

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No. 2767/Del/2023
निर्धारणवर्ष/Assessment Year: 2012-13**

NISHA GOEL, DU-10, Pitampura, Delhi.	Vs.	Income Tax Officer, Ward 52(3), Civic Centre, Minto Road, New Delhi.
PAN No. AIFPG0671A		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Suresh Kumar Gupta, CA
राजस्वकीओरसे /Revenue by	Shri Amit Katoch, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	31.05.2024
उद्घोषणाकीतारीख/ Pronouncement on	04.06.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 18.09.2023 for the AY 2012-13 arising out of the assessment order passed u/s 144 read with section 147 of the Act. The assessee in its appeal raised the following grounds: -

“1. The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of

section 147/148 of the Income Tax Act therefore such assessment is liable to be quashed. (Tax Effect Rs.55,45,826/-)

2. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings-initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without application of independent mind on the material available with him. In view of the above defects in the compliances the resultant reassessment proceedings are required to be annulled. (Tax Effect Rs.55,45,826/-)

3. The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction u/s 151 of IT Act has been mechanically accorded by the sanctioning authority. (Tax Effect Rs.55,45,826/-)

4. The Ld. CIT(A) has erred both in law and on facts in confirming the estimated addition of Rs.1,19,66,989/- ignoring the fact that the estimation by the AO is arbitrary, without any Basis and, therefore, the same needs be set aside. (Tax Effect Rs.35,45,360/-)

5. The Ld. CIT(A) has erred both in law and on facts in confirming addition of Rs.64,74,000/- being cash deposits in the bank account having considered the same as unexplained deposit and bringing to tax under the head income from other sources and without prejudice, not bringing on record any reason how the nature of credits in cash is different from other credits (Tax Effect Rs.18,48,026/-)

6. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."

2. Ld. Counsel for the assessee, at the outset, submits that ground no.1 to 3 of grounds of appeal raised are with respect to

validity of reassessment proceedings u/s 147 of the Act. Ld. Counsel for the assessee referring to page 10 of the Paper Book for the reasons recorded for reopening the assessment which is proforma for recording reasons submits that in Column VI of the said proforma the AO mentioned that the quantum of income which has escaped assessment was Rs.1,125,46,000/-. Ld. Counsel referring to page 12 of the Paper Book submits that the AO records reasons that the assessee made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd. and this has escaped assessment. Ld. Counsel submits that in the reasons recorded the AO simply stated that there are deposits of Rs.1,25,46,000/- by the assessee in the bank account with HDFC Bank Ltd. without mentioning the account number and name of the branch of HDFC Bank. Ld. Counsel, therefore, submits that the credibility of the information will provide basis for deciding whether the AO had applied his mind to the information which as per the AO was available on ITS. Referring to page 3 of the assessment order Ld. Counsel for the assessee submits that the above information that the assessee had deposited cash of Rs.1,25,46,000/- in HDFC Bank found to be incorrect by the AO as is evident from the assessment order, wherein the AO stated that on

perusal of the bank statement received from HDFC Bank Ltd. there is cash deposit of Rs.64,74,000/- only.

3. Ld. Counsel further submits that in the assessment order page 3 it is also the observation of the AO that on perusal of ITS, it is noticed that there are total entry of each amount of cash deposit made in the HDFC Bank. Therefore, the Ld. Counsel submits that there is a complete non-application of mind by the AO when the reasons were recorded for reopening the assessment. Ld. Counsel placed reliance on the decision of the coordinate bench in the case of Lakhmichand Tejumaal Vs. ACIT in ITA No.8094/Del/2019 dated 06.08.2021. Ld. Counsel submits that the coordinate bench considered various decisions including the decision of the jurisdictional High Court in the case of Pr. CIT Vs. RMG Polyvenyl (I) Ltd. (396 ITR 5) and Synfonia Trade Links Pvt. Ltd. in WP(c) 12544/2018.

4. Ld. Counsel further submits that the reopening of assessment is also bad in law for the reason that reopening is based on incorrect facts. Ld. Counsel submits that it is settled law that if wrong facts and wrong reasons are recorded for reopening of assessment such reopening is bad in law. Ld. Counsel submits that the AO computation of escaped income is apparently based on incorrect

facts and, therefore, such factual errors show the non-application of mind. Reliance was placed on the decision of Pr. CIT Vs. M/s SNG Developers Ltd. (404 ITR 312) (Del.). Ld. Counsel submits that the SLP filed by the Revenue has also been dismissed by the Apex Court. Ld. Counsel also placed reliance on the decision of the Delhi High Court in the case of CIT Vs. Suren International Pvt. Ltd. (357 ITR 24), where proceedings were quashed as the AO wrongly quantified the escaped income. Further he also placed reliance on the decision of the coordinate bench of the Tribunal in the case of M/s Hitech Constructions Pvt. Ltd. Vs. ITO in ITA No.1605 & 1606/Del/2019.

5. Ld. Counsel further submits that in the reasons recorded the AO has neither mentioning the particular of bank account/branch nor date of cash deposits whether such deposits fall during the year under consideration. Ld. Counsel submits that it is, therefore, the case of initiation of action without verification of facts such as bank statement where cash deposits are allegedly made. Ld. Counsel submits that had AO independently verified the information from the bank statement the quantification of income could not have been wrongly recorded in the reasons. Ld. Counsel submits that coordinate bench of the Tribunal in the case of M/s RN Khemka Pvt.

Ltd. in ITA No.7244/Del/2019 dated 12.08.2021 quash the reassessment proceedings on identical facts.

6. Ld. Counsel further submits that it is evident from the reason recorded that in the name of material, the AO has merely had ITS information showing cash deposits in the bank and that the appellant has not filed any return of income for the assessment year in question. Based on that information, the AO formed a belief that income has escaped assessment. There is no nexus between the prima facie inference arrived in the reasons recorded and information; the information was restricted to cash deposits in bank account but there was no material much less tangible, credible, cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee; that the proceedings initiated are based on surmises, conjectures and suspicion and therefore, the same are without jurisdiction; that the reasons recorded are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income and there are merely presumption in nature; that it is a case of mechanical action on the part of the AO as there is non-application of mind much less independent application of mind so as to show that he formed an opinion based on any material that such deposits

represented income. Similar reasons based on the identical material and the consequent assessment orders passed have been dealt by the various judicial fora and the reassessment proceedings initiated in such circumstances were quashed on account of non-application of mind and absence of any tangible material. The Hon'ble Delhi Bench of ITAT in the case of Harmeet Singh vs ITO in ITA No.1939/Del/2016 Dated 10.02.2017 on similar facts has quashed the reassessment proceedings.

7. Ld. Counsel further submits that from the variation in the quantification of income in reason recorded based on the information available in ITS and which were found to be incorrect by the Ld AO at the time of passing of assessment order, it is evident that the AO has relied upon the unverified information which was found in the assessment as incorrect information. The jurisdictional Dell High Court in the case of Sh Rajiv Agarwal vs ACIT 395 ITR 0255 (Del) held that "even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped

assessment. There is non-application of mind by the AO could not be said to have reason to believe as to justify reopening of assessment.” The co-ordinate Bench of Hon’ble ITAT in decision of M/s R N Khemka P Ltd in ITA No.7244/Del/2019 dt: 12.08.2021 in para 32 at page 51 therein on identical facts has quashed the reassessment proceedings on ground of Non-verification of unverified information received from investigation relying on decision of Sh Rajiv Aggarwai vs ACIT (supra).

8. Ld. Counsel submits that there is mechanical approval by Pr.CIT. It is submitted that inconsistencies and omissions pointed in preceding para in support of ground on non-application of mind are the glaring mistakes committed by all the authorities involved in the process such as the AO recording reason, Addl. CIT recommending reopening and Pr CIT non-pointing out such omissions and resulting non-correction of the same, before the approval was accorded, shows that the said authority have acted mechanically in granting sanction u/s 151 of the Act. Such mechanical approval was found to be fatal for validity of the reassessment proceedings as decided by the co-ordinate Hon'ble Delhi Bench in the RMP Holdings P Ltd ITA No.7243/Del/2019 dt: 31.07.2020 wherein it was held that both AO and approving authorities have acted mechanically ignoring the

glaring mistakes in the reason recorded showing non application of mind by the reason recording authority where the decision of Delhi High Court in the case of Sonia Gandhi 407 ITR 594 (Del) has been distinguished. Reliance is also placed on the decision of M/s Synfonia Trade/inks P Ltd vs ITO W.P.(C) No.12544/2018 dt: 26.03.2021 (Del) has quashed the reassessment proceeding based on mechanical approval granted by approving authority. Further, reliance is placed on the following authorities:

- a. *Chhugamal Rajpal vs. S.P. Chaliha & Ors. - 79 ITR 603 (SC);*
- b. *Arjun Singh vs Asstt. Director of Income Tax (M.P.) reported in (2000) 246 ITR 363 (MP);*
- c. *Pr. CIT vs. N. C. Cables Ltd 391 ITR 11 (Del)*
- d. *German Remedies Ltd. vs. Dy. CIT (2006) 287 ITR 494 (Bom);*
- e. *United Electrical Company P. Ltd. vs. CIT & Ors. (2002) 258 ITR 317 (Del);*
- f. *Central India electric Supply Co. Ltd. Vs. ITO, 333 ITR 237 (Del);”*

9. Ld. DR, on the other hand, strongly supports the orders of the authorities below.

10. Heard rival submissions, perused the orders of the authorities below. Perusal of the reasons show that the assessment was

reopened for the reason that the assessee made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd. the reasons recorded for the reopening of assessment which is placed at page 12 of the Paper Book read as under: -

Annexure-A

Ms. NISHA GOEL. CU 59 VISHAKHA ENCLAVE PITAMPURA DELHI 110088. PAN: AIFPG0671A

Reasons for reopening the case U/s 147 of the Income Tax Act, 1961 for A.Y. 2012-13

1. The assessee is an Individual who has made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd. during the year under consideration. The assessee has not filed return of income for A.Y. 2012-13.
2. In this case, the information regarding assessee's non-filing of return of income for A.Y. 2012-13 was shown under the category of NMS. As per the information obtained from Individual Transaction Statement generated from ITD System, the assessee has entered in to following financial transactions during F.Y. 2011-12.
 - Made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd.
3. On perusal of the information collected from ITS, it is observed that the assessee has made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd during the year under consideration.
4. After obtaining information under the assessee's non-filing of return for A.Y. 2012-13 under the category of NMS, enquiries were conducted into PAN/ITS database & ITBA 360 degree profile from the system, where from the information about these transactions made by the assessee, were confirmed. System generated notice was sent to the assessee on the subject of non-filing of its return of income for Financial Year 2011-12, but the assessee had neither filed return nor submitted its reasons for non-filing.
5. In view of investments made by the assessee in made cash deposits of Rs.1,25,46,000/- in HDFC Bank Ltd, it is inferred that, during the year the assessee was having total income exceeding the maximum amount which was not chargeable to income tax for the relevant assessment year. So filing of return for the A.Y. 2012-13 (relevant F.Y. 2011-12) was mandatory in its case as per the relevant provisions of Income Tax Act, 1961.
6. I have independently examined the information available and after application of mind on the information available on the record and analysis of the transactions made by the assessee during the year under consideration and verifications made, I have reached on the conclusion that the assessee has not filed return of income despite having taxable income with the sole motive of evading taxes. Thus, this is a fit case for proceeding under Explanation 2(a) of section 147 of IT Act, 1961.
7. It is pertinent to mention that in the case of **CIT v Nova Promoters & Finlease (P) Ltd** (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

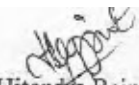
"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment"

Here it would be worthwhile to mention that in the case of **Rajesh Jhaveri Stock Brokers Pvt. Ltd. v. ACIT (2007) 291 ITR 500/161 Taxman 316 (Supreme Court)**. The Hon'ble Apex Court has held that:-

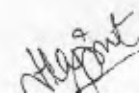
"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."

7.1 To conclude, I have independently examined the entire gamut of facts and circumstances surrounding the case as also the material available on record and after due application of mind on the same as brought out above, I, therefore, have reasons to believe that an income of Rs.1,25,46,000/-, in the case of the assessee that was chargeable to tax, under the provisions of Income Tax Act, 1961, has escaped assessment during the A.Y. 2012-13 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. Hence, it is a fit case for initiation of proceedings in terms of Explanation 2(a) to 147 of I.T. Act, 1961, so as to bring to tax the income escaping assessment to the tune of Rs.1,25,46,000/- and any other income which comes to my notice subsequently during the course of assessment proceedings.

8. Accordingly, necessary approval u/s 151(1) of the I.T. Act, 1961 is solicited to issue notice u/s 148 of the I.T. Act to re-open the assessment u/s 147 of the I.T. Act, 1961, so as to bring tax the income escaping assessment.


(Hitendra Rajput)
Income Tax Officer,
Ward-52(3), New Delhi.

Submitted before the Pr. CIT-18, New Delhi for perusal, kind consideration and necessary sanction for issuance of notice u/s 148 as required u/s 151(1) of the Income Tax Act, 1961.


(Hitendra Rajput)
Income Tax Officer,
Ward-52(3), New Delhi.

11. On careful perusal of the reasons, it is noticed that the AO nowhere stated which branch of the HDFC Bank and the account number of bank account in which the cash deposits of

Rs.1,25,46,000/- is made. It is very much clear that while recording the reasons for reopening the AO is not in position of even the bank statement where he has alleged that the assessee made cash deposits to the tune of Rs.1,25,46,000/-. Perusal of the assessment order also reveals that ultimately on verification of bank statement the AO could only find that the cash deposits were only to the tune of Rs.64,67,000/-. This clearly shows that the AO has not applied his mind for recording reasons that the income had escaped assessment to the tune of Rs.1,25,46,000/-. There is complete non-application of mind by the AO. It appears that AO has not cross verified the information which he possessed with that of the bank statement before recording the reasons as there are factual inconsistencies in the reasons recorded. The proceedings initiated u/s 148 and the reasons suggests that reopening was attempted on mere suspicion that the income to the tune of Rs.1,25,46,000/- had escaped assessment.

12. In the case of Rajiv Aggarwal Vs. ACIT (395 ITR 255) held as under: -

“Secondly, the Assessing Officer’s belief that income of an assessee has escaped assessment must be based on tangible material. It has been explained in a number of decisions that there must be a “close nexus” or “live link” between tangible material and the reason to

believe that income has escaped assessment. It follows that the material on the basis of which reassessment proceedings can be initiated must be credible material which could lead to such belief. Clearly, an unsubstantiated complaint cannot be the sole basis for forming a belief that income of an assessee has escaped assessment. Even in cases where the Assessing Officer comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an assessee has escaped assessment, form a believe that income of the assessee has escaped assessment. Plainly, in this case, the assessee had not acquired any material to form such belief. On the contrary, when it is pointed out to the Assessing Officer that SHPL had not assigned any policy to Rajiv Agarwal, the said fact was completely overlooked. Similarly, in the case of Vijay Laxmi Agarwal, the Assessing Officer failed to take into account the fact that the assessee had paid a sum of Rs.2,08,000/-, which was more than surrender value of the policy, for assignment of the policy in her favour. This too was completely ignored by the Assessing Officer.”

13. Following the said decision and also the decision of the jurisdictional High Court in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (395 ITR 677) the coordinate bench of the Tribunal in the case of RN Khemka Enterprise Pvt. Ltd. Vs. ITO (ITA No.7244/Del/2019) dated 12.08.2021 held that if there is non-application of mind in recording reasons, the AO could not be said to have reason to believe to justify reopening of assessment. While holding so the Tribunal observed as under: -

"30. We find that Hon'ble Delhi High Court in the case of Pr. CIT vs Meenakshi Overseas Pvt. Ltd. reported in 395 ITR 677 (Del.) has quashed the reassessment proceedings on the ground that the reasons recorded by the AO failed to demonstrate link between tangible material and formation reason to believe that income had escaped assessment. 1 relevant observation of the Hon'ble Delhi High Court from paras 19 to 38 read as under:-

"19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the above said instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bona-fide one. Therefore, 1 have reason to be believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

22. *As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow there from.*

23. *Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.*

24. *The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.*

25. *At this stage it requires to be noted that since the original assessment was processed under Section*

143 (1) of the Act, and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under Section 147of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

27. Each case obviously turns on its own facts and no two cases are identical However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the AO for a valid assumption of jurisdiction under Section 147of the Act to reopen a past assessment.

28.1 In Signature Hotels Pvt. Ltd. v. Income Tax Officer (supra), the reasons for reopening as recorded by the AO in a proforma and placed before the CIT for approval read thus:

"11. Reasons for the belief that income has escaped assessment.- Information is received from the DIT (Inv.-I), New Delhi that the assessee has introduced money amounting to Rs. 5 lakh during

the F. Y. 2002- 03; relating to A.Y. 2003-04. Details are contained in Annexure. As per information amount received is nothing but accommodation entry and assessee is a beneficiary."

28.2 The Annexure to the said proforma gave the Name of the Beneficiary, the value of entry taken, the number of the instrument by which entry was taken, the date on which the entry was taken, Name of the account holder of the bank from which the cheque was issued, the account number and so on.

28.3 Analysing the above reasons together with the annexure, the Court observed:

"14. The first sentence of the reasons states that information had been received from Director of Income- Tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure, reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.

15. The aforesaid reasons do not satisfy the requirements of Section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of

the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

28.4 *The Court in Signature Hotels Pvt. Ltd. v. Income Tax Officer (supra) quashed the proceedings under Section 148 of the Act. The facts in the present case are more or less similar. The present case is therefore covered against the Revenue by the aforementioned decision.*

29.1 *The above decision can be contrasted with the decision in AGR Investment v. Additional Commissioner of Income Tax (supra), where the 'reasons to believe' read as under:*

"Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/accommodation entries provided by certain individuals/companies. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. In the said information, it has been inter-alia reported as under:

"Entries are broadly taken for two purposes:

- 1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*
- 2. To inflate expense in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.*

It has been revealed that the following entries have been received by the assessee:...."

29.2 The details of six entries were then set out in the above 'reasons'. These included name of the beneficiary, the beneficiary's bank, value of the entry taken, instrument number, date, name of the account in which entry was taken and the account from where the entry was given the details of those banks. The reasons then recorded:

"The transactions involving Rs.27,00,000/-, mentioned in the manner above, constitutes fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income/income from other sources of the assessee company, which has not been offered to tax by the assessee till its return filed.

On the basis of this new information, I have reason to believe that the income of Rs.27,00,000/- has escaped assessment as defined by section 147 of the Income Tax Act. Therefore, this is a fit case for the issuance of the notice under section 148."

29.3 The Court was not inclined to interfere in the above circumstances in exercise of its writ jurisdiction to quash the proceedings. A careful perusal of the above reasons reveals that the AO does not merely reproduce the information but takes the effort of revealing what is contained in the investigation report specific to the Assessee. Importantly he notes that the information obtained was fresh' and had not been offered by the Assessee till its return pursuant to the notice issued to it was filed. This is a crucial factor that went into the formation of the belief In the present case, however, the AO has made no effort to set out the portion of the investigation report which contains the information specific to the Assessee. He does not also examine the return already filed to ascertain if the entry has been disclosed therein.

30.1 In *Commissioner of Income Tax, New Delhi v. Highgain Finvest (P) Limited* (2007) 164 Taxman 142 (Del) relied upon by Mr. Chaudhary, the reasons to believe read as under:

"It has been informed by the Additional Director of Income Tax (Investigation), Unit VII, New Delhi vide letter No. 138 dated 8th April 2003 that this company was involved in the giving and taking bogus entries/ transactions during the financial year 1996-1997, as per the deposition made before them by Shri Sanjay Rastogi, CA during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transaction of this nature are as under:

Date	Particulars of cheque	Debit Amt.	Credit Amt
18,11.96	305002	5,00,000	

Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the PNB, New Rohtak Road, New Delhi.

Note: It is noted that there might be more such entries apart from the above.

The return of income for the assessment year 1997-98 was filed by the Assessee on 4th March 1998 which was accepted under Section 143 (1) at the declared income of Rs. 4,200. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs. 5,00,000 (as mentioned above) has escaped the assessment within the meaning of the proviso to Section 147 and clause (b) to the Explanation 2 of this section.

Submitted to the Additional CIT, Range -12, New Delhi for approval to issue notice under Section 148 for the assessment year 1997-98, if approved."

30.2 The AO was not merely reproducing the information received from the investigation but took the effort of referring to the deposition made during the survey by the Chartered Accountant that the Assessee company was involved in the giving and taking of bogus entries. The AO thus indicated what the tangible material was which enabled him to form the reasons to believe that income has escaped assessment. It was in those circumstances that in the case, the Court came to the conclusion that there was prima facie material for the AO to come to the conclusion that the Assessee had not made a full and true disclosure of all the material facts relevant for the assessment.

31. In *Commissioner of Income Tax v. G&G Pharma (supra)* there was a similar instance of reopening of assessment by the AO based on the information received from the DTT (I). There again the details of the entry provided were set out in the 'reason to believe'. However, the Court found that the AO had not made any effort to discuss the material on the basis of which he formed prima facie view that income had escaped assessment. The Court held that the basic requirement of Section 147 of the Act that the AO should apply his mind in order to form reasons to believe that income had escaped assessment had not been fulfilled. Likewise in *CIT-4 v. Independent Media P. Limited (supra)* the Court in similar circumstances invalidated the initiation of the proceedings to reopen the assessment under Section 147 of the Act.

32. In *Oriental Insurance Company Limited v. Commissioner of Income Tax 378 ITR 421 (Del)* it was held that "therefore, even if it is assumed that, in fact, the Assessee's income has escaped assessment, the AO would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional precondition being met to reopen the assessment, the question of assessing or reassessing income under Section 147 of the Act would not arise."

33. In *Rustagi Engineering Udyog (P) Limited (supra)*, it was held that "...the impugned notices must also be set aside as the AO had no reason to believe that the income of the Assessee for the relevant assessment years had escaped assessment. Concededly, the AO had no tangible material in regard to any of the transactions pertaining to the relevant assessment years.

"Although the AO may have entertained a suspicion that the Assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under Section 147 of the Act A reason to believe - not reason to suspect - is the precondition for exercise of jurisdiction under Section 147 of the Act. "

34. Recently in *Agya Ram v. CIT (supra)*, it was emphasized that the reasons to believe "should have a link with ar. objective fact in the form of information or materials on record... " It was further emphasized that "mere allegation in reasons cannot be treated equivalent to material in eyes of law. Mere receipt of information from any source would not by itself tantamount to reason to believe that income - chargeable to tax has escaped assessments."

35. In the decision of this Court dated 16th March 2016 in W.P. (C) No. 9659 of 2015 (*Rajiv Agarwal v. CIT*) it was emphasized that "even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment."

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped

assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.

The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs."

31. We find, following the above decision, the Coordinate Benches of the Tribunal are taking the consistent view that when there is non-application of mind by the AO to the report of the Investigation Wing, such reassessment proceedings are not in accordance with law and such reopening proceedings have been quashed. Since, in the instant case, the AO has not applied his mind as there is non-identification of the deponents, non-mentioning of middleman if any, absence of details in the form of instrument number through which the cheques/RTGS was accepted by the assessee company, name of the bank from which the accommodation entries were provided, the name of the bank in which the accommodation entries were credited and the date of transaction etc. therefore, we are of the considered opinion that there is complete non-application Of mind by the AO to the information received from the Investigation Wing. Therefore, in view of the decision of the Hon'ble Delhi High court in the case of Pr. CIT vs Meenkashi Overseas Pvt. Ltd. (supra), the reassessment proceedings are not in accordance with law.

32. *We further find the Hon'ble Delhi High Court in the case of Sh Rajiv Agarwal vs ACIT, reported in 395 ITR 0255 (Del) has held that even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment. There is non-application of mind by the AO could not be said to have reason to believe as to justify reopening of assessment."*

14. In the case of PCIT Vs. RMG Polyvenyl (396 ITR 5) the Hon'ble jurisdictional High Court observed as under: -

"12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

13. *As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity*

by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs.78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crore. On what basis such an addition was made has not been explained.”

15. The ratio of the above decisions clearly applies to the facts of Assessee case. There is complete non application of mind by the AO while recording the reasons for reopening of assessment. Therefore, in view of the above discussion, we quash the reassessment made u/s 143(3) read with section 147 of the Act. Ground nos. 1 to 3 are allowed.

16. As we have quashed the reassessment order on the legal issue, we are not inclined to go into the merits of the addition of disallowance made in the reassessment order as it would be of only academic in nature at this stage.

17. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 04/06/2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 04.06.2024

**Kavita Arora, Sr. P.S.*

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

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi