

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER AND
DR. A. L. SAINI, HON'BLE ACCOUNTANT MEMBER
(Physical Hearing)**

Sl. No.	ITA No.	Asst. Year	Name of Appellant	Name of Respondent
1.	239/SRT/2019	2010-11	Ravjibhai Bechabhai Dhameliya, 2 nd Floor, Vrajshila, Nr. Gajjar Petrol Pump, Kapodra Char Rasta, Surat. PAN: ACCPD5423C	The ITO, Ward -3(1)(1), Surat
2.	304/SRT/2019	2010-11	The DCIT, Circle -3(3), Surat	Ravjibhai Bechabhai Dhameliya, 2 nd Floor, Vrajshila, Nr. Gajjar Petrol Pump, Kapodra Char Rasta, Surat. PAN: ACCPD5423C
3.	122/SRT/2020	2011-12	The ACIT, Circle - 3(3), Surat	Ravjibhai Bechabhai Dhameliya, 2 nd Floor, Vrajshila, Nr. Gajjar Petrol Pump, Kapodra Char Rasta, Surat. PAN: ACCPD5423C
4.	124/SRT/2020	2011-12	Ravjibhai Bechabhai Dhameliya, 2 nd Floor, Vrajshila, Nr. Gajjar Petrol Pump, Kapodra Char Rasta, Surat. PAN: ACCPD5423C	The DCIT, Circle – 2(1)(2), Surat

Date of Hearing:	17/08/2023
Date of Pronouncement:	06/11/2023
Appellant by:	Shri P. M. Jagasheth, CA and Shri Sapnesh Sheth, CA
Respondent by:	Shri Airiju Jaikaran, CIT(DR)

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned four appeals filed by the Assessee and Revenue, pertaining to assessment years 2010-11 to 2011-12, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), [in short 'the ld. CIT(A)'], 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. At the outset, we note that appeals are filed by the Revenue and appeals filed by the Assessee, both are barred by limitation by forty five days and fifty two days, respectively. The Learned DR for the Revenue, as well as, Learned Counsel for the assessee, both have argued on the same line stating that the delay are attributable to Covid 19 pandemic disease; therefore these small delay in filing appeals by Revenue and appeals by Assessee, should be condoned.

3. We have heard both the parties on this preliminary issue. We note that delay in filing appeals are as follows:

- (i) Revenue`s appeals are barred by limitation by 45 days.
- (ii) Assessee`s appeals are barred by limitation by 52 days.

We note that above delay in filling the appeals by Revenue as well as, by the Assessee, are due to Covid 19 pandemic disease. We have examined that the delay in filing the these appeals fall in the period of Covid 19 pandemic and such delay have been condoned by the Hon`ble Supreme Court, vide *suo moto* Writ Petition No.3 of 2020. Therefore, respectfully following the binding judgment of the Hon`ble Supreme Court, in MA No.21 of 2022 in *suo moto* Writ Petition No.3 of 2020, dated 10.01.2022, we condone the delay in filing both these appeals and both these appeals, that is, (appeal by Revenue and Appeal by assessee) are admitted for hearing on merit.

4. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order for the sake of convenience and

brevity. The facts as well as the grounds narrated in ITA No.239/SRT/2023 for AY.2010-11 have been taken into consideration for deciding all these appeals *en masse*.

5. Grounds of appeal raised by the assessee in 'lead case' in ITA No.239/SRT/2019, are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in partly confirming the action of assessing officer in making addition as unverifiable purchases by sustaining addition to the extent of Rs.1,48,90,540/- as against addition of Rs.29,78,10,891/- made by ld. assessing officer.

3. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.

4. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

6. Brief facts, as discernible from the orders of lower authorities are that the assessee before us in an Individual and filed his original return of income for assessment year (AY) 2010-11, on 15.10.2010, declaring total income of Rs.4,52,13,460/-. The assessment order, assessing the total income at Rs.4,53,55,301/-, was passed u/s 143(3) of the Act, on 15.02.2013.

7. Subsequently, after recording the reasons and obtaining prior approval under section 151(1) the Income Tax Act, 1961 of the Pr. CIT-3, Surat, vide letter dated 30.03.2017, the proceedings under section 147 the Income Tax Act, 1961 were initiated, and, notice u/s 148 of the Income Tax Act, 1961 was issued on 31.03.2017 and duly served upon the assessee. In response to the notice issued u/s 148 of the Act, the assessee has not filed his return of income on the specified date. Thereafter, due to change of

incumbent, the notice u/s 142 (1) r.w.s. 129 of the Act, was issued on 26.05.2017 and served upon the assessee and assessee was requested to attend the office of the assessing officer, on 06.06.2017. But, the assessee has not complied this notice too. Therefore, a show cause letter for non-compliance of notices and explanation for accommodation entries of bogus purchases amounting to Rs.29,78,10,891/-, from various dummy concerns of Shri Rajendra Sohanlal Jain and Shri Surendra Jain and their Group was issued on 13.07.2017 and the assessee was requested to submit explanation with necessary supporting evidences on 25.07.2017. In response to which, the assessee vide letter dated 24.07.2017, requested to treat the return of income filed u/s 139(1) as return of income filed in response to the notice issued u/s,148 of the Act and enclosed copy of acknowledgment of the original return of income, which was filed on 15.10.2010. The assessee has also requested to provide copy of reasons recorded to, initiate proceedings under section 147 the Act and the same has been provided to the assessee vide this office letter No.SRT/DCIT/Cir-3(3)/RBD/269/2017-18 dated 25/07/2017. The notice u/s 143 (2) of the Act, dated 26.07.2017, was issued and duly served upon the assessee to comply on 31.07.2017. In response to the notices issued u/s 143(2) and u/s 142(1) of the Act, the assessee has attended and furnished details before the assessing officer.

8. In assessee's case, the information were gathered by the assessing officer from the DDIT (Inv.), Mumbai, that a search and seizure action under section 132 of the Act, 1961 was conducted on 03.10.2013 by the DGIT (Inv.), Mumbai on group concerns of Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain, the entry providers, and operating in Mumbai, indulged in providing accommodation entries in the nature of bogus sales and unsecured loans. During the course of search proceedings as well as post search investigation, it was found that Shri Rajendra

Sohanlai Jain along with Shri Sanjay Chaudhary Jain and Shri Dharmichand Jain were operating and managing benami concerns in the name of their employees through which they provided accommodation entries of unsecured loans and bogus purchase to various beneficiaries. It has also been further confirmed by him that in all such cases, the effective control of business remains with them and the business income of such proprietorship concern get adjusted against the overall salary payable to such employee on annual basis. During course of statement proceedings, in reply to Q. No.13 of the statement recorded under section 132(4) on 05.10.2013, Shri Rajendra Sohanlai Jain has admitted that he and his dummy concerns/entities were engaged in business of bills shopping through all the concerns. It has also been mentioned that he has admitted to be holding no physical stock at any of his place at any point of time and that they were merely lending names of various concerns for the purposes of acquiring and providing bills though no actual demand were ever involved in such transaction. All concerns have been maintained, operated, controlled, manage by Shri Rajendra Sohanlai Jain and Shri Surendra Jain and that they were the key persons responsible for day to day activities and that the share of profit/loss was between only the above two persons and the remaining were nearly employees of their concerns who were being paid salary/remuneration and compensations, for facilitating the operation of providing bogus entries of bills of purchase, sales and unsecured loans.

9. The above investigation made during the course of search and post search in the case of above group revealed that the assessee, proprietor of M/s Amrut Exports, was one of the beneficiaries of non-genuine purchase transactions and found to have availed accommodation entries of bogus purchases to the tune of Rs.29,78,10,891/-, during the financial year (F.Y.)

2009-10 relevant to assessment year (A.Y.) 2010-11 from the following concerns of Rajendra Jain group:

S. N.	Name of Entry provider	PAN	Amount (in Rs.)
1.	Avi Export	ABIPJ5587A	4,17,10,193/-
2.	Karnavat Impex Pvt. Ltd.	AADCK1927A	16,57,70,827/-
3.	Kriya Impex Pvt. Ltd.	AADCK1926B	3,41,72,900/-
4.	Moulamani Impex Pvt. Ltd.	AADCM1931C	1,42,70,985/-
5.	Kalash Enterprise	AFRPJ9962J	1,09,30,886/-
6.	Sparsh Export Pvt. Ltd.	AACKS0761R	2,85,45,600/-
7.	Sum Diam	ABAFS0852K	24,09,500/-
Total			20,78,10,891/-

10. During the course of search proceedings, certain documents were also seized which contain names of different concerns along with the names of the directors, parties and proprietors shown in these concerns, PAN, bank account number and netting made in same handwriting. The consolidated notings in same handwriting indicate that these concerns are related to one person/group only goes to further strengthen the fact that the concerns are bogus concerns which actually does not deal in any trading of diamonds and were only providing accommodation entries to different parties for a fixed charge for facilitating such provisions. It has been also been noticed that the books of accounts of all these concerns are maintained in one register and on one computer. This further proves that all these concerns are managed and controlled by one person/group. On the basis of the statement of Shri Rajendra Sohanlal Jain, it has been confirmed that he along with Shri Surendra Jain had floated various paper entities through dummy partners/directors/proprietors of various entities of this group and consequential investigation carried out by the Investigation Wing, , Mumbai

revealed that actual importers of rough diamonds import part of their demand requirement through benami entities operators as above, which ensures benefit of suppression of turnover, profits and capital requirement of the former. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignments from customs, through, CHA (Customs House Agent), the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of the actual importer. On the basis of these benami entities, bogus sale bills are issued against non-existent against the bogus stock. Thus to summarize, such bogus entities were into business on paper only and simply facilitating bogus bills of sales and the overall affairs of their entities were managed by Shri Rajendra Sohanlal Jain and Shri Surender Jain with the help of their acquaintances and employees. Since the evidential and material facts found during the course of search and survey operations carried out in the case of Shri Rajendra Sohanlal Jain group prove giving of above mentioned accommodation sales entries, it is prima facie apparent that the assessee has utilized such bogus purchases to suppress the profits for the year to that extent. There is no other prudent use of bogus purchase bills. During the course of assessment proceedings, a show cause letter dated 13.07.2017 was issued and served upon the assessee. Relevant portion of the show cause notice is reproduced on page No.5 of the assessment order.

11. In response to the above show cause notice, the assessee has submitted reply on 28.07.2017. But, the assessee has failed to submit copy of final accounts/ audit report for A.Y. 2010-11 with complete postal addresses of the above concerns. Therefore, assessing officer noted that books result of the assessee is not reliable and is susceptible for the

manipulation at the will and wish of the assessee. In view of the above, Books result of the assessee's concern was not accepted by the assessing officer. The assessing officer further observed that the assessee has shown gross profit of Rs.10,50,26,004/- on total turnover of Rs.1,80,68,18,795/- i.e. 5.81% for the year under consideration against gross profit of Rs.8,16,75,381/- on total turnover of Rs.1,45,39,33,687/- i.e. 5.62% for the immediate preceding year to the year under consideration. In view of the aforesaid facts, material and evidence existing on records, the assessing officer was of the opinion that the transactions in respect of rough diamonds shown as purchased by the assessee from the 7 parties totaling to Rs.29,78,10,891/- are not genuine transactions. Therefore, amount of Rs.29,78,10,891/- claimed as purchases expenses were treated by the assessing officer as bogus purchases and the same were disallowed and added to total income of the assessee.

12. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has restricted the bogus purchase addition from 100% to 5% of total bogus purchases, observing as follows:

“6.2.18 In view of the above facts and discussion, it is evident and clear that the so called transactions through banking channels of purchase made from the concern of Rajendra Jain and others was a make believe arrangement through a series of transfer of unaccounted funds through multi layering to give it a look of a genuine transaction. The very facts remains that the whole arrangement of providing the bogus accommodation entries were established beyond doubt during the search proceedings as no evidence of any sales purchase of diamonds was found neither any stocks of the diamonds was founds. These evidences when confronted were admitted under section 132(4) of the Act by Rajhendra Jain and others himself. The income tax proceedings are not governed by the strict rules of evidences and are not required to prove the impossible. In the assessee’s own case for AY. 2007-08, 2008-09 and 2013-14 the CIT(A)-3, Surat vide his order dated 27.03.2015 in the Appeal No.CIT(A), Surat-3/10128/2015-16 has confirmed the disallowance by the restricting it to 5% of the total purchases following the decision of the Hon'ble Gujarat High Court in the case of M/s Mayank Diamond Pvt. Ltd. reported in 2014(1) TMI 812 (Guj.). In the decision of the Hon'ble ITAT Bench, Surat in the case of Deputy Commissioner of Income

Tax Circle 2(2) vs J. B. Brothers, Surat vide ITA No.3661/Ahd/2015 & Co. No.22/Ahd/2016 AY 2007-08 date of order 06.04.2018 and M/s Delux Diamonds, Surat vs Income Tax Officer, Ward 1(3)(1), Surat vide ITA No.1396/Ahd/2017 AY 2007-08 date of order 11.04.2018, restricted the addition to 5% of bogus purchases. Therefore, in the light of above facts and circumstances and considering the gross profit rate of 5% as the average rate of the industry and following the judicial pronouncement by the Co-ordinate Bench of Tribunals and the decision of Hon'ble jurisdictional High Gujarat High Court in the case of Mayank Diamond Pvt. Ltd. (Tax Appeal No.200 of 2003) dated 17.11.201; the addition is restricted to 5% of bogus purchases. The circumstantial evidences itself show that the purchases amounting to Rs.29,78,10,891/- were not genuine and therefore the AO is being directed to recalculate addition made by the AO @ 5% of the bogus purchases is upheld and the ground of appeal is partly allowed.”

13. Aggrieved by the order of Id. CIT(A), the Revenue as well as Assessee are in appeal before us.

14. We note that in these two assessment years, the Assessing Officer made 100% addition on account of bogus purchases. In assessment years 2010-11, the Assessing Officer, after rejecting the books of accounts of the assessee, made addition on account of bogus purchases to the tune of Rs.29,78,10,891/-. On appeal by the assessee, the Id. CIT(A) by following the decision of jurisdictional High Court, in the case of Mayank Diamond (in Tax Appeal No.200 of 2003), restricted the addition at the rate of 5% of Rs.29,78,10,891/- which comes to Rs.1,48,90,544/-.

15. Similarly, for assessment year 2011-12, the Assessing Officer framed assessment order under section 144 r.w.s. 147 of the Act and made 100% addition of bogus purchases of Rs.30,72,16,240/-. On appeal, the Id. CIT(A) restricted the addition at the rate of 5% of bogus purchases that is, 5% of Rs.30,72,16,240/-, which comes to Rs.1,53,60,812/-.

16. Shri P.M. Jagasheth, Learned Counsel for the assessee, at the outset, prayed the Bench that since the assessee has raised the technical ground challenging the validity of reassessment proceedings under section 147/148

of the Act, which goes to the root of the matter therefore the same should be adjudicated first. The Id Counsel stated that reasons recorded by the assessing officer is defective. The sanction for issue of notice under section 151(1) of the Act, is not in accordance with law. The approval for initiating proceedings under section 147 of the Act is defective. In the reasons recorded by the assessing officer for reopening of assessment, there is no application of mind. The “satisfaction note” by Additional Commissioner of Income Tax for assessment year 2010-11 is not in accordance with law. The Ld. Counsel also pointed out that there is non-application of mind by the assessing officer, while recording reasons and the “satisfaction” recorded by the Additional Commissioner of Income Tax, is also wrong. The said “satisfaction” was to be recorded by the Additional Commissioner of Income Tax (Addl. CIT), instead of Commissioner of Income Tax (CIT). The Id Counsel further argued that there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer. It reflects an arbitrary exercise of the power conferred under section 147 of the Act. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner 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. The assessing officer (AO) was not having any material information to form "a reason to believe" that there was an escapement of income. Therefore, Id Counsel contended that reassessment proceedings initiated against the assessee under section 147/148 may be quashed in both the assessment years, that is, AY 2010-11 and 2011-12.

17. On the other hand, Learned DR for the Revenue submitted that assessing officer (AO) was having sufficient material to form the "reason to

believe" at the time of re-opening of the assessment. Although, the "satisfaction note" by Commissioner of Income Tax for assessment year 2010-11, is in brief, yet it is as per the scheme of the Act. The approval for initiating proceedings under section 147 of the Act may be given by senior officer of the Income Tax Department. The AO on the basis of the information received from the Investigation Wing, has found that the assessee had obtained accommodation entries in form of bogus purchases. The Credible information was received by the AO from the Investigation Wing, regarding search and seizure action carried out in the case of Shri Pravin Kumar Jain group/Rajendra Jain/Bhanwarlal Jain/Gautam Jain and evidences found during it including the statements of various persons, it was found that they were engaged in systematic providing of accommodation entries. The AO has noted that the search has revealed that the assessee managed to have received bogus bills for purchases. This information was not available at the time of passing the original assessment order, hence, entire bogus purchases were allowed. Now, the AO got the new information that assessee was engaged in providing bogus purchase bills, therefore reassessment proceedings initiated by the assessing officer u/s 147/148 is valid for both the assessment years, 2010-11 and 2011-12.

18. We heard both sides in detail and also perused the records of the case including the paper book filed by the assesses running in to 223 pages for assessment year 2010-11 and 173 pages for assessment year 2011-12. The necessary facts of the case have already been discussed in paragraphs above. Since the assessee has challenged the reassessment proceedings under section 147/148 of the Act, therefore, it is appropriate to go through first the reasons recorded and satisfaction recorded etc, the by the assessing

officer, which are reproduced below for ready reference for assessment year 2010-11:



Office of the
Pr. COMMISSIONER OF INCOME-TAX-3
Room no.425- Aayakar Bhawan, Majuragate, Surat

No.SRT/Pr.CIT-3/ITO(HQ)/151/2016-17

Date: 30.03.2017

To
The DCIT, Circle- 3(3),
The Income Tax Officer,
Ward- 3(3)(1), 3(3)(3), 3(3)(4) & 3(3)(5)
SURAT

Sub: Sanction for issue notice u/s. 151(1) of the I. T. Act, 1961 in the following case-
reg.

Please refer to the above.

2. In this connection, I am directed to convey that sanction u/s 151 (1) of the Act has been accorded by the Pr. Commissioner of Income-Tax-3, Surat in the following cases for issue of notice u/s 148 of the I. T. Act, 1961.

Sr. No.	Name of the assessee	WARD/CIRCLE	PAN	A.Y.
1	PANKAJ DIAMONDS	Circle- 3(3), Surat	AADFP8145L	2010-11
2	PRAVIN J BABARIYA	Ward- 3(3)(5), Surat	AFYPB2108K	2010-11
3	RAVJI B DHAMELIYA	Circle- 3(3), Surat	ACCPD5423C	2010-11
4	EURO JEWELS	Circle- 3(3), Surat	AACFE2545E	2010-11
5	SAKET IMPEX	Circle- 3(3), Surat	AAQFS1616B	2010-11
6	MUKESH D DAYANI	Ward- 3(3)(3), Surat	AFTPD6953R	2010-11
7	NARSHI V PATEL	Ward- 3(3)(3), Surat	ABRPP3765H	2010-11
8	MANJULA CHALIYAWALA B	Ward- 3(3)(3), Surat	AJBPC4379G	2010-11
9	KAKADIYA DIAMONDS	Ward- 3(3)(3), Surat	AAIFK7394K	2010-11
10	MAHESHBHAI J ROY	Ward- 3(3)(3), Surat	AGXPR2948B	2010-11
11	RAMPAL K YADAV	Ward- 3(3)(4), Surat	ACBPY5224B	2010-11

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12	RAYABEN K DUNGRANI	Ward- 3(3)(4), Surat	BFLPD8876C	2010-11
13	NIRANJAN REDDY	Ward- 3(3)(3), Surat	AQXPR5794D	2010-11
14	LAXMAN D JAIN	Ward- 3(3)(5), Surat	ACXPJ4337Q	2011-12
15	PRAKASH JAIN	Ward- 3(3)(5), Surat	ACUPJ0724E	2010-11
16	BASANT G TARBA	Ward- 3(3)(1), Surat	AFIPT1037P	2010-11
17	LAXMAN D JAIN	Ward- 3(3)(5), Surat	ACXPJ4337Q	2010-11
18	PRAVIN M HARSODA	Ward- 3(3)(5), Surat	ABEPH3761L	2010-11
19	VINOD V DHAYALKAR	Ward- 3(3)(5), Surat	AKZPD7531J	2010-11
20	UMESH G GAMI	Ward- 3(3)(5), Surat	AHTPG0868L	2010-11
21	RUBBY IMPEX	Ward- 3(3)(4), Surat	----	2010-11
22	SAFFRON IMPEX	Ward- 3(3)(4), Surat	AAOFM7546D	2010-11
23	SUNIL R BODRA	Ward- 3(3)(4), Surat	BLLPB4229B	2010-11
24	SONU CORORATION	Ward- 3(3)(4), Surat	ABOFS3554J	2010-11
25	BHAVESH CONTRACTOR	B Ward- 3(3)(1), Surat	ACDPC9957F	2010-11
26	BHVESK K DARBAR	Ward- 3(3)(1), Surat	AMKPD2189F	2010-11
27	ANJNABEN V TALA	Ward- 3(3)(1), Surat	AGJPT3670N	2010-11
28	ALKESH GOYANI	Ward- 3(3)(1), Surat	ARVPG6318F	2010-11
29	SANGITA S PATEL	Circle- 3(3), Surat	BCJPP1402K	2010-11
30	SANJAY N PATEL	Circle- 3(3), Surat	ARI:PP1148J	2010-11

Encl: As above
Copy to: The Addl./jt. CIT, Range-3(3), Surat

Sahajanand
(SAHAJANAND) ITO (HQ)
For Pr. Commissioner of Income-tax-3,
Surat

(SAHAJANAND) ITO (HQ)
For Pr. Commissioner of Income-tax-3,
Surat



**OFFICE OF THE
ADDL. COMMISSIONER OF INCOME-TAX, RANGE-3(3)
ROOM NO. 403, 4TH FLOOR, AAYAKAR BHAVAN, MAJURAGATE, SURAT
Ph.No.0261-2878403 email : surat.addlcit3.3@incometax.gov.in**

No.SRT/Rg.3(3)/147/ 2016-17

Dt. 27.3.17

To
The Pr. Commissioner of Income Tax -3
Surat

Sir,

Sub : Reasons recorded for re-opening of assessment in the case of
Shri. Ravjibhai Becharbhai Dhameliya for A.Y.2010-11.

Kindly refer to the above.

2. I am submitting herewith the reason recorded for re-opening of assessment in the case of above named assessee for A.Y.2010-11 received from the DCIT Cir.3(3), Surat dt.23.03.2017 .

3. After perusal of the reason recorded by the A.O., it is found that an income of Rs.29,78,10,891/- has escaped assessment in the hands of the assessee for A.Y.2010-11. The case is being re-opened on the basis of information received from DCIT C.C.-4, Surat that Shri.Rajendra Jain, Shri. Sanjay Choudhari and Shri.Dharmichand Jain are some of the entry providers operating in Mumbai, indulging in providing accomodation entries in the nature of bogus sales and unsecured loans. A search and seizure action in these groups of cases was carried out in 03.10.2013 by the DGIT(Inv) Mumbai charge. Shri. Ravjibhai Becharbhai Dhameliya is one of the beneficiary of this group. Therefore, necessary sanction u/s.151(1) of the Act may kindly be accorded to issue notice u/s.148 of the I.T.Act.

Yours faithfully.

[Alok Kumar]

Addl. Commissioner of Income-tax,
Range-3(3), Surat

1 To (Hq) ->

प्रधान आयकर आयुक्त कार्यालय-3 No. 949 सुरत.
27 MAR 2017
Office of the Pr. Commissioner of Income Tax-3, Surat.

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS
UNDER SECTION 147 OF THE INCOME-TAX ACT, 1961 FOR OBTAINING THE
APPROVAL OF THE COMMISSIONER OF INCOME-TAX, SURAT-3.

1	Name & address of the assessee	: Shri Ravjibhai Becharbhai Dhameliya B-1, Jay Gangeshwar Society, Near Hirabaug, Varachha Road, Surat.
2	PAN	: ACCPD5423C
3	Status	: Individual
4	Ward/Circle/Range	: Dy. Commissioner of Income-tax, Circle-3(3), Surat
5	Assessment Year in respect of which it is proposed to issue notice under section 148 of the Act,1961	: 2010-11
6	The quantum of Income which has escaped assessment	: Rs.29,78,10,891/-
7	Whether the assessment is proposed to be made for first time, if the reply is in the affirmative, please state	: No
8	Whether the provisions of section 147 are applicable	: Yes
9	a) Whether any voluntary return has been filed	: Yes
	b) If so, the date of filing of the said return.	: 15.10.2010
10	If the answer to Item No.7 is in negative, please state the income originally assessed	: Rs.4,53,55,301/- u/s 143(3) dated 15.02.2013
11	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 the provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147	: No

12

Reasons for the belief that income has escaped assessment

In the search conducted on Shri Rajendra Jain, Shri Sanjay Chaoudhary and Shri Dharmichand Jain on 03.10.2013 by the Investigation Wing, Mumbai, covered certain name sake/dummy directors/partners/proprietors of various concerns that were being actually managed, controlled and operated by Shri Rajendra Jain, Shri Sanjay Chaoudhary Jain and Shri Dharmichand Jain under section 132 and 131 of the Income Tax Act, 1961.

2. During the course of search and consequential operation, the statement of Shri Rajendra Sohanlal Jain was recorded and it has been reportedly accepted by him that he was working for Shri Ratanlal Jain, besides other concerns, and that he had been also been operating through M/s Minar Gems, a proprietary concern in his name. So, after quitting the job, he took the idea of operating through various concerns including several proprietorship concerns in the names of our employees. It has also been further confirmed by him that in all such cases, the effective control of business remains with them and the business income of such proprietorship concern get adjusted against the overall salary payable to such employee on annual basis.

3. It has also been reported that Shri Rajendra Sohanlal Jain has admitted that he and his dummy concerns/entities were engaged in business of bills shopping through all the concerns, the details which has been admitted by him reply to Q.No.13 of the statement recorded under section 132(4) for on 05.10.2013. It has also been reported that he has admitted to be holding no physical stock at any of our place at any point of time and that they were merely lending names of various concerns for the purposes of acquiring and providing bills though no actual demand were ever involved in such transaction. All concerns have been maintained, operated, controlled, manage by Shri Rajendra Sohanlal Jain and Shri Surendra Jain and that they were the key persons responsible for day to day activities and that the share of profit/loss was between only the above two persons and the remaining were nearly employees of their concerns who were being paid salary/remuneration and compensations, for facilitating the operation of providing bogus entries of bills of purchase, sales and unsecured loans.

4. During the course of search proceedings certain documents were also seized which contain names of different concerns along with the names of the directors, partners and proprietors shown in these concerns, PAN Nos. bank account nos and jotting made in same handwriting. The consolidated jottings in same handwriting indicate that these concerns are related to one person/group only goes to further strengthen the fact that the concerns are bogus concerns which actually deal with no trading of diamonds and were only providing accommodation entries to different parties for a fixed charge for facilitating such provisions. It has been also been reported that the books of accounts of all these concerns are maintained in one register and on one computer. This further proves that all these concerns are managed and controlled by one person/group.

5 During the course of search, evidences were found and persons were examined on oath which established that benami concerns have been formed to give accommodation entries in the nature of bogus purchases and bogus unsecured loans to various beneficiaries. The modus operandi adopted by these bogus concerns, has been explained

by Shri Rajendra Sohanlal Jain, in the statement u/s 132(4) of the Act.


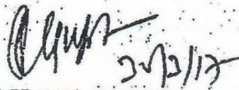
6. On the basis of the statement of Rajendra Sohanlal Jain it has been confirmed that Shri Rajendra Sohanlal Jain along with Sri Surendra Jain had floated various paper and fictitious concerns and entities through dummy partners/directors/proprietors of various entities of this group and consequential investigation carried out by the Investigation Wing, Mumbai revealed that actual importers of rough diamonds import part of their demand requirement through benami entities operators as above, which ensures benefit of suppression of turnover, profits and capital requirement of the former. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignments from customs, through CHA, the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of the actual importer. On the basis of these benami entities, bogus sale bills are issued against nonexistent against the bogus stock.

7. From the details and evidences made available through the above referred letter dtd. 14.03.2014 of the Director General of Income Tax (Investigation), Mumbai it is seen that the following entities of Shri Rajendra Sohanlal Jain group have given accommodation entries of bogus sales to Shri Ravjibhai Becharbhai Dhameliya, Prop of M/s Amrut Exports) as under during F.Y.2009-10 relevant to A.Y.2010-11.

Name of Entry Provider	PAN	Amount (Rs.)
Avi	ABIPJ5587A	4,17,10,193/-
Karnawat	AADCK1927A	16,57,70,827/-
Kriya	AADCK1926B	3,41,72,900/-
Moulmani	AADCM1931C	1,42,70,985/-
Kalash	AFRPJ9962J	1,09,30,886/-
Sparsh	AACKS0761R	2,85,45,600/-
Sun	ABAFS0852K	24,09,500/-
Total		29,78,10,891/-

8. Thus to summarise, such bogus entities were not really doing any business and on the other way were only facilitating bogus bills of sales and the overall affairs of their entities were been managed by Shri Rajendra Sohanlal Jain and Shri Surender Jain and his group consisting of his acquaintances and employees. Since the evidential and material facts found during the course of search and survey operations carried out in the case in Shri Rajendra Sohanlal Jain group prove giving of above mentioned accommodation sales entries, it is prima facie apparent that Shri Ravjibhai Becharbhai Dhameliya have utilized such bogus purchases to suppress profits for the year to that extent. There is no other prudent use of bogus purchase bills.

9. Though the case of the assessee was completed under scrutiny and assessment order dated 15.02.2013 has been passed by the AO on the basis of material facts available before him at the time of completion of assessment proceedings, the information that the bills of purchases have also included such bogus bills of purchases was not available with the AO at that point of time since the search and survey operations in the case of Shri Rajendra Sohanlal Jain group has only commenced on 03.10.2013 and the

	<p>report of the Investigation Wing, Mumbai on such bogus entry providers has been received in this office only after 14.03.2014 i.e. after more than 3 years of completion of assessment proceedings. As such, the information provided by the Investigation Wing is a new piece of information which was not available before the AO at the time to completion of assessment proceedings.</p> <p>10. In view of the above findings of the Inv. Wing that such entity was not found to be operating from the above address, it is clear that the above accommodation entries availed by Shri Ravjibhai Bencharbhai Dhameliya has been only for the purpose of suppressing taxable income. In view of the above, assessee had not furnished truly and full materials during the course of original assessment proceedings, I have reason to believe that the income chargeable to tax amounting to Rs.29,78,10,891/- has escaped assessment within the meaning of section 147 of the Act. Therefore, it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961.</p> <p>Therefore, statutory approval to issue notice u/s 148 of the I.T. Act may kindly be accorded.</p>	
	<p>Date: 23/03.2017</p>	<p> (RAMESHWAR P. MEENA) DY. COMMISSIONER OF INCOME TAX, CIRCLE 3(3), SURAT</p>
<p>10</p>	<p>Whether the Principal Commissioner of Income-tax, Surat-3 is satisfied on the reasons recorded by the AO that it is a fit case for issue of Notice under sec. 148 of the I.T. Act, 1961.</p>	<p><i>yes, I am satisfied</i></p> <p> (RAJANI KANT GUPTA) PR. COMMISSIONER OF INCOME-TAX, SURAT-3</p>

19. From the above ‘reasons recorded’, ‘satisfaction note’, and ‘approval’ given by the Principal Commissioner of Income Tax (PCIT), it seems to us that there are many defects and inconsistency/ arbitrariness in satisfaction note and approval given by PCIT. The Arbitrariness is the quality of being "determined by chance, whim, or impulse, and not by necessity, reason, or principle". It is also used to refer to a choice made

without any Principle or Act. Such Arbitrariness is not countenanced in the Income Tax Act proceedings. The following important defects, inconsistency and arbitrariness in the process of recording reasons are noticed by us, which are as follows:

(i) The Additional Commissioner of Income Tax, Range-3(3), Surat, wrote a letter to the Principal Commissioner of Income Tax-3, on dated **27.03.2017**, stating that a search and seizure action, in the group of Shri Rajendra Jain, Sanjay Jain etc, were carried out on 03.10.2013. Shri Ravjibhai Becharbhai Dhameliya (Assessee under consideration) is one of the beneficiary of this group, therefore necessary sanction under section 151(1) of the Act, may be given.

(ii) After this, form for recording the reasons for initiating proceedings under section 147 of the Income Tax Act, 1961, for obtaining the approval of the Commissioner of the Income-Tax, Surat-3, was prepared on **23.03.2017**.

(iii) Then after, the Principal Commissioner of Income Tax, Surat-3 recorded the 'satisfaction' stating as follows:

“Yes, I am satisfied”

We note that this 'satisfaction' note is given by the Principal Commissioner of Income Tax, without expressing as to how and why he is satisfied.

(iv) The said “satisfaction” was to be recorded by the Additional Commissioner of Income Tax (Addl. CIT), instead of Commissioner of Income Tax (CIT).

25. From the above important defects, inconsistency and arbitrariness in the process of recording reasons, it is abundantly clear that process of recording reasons is itself wrong and not in accordance with law. We note

that the Additional Commissioner of Income Tax, Range-3(3), Surat, wrote a letter to the Principal Commissioner of Income Tax-3, on dated **27.03.2017**, requesting the Principal Commissioner of Income Tax-3, for sanction under section 151(1) of the Act. **Therefore, the reasons must be recorded by the assessing officer prior to 27.03.2017, however, in assessee's case the reasons were recorded on 23.03.2017, which clearly shows non-application of mind and arbitrariness in the process of recording reasons, hence the reassessment proceedings initiated against the assessee by the Revenue authorities are not in accordance with law, hence bad in law and therefore liable to quash.**

26. The Law is well settled that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim '*Expressio unius est exclusion alteris*', meaning there by that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following of other course is not permissible. (Nazir Ahmed v. King Emperor AIR 1936 PC 253; Ram Phal Kundu v. Kamal Sharma [2004] 2 SCC 759 and Indian Bank's Association v. Devkala Consultancy Service AIR 2004 SC 2615). Similar view has been expressed in the **Orissa Rural Housing Development Corpn. Ltd, 343 ITR 316(Orissa).**

27. We note that Article 265 of the Constitution of India lays down that, "No tax shall be levied or collected except by authority of law". The Hon'ble Supreme Court of India has held that the this provision under Article 265 of the Constitution of India is applicable not only for levy but also for the collection of taxes and the expression "assessment" within its

compass covers both the aspects carried out by the executive functionary. Chottabhai Vs. Union of India 1962 SCR Supl.2 1006. Therefore, it is required that whole of the process of taxation must follow the procedures which are valid under the law and must adhere to law i.e. substantive one as well as procedural one too. Therefore, in other words it is provided in the Constitution of India that every step should be taken to ensure that levy and collection of the taxes is strictly in accordance with law – not only substantive one but the procedural law, as well. In the assessee's case under consideration, we noted above that there are non-application of mind and arbitrariness in the process of recording reasons, hence the reassessment proceedings initiated against the assessee by the Revenue authorities are not in accordance with law, so far procedural law, is concerned, hence reassessment proceedings should be quashed.

28. For assessment year 2011-12, the 'reasons recorded' and 'satisfaction recorded' and 'approval' etc, are reproduced below for ready reference:

“FOR AY. 2011-12:

Office of the
Pr. COMMISSIONER OF INCOME-TAX-3
Room no.425- Aayakar Bhawan, Majuragate, Surat

No.SRT/Pr.CIT-3/ITO(HQ)/151/2016-17

Date: 30.03.2017

To
The DCIT, Circle- 3(3),
The Income Tax Officer,
Ward- 3(3)(1), 3(3)(3), 3(3)(4) & 3(3)(5)
SURAT

Sub: Sanction for issue notice u/s. 151(1) of the I. T. Act, 1961 in the following case-
reg.

Please refer to the above.

2. In this connection, I am directed to convey that sanction u/s 151 (1) of the Act has been accorded by the Pr. Commissioner of Income-Tax-3, Surat in the following cases for issue of notice u/s 148 of the I. T. Act, 1961.

Sr. No.	Name of the assessee	WARD/CIRCLE	PAN	A.Y.
1	PANKAJ DIAMONDS	Circle- 3(3), Surat	AADFP8145L	2010-11
2	PRAVIN J BABARIYA	Ward- 3(3)(5), Surat	AFYPB2108K	2010-11
3	RAVJI B DHAMELIYA	Circle- 3(3), Surat	ACCPD5423C	2010-11
4	EURO JEWELS	Circle- 3(3), Surat	AACFE2545E	2010-11
5	SAKET IMPEX	Circle- 3(3), Surat	AAQFS1516B	2010-11
6	MUKESH D DAYANI	Ward- 3(3)(3), Surat	AFTPD6953R	2010-11
7	NARSHI V PATEL	Ward- 3(3)(3), Surat	ABRPP3765H	2010-11
8	MANJULA CHALIYAWALA B	Ward- 3(3)(3), Surat	AJBPC4379G	2010-11
9	KAKADIYA DIAMONDS	Ward- 3(3)(3), Surat	AAIFK7394K	2010-11
10	MAHESHBHAI J ROY	Ward- 3(3)(3), Surat	AGXPR2948B	2010-11
11	RAMPAL K YADAV	Ward- 3(3)(4), Surat	ACBPY5224B	2010-11

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12	RAYABEN K DUNGRANI	Ward- 3(3)(4), Surat	BFLPD8876C	2010-11
13	NIRANJAN REDDY	Ward- 3(3)(3), Surat	AQXPR5794D	2010-11
14	LAXMAN D JAIN	Ward- 3(3)(5), Surat	ACXPJ4337Q	2011-12
15	PRAKASH JAIN	Ward- 3(3)(5), Surat	ACUPJ0724E	2010-11
16	BASANT G TARBA	Ward- 3(3)(1), Surat	AFIPT1037P	2010-11
17	LAXMAN D JAIN	Ward- 3(3)(5), Surat	ACXPJ4337Q	2010-11
18	PRAVIN M HARSODA	Ward- 3(3)(5), Surat	ABEPH3761L	2010-11
19	VINOD V DHAYALKAR	Ward- 3(3)(5), Surat	AKZPD7531J	2010-11
20	UMESH G GAMI	Ward- 3(3)(5), Surat	AHTPG0868L	2010-11
21	RUBBY IMPEX	Ward- 3(3)(4), Surat	----	2010-11
22	SAFFRON IMPEX	Ward- 3(3)(4), Surat	AAOFM7546D	2010-11
23	SUNIL R BODRA	Ward- 3(3)(4), Surat	BLLPB4229B	2010-11
24	SONU CORORATION	Ward- 3(3)(4), Surat	ABOFS3554J	2010-11
25	BHAVESH CONTRACTOR B	Ward- 3(3)(1), Surat	ACDPC9957F	2010-11
26	BHVESK K DARBAR	Ward- 3(3)(1), Surat	AMKPD2189F	2010-11
27	ANJNABEN V TALA	Ward- 3(3)(1), Surat	AGJPT3670N	2010-11
28	ALKESH GOYANI	Ward- 3(3)(1), Surat	ARVPG6318F	2010-11
29	SANGITA S PATEL	Circle- 3(3), Surat	BCJPP1402K	2010-11
30	SANJAY N PATEL	Circle- 3(3), Surat	ARI'PP1148J	2010-11

Encl: As above
Copy to: The Addl./Jt. CIT, Range-3(3), Surat

Sahajanand
(SAHAJANAND) ITO (HQ)
For Pr. Commissioner of Income-tax-3,
Surat

(SAHAJANAND) ITO (HQ)
For Pr. Commissioner of Income-tax-3,
Surat



Office of the
PR. COMMISSIONER OF INCOME TAX-3,
Room No -425, 4Th Floor, Aayakar Bhawan Majura Gate, Surat. Phone:
0261-2878425.

No. SRT/Pr.CIT-3/ITO(HQ)/Approval/148/2017-18

Date:- 30.03.2018

To,
The Addl. Commissioner of Income tax
Range-3(3), Surat.

Sir,

Sub: Approval for issuance of notice u/s 148 of the I.T Act, 1961-reg


Kindly refer to the above, .

2. In this connection, I am directed to inform you that the Pr. Commissioner of Income tax-3, Surat has accorded approval for issue of notice u/s 148 of the I.T Act, 1961 in the following cases. The same may kindly be conveyed to the concerned Assessing Officers immediately.

S.No	Name of the assessee	PAN	A.Y	AO
1.	Nareshbhai Arjanbhai Lathiya	ADLPP8388A	2011-12	Cir-3(3), Surat/
2.	Ravjibhai Becharbhai Dhameliya	ACCPD5423C	2011-12	Cir-3(3), Surat
3.	M/s Saket Impex	AAQFS1516B	2011-12	Cir-3(3), Surat
4.	M/s Tiku Gems	AADFT6848C	2011-12	Cir-3(3), Surat
5.	Mahesh Faldu	AABPF9344F	2011-12	Wd-3(3)(3), Surat
6.	Nareshkumar Vallabhbhai Chhatrala	ABOPC4169R	2011-12	Wd-3(3)(3), Surat
7.	M/s Kakadiya diamond	AAIFK7394K	2011-12	Wd-3(3)(3), Surat
8.	M/s Kakadiya diamond	AAIFK7394K	2012-13	Wd-3(3)(3), Surat

Yours faithfully,

Encl: case folders (08)


(Gautam Kumar Thakur) ITO(HQ)
For Pr. Commissioner of Income tax-3
Surat.

Wt
30/3/18

Annexure-B
Reason for Reopening - where no regular assessment made

1	Name of the Assessee:	:	Ravjibhai Becharbhai Dhameliya Prop. Amrut Exports Vraj Shila, Kapodra Char Rasta, Varachha Road, Surat
2	Address of the Assessee:	:	Vraj Shila, Kapodra Char Rasta, Varachha Road, Surat
3	PAN of the Assessee:	:	ACCPD5423C
4	Assessment Year:	:	2011-12
5	Details of the Assessing Officer having jurisdiction over the	:	DCIT, Circle 3(3), Surat

Reasons for reopening of the assessment in case of Shri Ravjibhai Becharbhai Dhameliya(Prop. Amrut Export, for A.Y. 2011-12 u/s 147 of the Act.

1. Brief details of the Assessee :

(a) Nature of business activity: The assessee is the proprietorship concern engaged in the business of manufacturing of polished diamond, export and sale of polished diamond and diamond cutting.

(b) Details of filing of ROI/processing and scrutiny:

Sr.No.	A.Y.	Date if filing ROI	Date of processing	Whether selected for scrutiny/re-open
1.	2011-12	08.09.2011	-	Now proposed for reassessment
2.	2010-11	15.10.2010	-	-

2. Brief details of information collected/ received by the AO: In the case of assessee a piece of information was received from the DCIT, Central Circle-4,Surat, regarding that a search and seizure action in these groups of cases has been carried out in 03.10.2013 by the DGIT(Inv), Mumbai Charge. The group cases are presently lying in the jurisdiction of DCIT, CC-4, Surat who is seized with the post search scrutiny assessment proceedings, it was found that Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain were operating and managing Benami concerns in the name of their employees through which they provided accommodation entries of bogus purchase to various beneficiaries. As a result of search and post search investigation, it was found the assessee was one of the beneficiaries of non-genuine purchase transactions and

o have made bogus purchase to the total tune of Rs.30,72,16,240/- from various parties the F.Y.2010-11 from the concerns of Shri Rajendra Jain group:

4. **Analysis of information collected/ received & Enquiries made by the AO as sequel to information collected/received:** Information has been analysed and consciously considered. The database of this office/available case records has also been perused. At the same time, the information so received is also found to be from a reliable source, specific and directly relevant to assessee's case. It comes to surface that impugned assessee has obtained Rs.30,72,16,240/- worth of accommodation entry from various parties identified as paper concern by Shri Rajendra Jain and others in their sworn statement. No actual delivery or movement of goods has taken place. In view of such specific and pointing discovery of investigation, there is a clear case of escapement of income in the hands of the assessee (since the assessee did not disclose true and full facts related to this transaction before the Department).

5 & 6. **Findings of the AO & Basis of forming reason to believe and details of escapement of income:** The information so received from the Central Circle-4, Surat, it comes to surface that impugned assessee has traded with various concerns(i.e. AADI Impex, AVI Impex, Karnawat Industries Pvt. Ltd., KIPL, Arihant Impex) and derived the bogus purchase of Rs. 30,72,16,240/- for the A.Y. 2011-12. Hence the assessee has to suppress his taxable income. As such, I have a reason to believe that an income of Rs. 30,72,16,240/- as stated above, has escaped assessment in the hand of the assessee i.e. Ravjibhai Becharbhai Dhameliya Prop. Amrut Exports for the year under consideration.

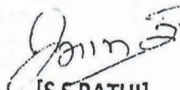
7. **Escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India:** Not applicable


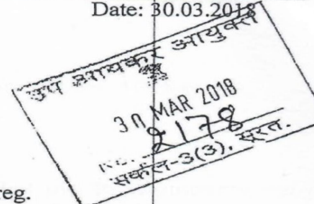
8. **Applicability of the provisions of section 147/151 to the facts of the case:**

In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above (refer paragraphs 5 & 6).


This case is within four years from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 has been obtained separately from Joint Commissioner of Income Tax as per the provisions of section 151 of the Act.

Encl: As required.


[S S RATHI]
Dy. Commissioner of Income-tax,
Circle-3(3), Surat

	<p>Office of the ADDL. COMMISSIONER OF INCOME-TAX, RANGE-3(3) Room No.403 Aayakar Bhawan, Majura gate, Surat Phone: 0261-2878403</p>			
No.SRT/Addl.CIT/Range-3(3)/Approval/148/2017-18	Date: 30.03.2018			
To, Dy. CIT, Cir-3(3), Surat. The Income tax officer, Ward- 3(3)(3)//3(3)(1), Surat				
<p>Sub: Approval for issuance of notice u/s 148 of the Act-reg. Ref: (i) Letter No. SRT/Pr. CIT-3/ITO(HQ)/Approval/148/2017-18 dated 30.03.2018.</p>				

Please refer to the above.				
<p>2. Vide above referred letter dated 30.03.2018 the Pr. CIT-3, Surat has accorded permission to issue notice u/s 148 of the Act in the following cases:</p>				
Sr. No.	Name of the assessee	PAN	A. Y.	Jurisdiction
1	Pradip Vallabbhai Zadaphia	AAFPZ1404J	2011-12	DCIT, Cir-3(3)
2	Gaurav S. Kothari	APJPK2757E	2011-12	Wd-3(3)(1)
3	Nareshbhai Arjanbhai Lathiya	ADLPP8388A	2011-12	DCIT, Cir-3(3)
4	Rajivbhai Becharbhai Dhameliya	ACCPD5423C	2011-12	DCIT, Cir-3(3)
5	M/s Saket Impex	AAQFS1516B	2011-12	DCIT, Cir-3(3)
6	M/s Tiku Gems	AADFT6848C	2011-12	DCIT, Cir-3(3)
7	Maheshbhai Shamjibhai Faldu	AABPF 9344 F	2011-12	ITO, Ward-3(3)(3)
8	Nareshkumar Vallabbhai Chhatrala	ABOPC4169R	2011-12	ITO, Ward-3(3)(3)
9	Kakadiya Diamond	AAIFR7394K	2011-12	ITO, Ward-3(3)(3)
10	Kakadiya Diamond	AAIFR7394K	2012-13	ITO, Ward-3(3)(3)


(O.P. Meena)
 Addl. Commissioner of Income-tax
 Range-3(3), Surat

Encl. proposal folder

29. After going through the above ‘sanction letters’ ‘reasons recorded’ and ‘approval’, we noticed the following arbitrariness in the process of recording reasons:

(i) From the above ‘sanction letters’ ‘reasons recorded’ and ‘approval’ it is clear that Income Tax Officer (HQ) on behalf of Principal Commissioner of Income Tax-3, issued letter to DCIT, Circle-3(3), on 30.03.2017, stating that sanction u/s 151 (1) of the Act has been accorded by the Principal Commissioner of Income Tax-3 Surat, for issue of notice under section 148 of the Act. In this letter, assessee’s name appears on serial number 3. The reasons recorded were not attached with this said letter dated 30.03.2017.

(ii) After one year, again Income Tax Officer (HQ) on behalf of Principal Commissioner of Income Tax-3, issued letter to Additional Commissioner of Income Tax, on **30.03.2018**, stating that sanction u/s 151 (1) of the Act has been accorded by the Principal Commissioner of Income Tax-3 Surat, for issue of notice under section 148 of the Act and same may be conveyed to the concerned assessing officer. In this letter, assessee's name appears on serial number 2 and reasons recorded are also annexed with this letter.

(iii) On the same date, that is on **30.03.2018**, the Additional Commissioner of Income Tax, wrote letter to Dy.CIT, Circle-3(3), Surat (The Income Tax Officer), stating that Principal Commissioner of Income Tax-3 Surat, vide his letter dated **30.03.2018**, has accorded permission to issue notice under section 148 of the Act. In this letter, assessee's name appears on serial number 4.

(iv) The reasons recorded were not attached with letter dated **30.03.2017**, which was issued by Principal Commissioner of Income Tax-3 Surat. Later on, after one year, entire formalities, such as, sanction by Principal Commissioner of Income Tax-3, were completed on **30.03.2018**, and Additional Commissioner of Income Tax, informed the Income Tax Officer to issue notice u/s 148 on **30.03.2018**. **The sequence of time is not mentioned on the letters dated 30.03.2018, hence it is not ascertainable that which letter has been issued first, hence there is** arbitrariness in the process of recording reasons.

(v) The said "satisfaction" was to be recorded by the Additional Commissioner of Income Tax (Addl. CIT), instead of Commissioner of Income Tax (CIT).

30. We note that for assessment year 2010-11 and 2011-12, the applicable provisions of section 151 of the Income Tax Act, reads as follows:

“151.Sanction for issue of notice-(1) No notice shall be issued under section 148 by an assessing officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the principal chief commissioner or chief commissioner or principal commissioner or commissioner is satisfied, on the reasons recorded by the assessing officer that it is a fit case for the issue of such a notice.

(2).In any case other than a case falling under subsection (1), no notice shall be issued under section 148 by an assessing officer, who is below the rank of joint commissioner, unless the joint commissioner is satisfied, on the reasons recorded by such assessing officer, that it is a fit case for the issue of such a notice.”

We note that in case of assessee under consideration, for both assessment years, that is, AY, 2010-11 and 2011-12 the scrutiny assessment was completed on 15.02.2013. We note that reopening of the assessment was made by the assessing officer for both assessment years, 2010-11 and 2011-12, on 30.03.2017, which is within four years from the end of the relevant assessment year, hence in assessee's case there was no requirement to sanction of notice by Principal Commissioner of Income Tax. However, sanction has been accorded by the Principal Commissioner of Income Tax, which is contrary to the provisions of section 151 of the Act, hence reassessment proceedings initiated against the assessee for assessment years, 2010-11 and 2011-12, should be quashed.

31. We also note that satisfaction recorded by the Principal Commissioner of Income Tax, stating *“Ys, I am satisfied”* is not in accordance with law, for this reliance can be placed on the judgment of the Coordinate Bench of ITAT Delhi in the case of Pioneer Town Planners Pvt. Ltd, in ITA No.132/Del/2018 for Assessment Year, 2009-10, wherein it was held as follows:

“19. On careful consideration of above rival submissions, first of all, we may point out that from the proforma of approval u/s 151 of the Act placed at pgs. 16-17 of the assessee paper book, it is clear that in column 12 the ACIT has granted approval for the issue of notice u/s 148 of the Act by writing that “Yes, I am satisfied” which is not sufficient to comply with the requirement of s. 151 of the Act. As per ratio of the decision of High Court of Madhya Pradesh in the case of CIT v. M/s. S. Goyanka Lime and Chemical Ltd. (supra), where the JCIT/ACIT has only recorded “Yes, I am satisfied” then, it has to be held that the approving authority has recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice u/s 148 of the Act for reopening of assessment and in this situation initiation of reassessment proceedings and reopening of assessment has to be held as invalid and bad in law. Therefore, we are inclined to hold that the reopening of assessment and notice u/s 148 of the Act are bad in law and consequently all subsequent proceedings in pursuant thereto are also bad in law and the same cannot be held as valid and sustainable.

20. So far as legal contention of the ld. AR on behalf of the assessee regarding non-application of mind by the AO, while recording reasons for reopening of assessment, is concerned from careful perusal and reading of the three pages of reasons recorded, we observe that in first four paras the AO has noted facts of the information received from DDIT (investigation), Faridabad, further, in para 6 modus operandi of entry providers has been noted thereafter, in para 7 & 8, it has been arisen that either during survey or post survey proceedings the assessee company has not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital/premium introducers and thus, the same is from paper companies of entry operator and then, he recorded satisfaction that the assessee company taken bogus/accommodation entries. Thereafter, the AO in last para 9 & 10, without applying mind to the information received from the Investigation Wing states/writes that he has reason to believe that the income has escaped assessment. The text and words used by the AO in the reasons recorded for reopening of assessment clearly show that the AO proceeded to initiatory assessment proceedings and reopening of assessment without having any valid satisfaction and only on the basis of borrowed satisfaction as there was no independent application of mind by the AO to the tangible material received from Investigation Wing which could form the valid basis and reason to believe that income has escaped assessment.

21. In view of decisions of Hon’ble High Court of Delhi in the cases of PCIT vs. Meenakshi Overseas (supra), PCIT vs. G&G Pharma (I) Ltd. (supra) and decision in the case of PCIT vs. RMG Polyviny (I) Ltd. (supra), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. In the case of Meenakshi Overseas (supra), their lordship speaking for the Hon’ble Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment then, indeed it is a borrowed satisfaction and the

conclusion of the AO based on reproduction of conclusion drawn in the investigation report cannot be held as valid reason to believe after application of mind. In this judgment their lordship also held that where nothing from the report of investigation wing is set out to enable the reader to appreciate how the conclusions flow there from then there is no independent application of mind by the AO to the tangible material which form the basis of the reasons to believe that income has escaped assessment.

22. In the present case, as we have noted above, the conclusion recorded by the AO in para 9 & 10 of the reasons is based on the information received from the director of investigation wing and the AO without making any effort to examine and discuss the material received from the Investigation Wing and without application of the mind to the same formed a reason to believe that income had escaped assessment. This shows that the AO proceeded to initiate reassessment proceedings on the basis of borrowed satisfaction without any application of mind and exercise on the information received from the Investigation Wing of the Department. Therefore, we have no hesitation to hold that the AO proceeded to initiate reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act on the basis of borrowed satisfaction and without any application of mind and examination of the so called material and information received from the investigation wing to establish any nexus, even prima facie, with the such information. Therefore, in our considered opinion the initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent proceeding and orders, including impugned reassessment and first appellate order, are bad in law and thus, not sustainable and we hold so. Accordingly, on the basis of foregoing discussion, grounds No.2, 3, 4 and additional ground.”

32. Therefore, considering the above facts and circumstances and considering the arbitrariness in the process of recording reasons, we are of the view that the action of the Assessing Officer to reopen the assessment is null in the eyes of law and hence we are inclined to quash the initiation of reassessment proceedings being *ab-initio void*. Hence, in view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, and processes of satisfaction by Id PCIT, as set out earlier, which were contained arbitrariness, in the process of recording reasons, and thus were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is

quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

33. In the result, assessee`s appeal for both the assessment years, that is, AYs2010-11 and 2011-12 (in ITA No.239/SRT/2019 and ITA No. 124/SRT/2020, are allowed, whereas appeals filed by the Revenue (in ITA No.304/SRT/2019 and ITA No.122/SRT/ 2020, are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 06/11/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Surat / दिनांक/ Date: 06/11/2023

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat