IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A No.5081/DEL/2019
Assessment Year 2009-10

Poltavsky TPS Power Services Ltd., 45-M Block, Commercial Complex, Greater Kailash-II, New Delhi.	v.	Income Tax Officer, Ward-20(1), New Delhi.
TAN/PAN: AABCP2692R		
(Appellant)		(Respondent)

Appellant by:	Ms. Sangeeta Singh, CA Ms. Kanishka Agarwal, CA Ms. Priyanka Jain, CA		
Respondent by:	Shri Anil Kumar Sharma, Sr.DR		
Date of hearing:	07	02	2023
Date of pronouncement:	27	04	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-VII, New Delhi ('CIT(A)' in short) dated 27.03.2019 arising from the assessment order dated 30.03.2016 passed by the Assessing Officer (AO) under Section 147 r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. As per the grounds of appeal, the assessee has challenged the additions on merit and has also challenged the assumption of jurisdiction under Section 147 of the Act.

3. Briefly stated, for the Assessment Year 2009-10 in question, the assessee filed return of income on 29.09.2009 declaring total income of Rs.6,27,340/-. The return of income filed by the assessee was subjected to scrutiny assessment and the assessment order was passed under Section 143(3) dated 29.12.2011 whereby the income was assessed at Rs.8,19,264/-. Thereafter, the assessment so completed earlier under Section 143(3) of the Act was reopened under Section 147 of the Act by issuance of notice dated 11.03.2015 under Section 148 of the Act. The reopening notice was stated to be issued with the previous approval of CIT under Section 151 of the Act. The re-assessment order was framed under Section 147 r.w. Section 143(3) of the Act vide order dated 30.03.2016 whereby the income was re-assessed at Rs.6,70,19,264/- and addition of Rs.6,62,00,000/- made under Section 68 of the Act on account of unexplained credits in the books of account of the assessee being share application money received during the year.

4. Aggrieved by the re-assessment of income, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has challenged the jurisdiction assumed by the Assessing Officer under Section 147 r.w. Section 148 of the Act and claimed that notice was issued for reopening the assessment without meeting the prerequisites of Section 147 to Section 151 of the Act. The assessee also challenged the merits of the additions. The CIT(A) however dismissed the grounds taken on both counts, i.e., lack of jurisdiction and lack of merits towards additions.

5. Aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the ld. AR for the assessee referred to the reasons recorded and challenged the validity of assumption of jurisdiction under Section 147 of the Act.

6.1 The ld. AR for the assessee submitted that the Assessing Officer has wrongly usurped jurisdiction under Section 147 of the Act contrary to the mandate of law for more than one reason.

(i) the notice for reopening has been issued beyond four years from the end of assessment year 2009-10 in question and the assessment in this case was earlier framed under Section 143(3) of the Act and therefore, the reopening notice is clearly time barred for the reason that embargo placed by the 1st proviso to the erstwhile provisions of Section 147 of the Act could not be successfully lifted by the Assessing Officer.

(ii) The reasons recorded do not meet the requirement of law under main provisions of Section 147 of the Act and the proviso thereto.

(iii) The inherent object of reopening in the present case, is to make enquiries to find out the *bona fides* of share application money and to examine, whether any escapement has occurred without application of mind.

(iv) The approval given by the superior authority under

Section 151 of the Act is nothing but a mechanical approval and thus does not meet the requirement of law. We shall deal with the nuances of arguments advanced on behalf of the assessee on the above broad propositions at appropriate place in succeeding paragraphs.

6.2. On merits, the ld. counsel for the assessee submitted that additions have been made on the ground that the share subscription received along with premium during the year are merely accommodation entries and the assessee stands as beneficiary to such entries. In this regard, the Ld. Counsel essentially alleged that;

(i) the entire addition has been made on surmises, assumptions and generalized conclusions thereon *dehors* the facts on record.

(ii) the allegations made against the assessee are not corroborated.

(iii) the re-assessment order is marred by serious factual errors and conclusions arrived overlooking relevant facts.

(iv) the re-assessment was made on pure guess without reference to any material.

(v) the additions made are squarely opposed to the statutory provision.

(vi) the assertions made in justification of additions are a mere *ipse dixit* and not objectively justifiable on facts.

(vii) the Assessing Officer overlooked factual evidences, misinterpreted and misconstructed the documents placed.

(viii) The additions made bear no direct nexus between

conclusion of facts arrived at and the primarily facts on which such conclusion is based.

6.3 The ld. counsel further submitted that CIT(A) has not applied its mind to all considerations and the circumstances germane to the issue. The ld. counsel submitted that voluminous documents filed before the revenue authorities to support the share subscription are testament to the fact that share application money received and share allotted to the subscribers at premium are *bona fide* and carried commercial substance. We shall deal with the arguments canvassed on merits at appropriate place.

7. The ld. DR for the Revenue, on the other hand, pointed out that all the conditions prescribed for conferment of powers under Section 147 r.w. Section 148 of the Act to re-assess the income of the assessee has been duly met before issuance of notice and also while framing the re-assessment order which has thus been rightly upheld by the CIT(A). The ld. DR for the Revenue also contended that the primary onus which lay upon the assessee to justify the *bona fide* of share application money received has not been discharged as contemplated in law and therefore, the only recourse available to the Revenue to make additions under Section 68 has been rightly adopted. The ld. DR for the Revenue thus relied upon the assessment order and the first appellate order and submitted that no interference thereto is called for.

8. We have heard both the sides in length and also perused

the re-assessment order and the first appellate order in question. We have also carefully perused the material referred to and relied upon filed by way of paper book and also the case laws cited.

9. Since, the assessee has *inter alia* questioned the legality of re-assessment order itself which affects the jurisdiction and goes to the very root of the matter, we consider it necessary to adjudicate the grounds concerning this basic issue of lack of jurisdiction first.

9.1 The validity of re-assessment order framed under Section 143(3) r.w. Section 147 of the Act as well as validity of issuance of notice under Section 148 of the Act for making the re-assessment order under Section 147 of the Act is in controversy.

9.2 Before we proceed to deal with the jurisdictional aspects, it will be pertinent to reproduce the reasons recorded in contemplation under S. 148(2) of the Act as extracted in the assessment order.

* [General]

"In this case the assessee has filed its return income for the A. Y. 2009-10 on 29.09.2009 declaring total income of 6,27,340/- . The return was processed u/s 143(1) of the IT. Act. Subsequently, the case was selected for scrutiny and accordingly assessment u/s 143(3) was completed at assesse income of Rs. 8,19,264/- after making the following additions:

1. Disallowance of interest of Rs.1,89,977/- given on various dated to Turbataom TPS Project Ltd.

2. ROC fee paid for increased of authorized capital amounting to Rs. 4,946/-.

*[Second Part]

During the course of assessment proceedings for the AY. 2010-11 in the case of M/s Poltavsky TPS Power Services Ltd, the assessing officer has found that the assessee has introduced share capital of Rs. 1,37,29,000/- and share premium of Rs. 5,48,80,000/- was received by the assessee. The assessee was sought to furnish the requisite details w.r.t. share application money/ share application premium amounts received during the year under consideration. The query in this regard raised by the Assessing Officer is reproduced hereunder:

b) As per information contained in the balance sheet during the relevant previous year the company has raised share capital of Rs. 13729000/- which it has also received premium of Rs. 54880000/- in this regard you are required to furnish following information:

S.No.	*Name & Address of the person/Entity applicant with PAN*	*Amount*	*Instrument No. of Mode*	*Source/ Assessment*	*Bank Account*

Further furnish following information:

- *Complete accounts of all the applicants in respect of share application.*

- *Details of distinctive numbers issued to each applicant.*

Furnish copy of annual return submitted to the ROC showing details about holders of share capital as on 31.03.2010.

- *Produce all, the person who have contributed towards share "capital of Rs. 20000/- and above for examination and verification of genuineness of share capital received.*

- *Details in respect of equity share capital holding of key management personals and promoters of the company.*

- *Details of share holding by the other companies in which the prompters have substantial interest of 100% holding of share capital.*

- *Details of investment made by the promoters and their associates, in the regard a date-wise amount should be furnished in respect of allotment of share capital.*

- *it is further iterated that complete details should be supported by documents showing of investments in equity share capital.*

Produce records of dispatch of share certificate to the share holders. In this regard also submit records showing genuineness of source of funds received as share capital, identity of the person and his creditworthiness in respect of investments made by him in share capital/ share premium and share application money. Further it may also be explained as to where the fund received on account of share capital were utilized.

• *In case of non submission of information called for or the same are not supported by documentary evidence explaining the source of funds invested as share capital, it will be considered that the funds introduced as share capital belong to the promoters and the company. Respecting their undisclosed income which is not recorded in the books of accounts of the company and the promoters and income will be assessed accordingly."*

The assessee company failed to provide the details in the specified manner. The assessing officer noted that the assessee gave evasive misleading replies and either deliberately withheld most of the information or was unaware of the requisite details/ documents related to various companies / entities summons to these companies on 28.08.2012 seeking various details / documents / clarification/ deposition. However, not even a single summon was complied with by the respective companies. Ultimately, vide show cause notice dt. 28.02.2013 the assessee was categorically confronted with the material on record and was sought to furnish its reply / explanations / documents in this regard. The assessee again grossly failed to furnish any conducive material and rather fumnished a bunch of papers before the assessing officer which contained various confirmations/ photocopies of declarations on stamp papers/ etc, merits of which are being discussed by the AO as under:

"Identical bunch of documents have been submitted for as money as 25 share applicant companies which are identical and seem to be prepared at one place and at one go.

Moreover, the assessee has failed to furnish even the manufactured / manipulated confirmations w.r.t. the three companies before the Assessing Officer."

The assessing officer vide his assessment order dated 28.03.2013 had concluded that the transactions with all companies have been managed / manipulated by the same person/ set of persons as in evident from careful perusal of the documents given by the assssee in its last submission in the form of bunch of papers without any covering letter. The main characteristics of these documents were discussed by the Assessing Officer which is reproduced as under:

a) The set of papers w.r.t all the companies contain application al confirmation affidavit (Photocopy), share certificate (photocopy) and copy of cheque; exactly in the same sequence.

b) All the application for shares and confirmation are printed in similar fonts, in similar manner, on similar quality of paper,

c) Even the stamps affixed on the application for shares and confirmations are bearing similar fonts and finish.

d) All the application for shares and confirmations are purportedly signed by similar persons who had signed the share application money cheques. However the difference in the signatures on cheque viz a viz, the application / confirmations file now are clearly noticeable. All the signatures have been attempted to be imitated though this misadventure on the part of the assessee clearly established the manipulative tactics

followed by the assessee.

e) All the affidavits are photocopies of stamp papers without ant serial number, typed in similar fashion in same fonts without mention of date and place do not bear the stamp of notary; and last but not the least; purportedly signed by similar persons as discussed above thought poorly manipulated due to poor imitative signatures.

f) A close scrutiny of the photocopies of cheques also reveal that the accounts are maintained in similar bank branched As many as 10 accounts in Kotak Mahindra Bank, Old Rajinder Nagar, two accounts in Kotak Mahindra Bank, Chandni Chowk, seven accounts in Kotak Mahindra Bank, Preet Vihar, one account with D.C.B. Chandni Chowk, three accounts with Axis Bank Ltd. Salkia Branch, Kolkata, one account with Axis Bank Lid. Chaitan Sett street, Kolkata). Cheques are written in identical fashion and they can be grouped by the similarity in writing the requisite spaces on the cheque leaves. These facts are particularly considered notable in the light of recent news report of various bank including the above banks having been found indulging in money - laundering (as per Cobrapost.com's sting operation) and investigation to probe the same has already been initiated by various agencies including Reserve Bank of India.

In view of the above the Assessing Officer had following observations which are reproduced as under;

1. "In many companies similar set of persons and Directors and various companies have common addresses.

2. Name of the companies are available on any of the addresses given by the assessee previously as well as on the new set of confirmations which is evident from the report of the inspector placed on record and as reproduced above which is not merely a co-incident.

3. The assessee has not been able to furnish the details/ documents to prove the authenticity of these companies and the facts and circumstances of the case prove beyond doubt that the assessee has engaged in introduction of its own funds in the books of accounts in the guise of share application money by sham/ paper companies controlled by same person(s) for providing a rout to channels funds as is evident from the observation made in the show cause notice as well as above.

4. The assessee has not been able to produce any of the signatories/ Directors of the above companies despite having been sought to do so.

5. The assessee has grossly failed to provide the contact details of the Directors, copies of mutual correspondences, etc, to prove that the share transactions (involving payment of share premium @4009 of face value of shares) with the said companies was genuine and as per the normal course of business practice."

The Assessing Officer found that it is a matter of record that the assessee company grossly failed to produce the books of accounts and answers! explanations / justification in context of the points raised in the questionnaire as well as show cause notice. The assessee has failed to

substantiate the claim made by it and rather there is ample evidence on record to implicate the assessee on various aspects and the assessee has not been able to rebut the same when it was confronted vide the show cause notice dt. 28.02.2013. the vague and evasive replies have been filed by the assesses and the assessee has evaded to answer the question in the specified manner despite in the face of specific queries raised during the course of assessment proceedings, the source of funds and nature of receipts of the assessee are mostly unexplained and marred by suspicious and bogus transactions which have been given another colour/ device to mischievously evade the rowing eyes of Revenue. The assessee has not been able to explain the basics of its existence / operation/ funding. The assessee company has kept mum in response to the queries as raised as per the distinctive points vide show cause notice dt. 28.02.2013. The Assessing Officer was not satisfied with the correctness and completeness of the assessee's books of accounts and the book results/ accounts of the assessee and therefore within the meaning of section 145(3) of the Income Tax Act, 1961. Since the share capital of Rs. 1,37,29,000/- and share premium of Rs. 5,48,80,000/- was not pertaining to assessment year 2010-11 the AO has put a note to scrutinize this share application money in his assessment order for the assessment year 2010-1. The relevant portion to this regard mentioned by the AC in his order reproduced as under:

*[Third Part]

Necessary measures w.r.t. introduction of the bogus share application money into books of accounts by the assessee company would be taken for the respective year when the share application money has been credited in the books of account.

*[Fourth Part]

On perusal of assessment record for the assessment year 2010-11, it is found that the said there application money mostly credited in the books of accounts during the F. Y. 2008-09 relevant to assessment year 2009-10.

In view of the concurrent findings recorded by Assessing Officer and perusal of records for the Assessment year 2010-11 it is found that the assessee had received share capital of Rs.1,37,29,000/- and share premium of Rs.5,48,80,000/- (Total 6,86,09,000/-) in the F. Y. 2008-09 relevant to A.V. 2009-10 and the assessee company grossly failed to produce the books of accounts and answers / explanations/ justification in context of the points raised in the questionnaire as well as show cause notices issued by the then Assessing Officer in respect of said share application money.

On the facts and circumstances of the case and findings recorded by the A0 for the assessment year 2010-11, I have reasons to believe that an amount of Rs. 6,86,09,000/- has escaped from the AY. 2009-10 which was chargeable to tax. I am also satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the tune of Rs. 6,86,09,000/- has escaped assessment with the meaning of Section 147 of the I.T. Act 1961."

Note: * insertions represent compartmentalization of reasons recorded. Such insertion is ours and

have been done with an object to dissect various parts of reasons for nuanced understanding of challenge to basis of reopening.

10. To begin with, it may be pertinent to observe that S. 147 is a substantive provision vesting jurisdiction to reopen a concluded assessment and therefore conditions stipulated for assumption of jurisdiction are required to be adhered strictly. Section 147 is structured with inbuilt safeguards. The AO is not permitted to exercise the powers under S. 147 arbitrarily or mechanically. The reasons for reopening (extracted above) are the fulcrum for formation of belief towards alleged escapement. On appraisal of the reasons so recorded for exercise of drastic powers conferred under S. 147 for reopening of assessment for AY 2009-10 in question and having regard to stance taken on behalf of the assessee, it emerges that the solitary cause for formation of belief towards purported escapement is the observations made by the AO adverse to Assessee while making assessment of subsequent Assessment Year 2010-11 and a consequent 'note' prepared by the AO while making assessment for AY 2010-11. The consequential note so prepared as a result of subsequent assessment has thus galvanized the action of reopening of assessment of AY 2009-10.

11. For an objective understanding, the body of reasons recorded has been broadly divided in four parts;

11.1 First part is general and introductory in nature.

11.2 In the second part of reasons recorded, the AO was engaged to cull out certain inadequacies observed in the course of enquiries conducted in AY 2010-11 towards receipt by

assessee on account of share subscription & share allotment at premium. Evidently, the second part alleging inadequacies appears to be very generalized and without any specifications on alleged misdemeanor *qua* any particular share subscriber or a transaction. Besides, such generic observations are in relation to subsequent AY 2010-11.

11.3 In the third part, the AO observed that a 'note' has been put by the AO of AY 2010-11 to 'scrutinize' the share application money in the relevant year in which such money has been claimed to be received by the assessee. The said 'note' has also been made part of the reasons recorded.

11.4 In the fourth and last part of reasons under challenge, the AO observed that as per the findings recorded by the AO in AY 2010-11, the assessee has grossly failed to justify the propriety of the receipts as per points raised in questionnaire and show cause notices issued in AY 2010-11. The AO in this part thus relied upon the findings recorded in AY 2010-11 for the purposes of formation of belief towards purported escapement and alleged failure on the part of the Assessee to disclose material facts fully and truly for the year 2009-10 in question.

11.5 On the basis of such reasons, the notice under S. 148 was issued and served on the assessee to reopen the assessment concluded earlier, after the end of 4 years from the AY 2009-10 in question.

12. As per main provision of erstwhile S. 147 of the Act, the AO is vested with powers to reopen the assessment subject

however to presence of some tangible material which is capable of formation of belief towards escapement of income. The reasons or material thus must have a live link with the formation of belief. The cause of action is 'reason to believe' towards escapement. Apart from the primary conditions of main provision, the first proviso casts further obligation on the revenue to overcome the embargo of limitation of 4 years.

13. We shall now advert to test the reasons for reopening on the touchstone of main provision of S. 147 of the Act. The main provision essentially provides that belief must be built on some material or reasons which are specific in nature and reliable in character. In the present case, the basis for formation of belief is the 'Note' culminated from the assessment proceedings in subsequent assessment year.

13.1 To reiterate, the observations culled out in subsequent year as recorded in second part of reasons are very general and vague and are predominantly in the nature of opinion and inferences owing to inadequacies in the documents and alleged inability of AO to gather adequate information to his satisfaction in that year to which the transaction did not actually belong. In the instant case, the assessment was earlier carried out under S. 143(3) of the Act after requisite enquiries under S. 133(6) were carried out with the investors/ subscriber of the shareholdings. The assessment so made has been reopened. In this backdrop, the reasons on record do not indicate any specific material against the assessee to dislodge the *bona fides* set up by the assessee. Succinctly put, the AO has solely relied on the

observations made in AY 2010-11 based on some enquiries revealing non-compliances of summons etc. where the money towards share subscription was not admittedly received. The observations in relation to AY 2010-11 as adopted in the second part, are in the apparently in nature of bald allegations without any specific details. The name of any subscriber who is alleged to be entry provider does not feature in the recorded reasons at all. No definitive link is present. At the time of formation of belief, it is neither the case of the AO that the assessee had not filed any documents whatsoever in the original assessment to support the subscription nor adverse material has been referred to have been unearthed whereby the alleged falsity in the claim of the assessee stands exposed. The observations in second part are thus very generic and are in the realm of mere adverse opinion formed probably due to lack of clinching proof on bonafides of share application money. The AO harboured belief on vague and nondescript hypothesis emerging from assessment of subsequent year when the share application money in question was not received at the first place. Besides, no tangible material has been referred which is capable of igniting the belief towards alleged escapement. The requirement of main provision of S. 147 are thus apparently not met.

13.2 This apart, the impugned note, as per third part of reasons recorded, spells out a case for a mere 'scrutiny' of the transaction of share application money in the appropriate year of receipt of such money. A mere scrutiny proposed, giving rise to reassessment proceedings in the instant, does not meet the requirements of main provision which calls for holding reason

to belief before commencement of reassessment proceedings. The conferment of powers under section 147 of the Act is wide but not plenary. It postulates that the Assessing officer must have reason to believe that the chargeable income has escaped assessment. The expression 'reason to believe' is the most valuable safeguard available to prevent arbitrary exercise of jurisdiction. It is trite that the 'reason to suspect' can not be equated with expression 'reason to believe'. The AO, in the instant case, has based its belief on an 'office Note' containing observations in other assessment year, which note, in turn, only suggests a case for 'scrutiny' into the impugned transactions. A proposed scrutiny to find out whether any escapement exists is at best a case of 'reasons to suspect'. It is well settled that the notice of reopening can be supported within the confines of reasons recorded by the AO. The AO cannot supplement the reasons. Other principle which is equally well settled and which would apply to present case is that reopening of the assessment would not be permitted for a fishing or a roving inquiry. This can, as well, be seen as part of requirement of main provision of S. 147 of the Act. The reopening is not permissible merely to launch verification of transactions to find out whether any income has actually escaped assessment or not as echoed in long line of judicial precedents.

13.3 In totality, the purported belief in the instant case is thus premised on wholly tentative grounds and thus a mere pretense. Such action does not pass the test of 'reason to believe'. We thus see no semblance in the action of the AO on the touchstone of main provisions of S. 147.

14. The reopening in the instant case is also governed by the fetters of limitation put by the first proviso to S. 147 of the Act. The first proviso casts exemplary burden on the revenue. From the language of first proviso, it appears that what is to be seen is whether the Assessee at the time of original assessment, has suppressed any material particulars deliberately or falsified any disclosure. Further, while the burden is on assessee to place all material facts i.e. primary facts in relation to a transaction, such onus does not extend to secondary or inferential facts. The duty of disclosure is limited to furnishing primary facts which means no further assistance required to AO by way of disclosure.

14.1 The question whether the Assessee could be stated to have disclosed fully and truly all material facts has to be examined in the light of facts of each case. In the present case, the material facts, namely details and particulars of share application money were called for in the original assessment by issuance of notice of AO dt. 04/08/2011 placed at page 723 of the paper book. As observed earlier, specific enquiries were also conducted by the AO with share applicants by seeking details under section 133(6) of the Act. The copy of notices issued to the share applicants and elaborate enquiries conducted, replies filed before AO in regular assessment proceedings, as adverted, are placed at pages 451-616 of the paper book. Alongside, evidences showing substantial business activities proposed to be carried out by the Assessee, list of projects/ orders awarded to the assessee or its group co. which significantly bolster its substratum of Assessee co. and providing reasons for subscription were also produced before AO as per page 617 to

720 of the paper book.

14.2 As per the contentions of the Assessee, except for bald allegation of failure to disclose material facts by the assessee in the original assessment, no foundation has been laid in this regard in the reasons recorded. It is not known what material facts have not been disclosed which the assessee was privy to. A condition towards disclosure of facts presupposes knowledge of facts by an assessee. The law can not expect an assessee to unfold something which the Assessee has no knowledge of. The AO, in the instant case, has rather reopened the case on the premise of inadequacy in the information collected in subsequent assessment year and not on account of any failure on the part of the assessee to disclose material facts *qua* AY 2009-10 in question. There is no allegation in the reasons recorded that onus cast upon the assessee in the original assessment was not discharged or any fact was not disclosed which the assessee was aware of and ought to have disclosed. Needless to say, the onus of disclosure does not extend beyond the full and truthful disclosure of all primary facts. Once, all such facts are disclosed, the onus stands discharged and it is not for assessee to tell the assessing officer, what inferences, whether of facts or law, should be drawn by him on these facts. This is the view expressed by *Hon'ble Supreme Court in Calcutta Discount Co. Ltd. (1961) 41 ITR 191*.

14.3 In the light of allegation recorded, it is manifest that the requirement of first proviso are not met for multiple reasons namely, the allegation of failure to disclose facts of material

nature is non-descript and obscure and is merely an iteration of statutory language; it is not known what primary facts of substantive nature were not 'disclosed' which were in the knowledge of the Assessee; which specific fact disclosed were found to be untrue later on. The allegation that the share application received are accommodation entries without further corroborative facts is by itself insufficient to allege the escapement in terms of first proviso.

14.4 As noted above, withholding the material facts which is in the knowledge of Assessee is one of the conditions precedent to lift the embargo of limitation placed under the first proviso. Importantly, such failure of the assessee to disclose material facts contemplated in first proviso to S. 147 has to be judged in the context of proceedings of the same year i.e. AY 2009-10 and not with reference to some enquiry in subsequent AY 2010-11. Any alleged failure in some other assessment year would not meet the requirement of first proviso to S. 147 with reference to reopening of some other year. To reiterate, from the body of reasons recorded for AY 2009-10 in question, it can not be deciphered as to what material facts in relation to share application money were withheld by the Assessee in AY 2009-10 in question. An alleged non-compliance of summons issued in some other years cannot be reckoned as 'failure on the part of assessee' and that too in some other assessment year. Coupled with this, an enquiry was made in relation to share application money recd. while framing regular assessment of AY 2009-10 and assessment was framed taking note of outcome of such enquiry. Hence, mere reproduction of statutory language of first

proviso would not meet the requirement of law for extension of limitation period beyond 4 years.

15. Thus, when seen holistically, the conclusion is inescapable that the AO has failed to satisfy the pre-requisites of main provision of S. 147 and also first proviso thereto. The jurisdiction assumed thus is clearly without legal foundation.

16. The notice issued under S. 148 to reopen the completed assessment is thus without jurisdiction and consequently, the reassessment order is bad in law and thus quashed.

17. In view of such conclusion, we consider it unnecessary to delve into merits of additions canvassed at the time of hearing.

18. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open Court on 27/04/2023.

Sd/-	Sd/-
[CHANDRA MOHAN GARG]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **/04/2023**

Prabhat