reply: Yes, it is fit case for issue of notice u/s.148."*

5.8. We find that the aforesaid approval granted by the ld. PCIT does not constitute proper sanction in terms of the Section 151(1) of the Act and rather it would only tantamount to mechanical approval granted by him without due application of mind. In this regard, we would like to place reliance on the Co-ordinate Bench decision of this Tribunal which has been rightly relied upon by the ld. AR in the case of that Avani Premises Pvt. Ltd., vs. ITO in ITA No.1664/Mum/2019 dated 09/01/2020 wherein the approval was obtained from Additional CIT in terms of Section 151 of the Act and question No.12 thereon and the reply given by the Additional CIT was as under:-

> *"Whether the Addl. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under Section 148."*
>
> *Reply: Yes, I am so satisfied*

5.8.1. The operative portion of decision of this tribunal in ITA No.1664/Mum/2019 dated 09/01/2020 is reproduced hereunder:-

> *6. The learned Counsel for the assessee stated that this issue is squarely covered in favour of assessee by wherein mechanical approval is held to be no approval by Hon'ble Madhya Pradesh High Court in the case of CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 Taxman 73 (Madhya Pradesh), wherein Hon'ble High court has considered the satisfaction accorded by the Joint Commissioner of Income Tax, wherein it is recorded that "Yes I am satisfied" and Hon'ble High court held that the mechanical way of recording satisfaction by the JCIT, which accords sanction for issuing notice under section 148 of the Act is unsustainable. The Hon'ble Madhya Pradesh High court held as under: -*
>
> > *"7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered*

> *by a Coordinate Bench of this Court and the following principles are laid down: —*
>
> *'The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.'*
>
> *8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*
>
> *9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.*
>
> *10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration."*

7. The learned Counsel for the assessee then drew our attention to the decision of Hon'ble Supreme Court in SLP, wherein SLP is being dismissed against the judgement of Hon'ble Madhya Pradesh High Court in the case of CIT vs. S Goyanka Lime & Chemical Ltd. (2016) 237 Taxman 378 (SC). The learned Counsel for the assessee also relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs. N.C. Cables Ltd. (2017) 391 ITR 11 (Delhi), wherein Hon'ble Delhi High Court has considered the issue of application of mind while according sanction for issue of notice under section 147 or 148 of the Act and this provision of section 151 of the Act was considered by Hon'ble Delhi High Court and held as under: -

> *"11. Section 151 of the Act clearly stipulates that the Commissioner of Income-tax (Appeals), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression "approved" says nothing. It is not as if the Commissioner of Income-tax (Appeals) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher*

ranking officer. For these reasons, the court is satisfied that the findings by the Income-tax Appellate Tribunal cannot be disturbed."

8. The learned Counsel for the assessee also relied on the decision of Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P. Chaliha and Others and stated that Hon'ble Supreme Court long back in 1971 while adjudicating the issue of according of sanction for issue of notice under section 148 of the Act has considered this issue and finally observed as under: -

"Further his report mentions: "Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under section 148. Before issuing a notice under section 148, the Income-tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or clause (b) of section 147 are satisfied, the Income-tax Officer has no jurisdiction to issue a notice under section 148. From the report submitted by the Income-tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he, as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income-tax Officer had any material before him which could satisfy the requirements of either clause (a) or clause (b) of section 147. Therefore, he could not have issued a notice under section 148. Further, the report submitted by him under section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which reads "Whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that

this is a fit case to issue notice under section 148. The important safeguards provided in sections 147 and 151 were lightly treated by the Income-tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under these provisions as of little importance. They have substituted the form for the substance."

9. On the other hand, the learned Sr. Departmental Representative, Shri Michael Jerald strongly opposed the issue raised because this issue was never raised before CIT(A) by the assessee and even now before Tribunal this issue is not raised, hence, he strongly opposed the adjudication of this issue. When it was pointed out to the learned Sr. Departmental Representative that the Revenue itself has filed this information regarding according of approval for issuance of notice under section 148 of the Act and approval accorded under section 151 of the Act, still he opposed the adjudication of this issue because this issue has not been raised before the lower authorities by the assessee.

10. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that this is purely a legal issue and legal issue regarding reopening was raised before CIT(A) by the assessee, and CIT(A) has adjudicated the issue of reopening. This is one of the facet of reopening and that facts relating to this issue are available on record and no new facts are to be brought on record. Even the Revenue vide order dated 30.09.2019 has filed this information, which is part of the record of the assessment, that the Addl. CIT while granting approval for issuance of notice under section 148 of the Act issued by the AO, the satisfaction recorded is just that "Yes I am so satisfied". We noted that this issue has time and again came up before Hon'ble High courts and Hon'ble High courts and Hon'ble Supreme Court has categorically held that the satisfaction should not be mechanical satisfaction and the important safe guards provided in section 147 to 151 of the Act, are not to be taken lightly by the department as well as by the concern Additional CIT or CIT as the case may be. While granting approval, the concern authority should be satisfied objectively. We also noted that in the present case, the authorities have accorded the satisfaction in a mechanical way which is unsustainable in law. Hence, on this very jurisdictional issue, we set aside the orders of the lower authorities and allow this appeal of the assessee.

11. As regards to the other grounds raised by the assessee, since we have adjudicated the issue on jurisdiction and quash the reopening, we need not to go into the other issues raised on jurisdiction as well as the merits of the case.

12. In the result, the appeal of the assessee is allowed."

5.9. We find that the aforesaid decision of Mumbai Tribunal considers the decision of the Hon'ble Madhya Pradesh High Court in 231 Taxman 73, wherein revenue SLP was subsequently dismissed by the Hon'ble Supreme Court in 237 Taxman 378. We also find similar view was expressed by the Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P.Chaliha & Others reported in 79 ITR 603 (SC) supra wherein the Hon'ble Supreme Court had emphasised the fact that the Additional Commissioner of Income Tax granting mechanical permission by simply saying the words "yes" and affixing the signature in the prescribed proforma does not tantamount to proper sanction in terms of Section 151 of the Act. In view of the aforesaid decisions of various other High Courts and also by the decision of the Hon'ble Supreme Court on the impugned issue, it could be safely concluded that the ld. PCIT, being a competent authority had granted mechanical approval without due application of mind on the prescribed proforma for reopening of assessment in terms of Section 151 of the Act. We find that the case law relied upon by the ld. DR of Hon'ble Andhra Pradesh High Court in the case of P. Munirathnam Chetty and P.Satyanarayana Chetty reported in 101 ITR 385 does not advance the case of the revenue and there is no need for us to go into it at this juncture in view of various other High Court decisions and Supreme Court decision in favour of the assessee on the similar issue. Respectfully following the aforesaid judicial precedents, we have no hesitation to hold that the entire re-assessment has been initiated without obtaining proper sanction in terms of Section 151(1) of the Act from the ld. PCIT and hence, we hold that the approval accorded by the ld. PCIT in a mechanical way is unsustainable in law, hence, on this very jurisdictional issue, we set aside the orders of the lower authorities and allow the appeal of the assessee.

5.10. We find the ld. DR vehemently argued the validity of reopening by placing reliance on the following decisions:-

a. *GKN Drive Shafts case rendered in 259 ITR 19 (SC) on providing reasons recorded for reopening the assessment to the assessee.*
b. *Raymond Wollen Mills Ltd., case reported in 236 ITR 34 (SC) on the aspect of sufficiency of reasons while reopening the assessment.*
c. *Rajesh Jhaveri Stock Brokers Pvt. Ltd., reported in 291 ITR 500 (SC) on the aspect of sufficiency of reasons while reopening the assessment.*
d. *Decision of Hon'ble Madras High Court in the case of Sterlite Industries (India) Ltd., vs. ACIT reported in 302 ITR 275 wherein it was held that information from Enforcement Directorate showing inflation of purchases could be a good ground for issuing notice u/s.148 of the Act.*
e. *Decision of the Hon'ble Delhi High Court in the case of AGR Investment Ltd., reported in 333 ITR 146 and the decision of Jaipur Bench in the case of Shalimar Buildcon 136 TTJ 701 wherein it was held that the notice u/s.148 of the Act could be issued based on information from Investigation Wing about tainted transactions carried out by the assessee.*

5.11. We find that all the aforesaid case laws referred by the ld. DR did not address on the crucial point canvassed by the ld. AR that ld. PCIT had only granted mechanical approval u/s.151(1) of the Act without proper

> *application of mind. Hence the reliance placed on the aforesaid decisions by the ld. DR does not come to the rescue of the revenue in the instant case.*
>
> *5.12. Since the entire reopening of assessment had been quashed on the aforesaid aspect, we need not go into other grounds raised by the assessee both on law as well as on merits and they are hereby left open.*
>
> *6. In the result, appeal of the assessee in ITA No.92/Mum/2019 for A.Y.2010-11 is allowed.*

5.2. For the elaborate reasons adduced in the aforesaid order and by respectfully following the various judicial precedents relied upon hereinabove in the said order, we have no hesitation in quashing the re-assessment proceedings in the facts and circumstances of the instant case.

5.3. Since, re-assessment is quashed on technical ground, the other grounds raised by the assessee on merits need not be adjudicated as it becomes academic in nature.

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

Order pronounced on 06/12/2021 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(LALEIT KUMAR)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 06/ 12 /2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai