

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. Nos.757 to 759/KOL/2022

Assessment Years: 2011-12 to 2013-14

Purple Suppliers Pvt. Ltd. Appellant
(PAN: AAFCP2218P)

Vs.

Asstt. Commissioner of Income Tax, Respondent
Circle-5(1), Kolkata.

Appearances by:

Shri Anil Kochar, Advocate appeared for Appellant.

Shri Subhendu Datta, CIT, DR appeared for Respondent.

Date of concluding the hearing : 28.05.2024

Date of pronouncing the order : 26.08.2024

ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed at the instance of the assessee pertaining to the Assessment Years (in short “AY”) 2011-12 to 2013-14 are directed against the separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Ld. Commissioner of Income-tax, Appeal, National Faceless Appeal Centre (NFAC), Delhi [in short ld. “CIT(A)”] dated 03.11.2022 arising out of the separate assessment orders u/s 143(3)/147 of the Act by ACIT, Circle-5(1), Kolkata dated 31.12.2018. Since grounds of appeal raised in these appeals are common and facts are identical, except variance in amount, with the consent of both the parties, we proceed to dispose of all these appeals by this consolidated order for the sake of brevity and convenience.

2. The Grounds of appeal raised by the assessee for the impugned Assessment Years are as under:-

Assessment Year 2011-12

1. *For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
2. *For that the Ld. CIT (A) erred in holding that the A.O. had correctly and legally assumed jurisdiction u/s 147 of the Act and that the reopening of the assessment u/s 148 of the Act is valid and lawful.*
3. *For that issue of notice u/s 148 of the Act by the A.O. proceeded on non-appreciation of the factual aspect of the case of the appellant and the Ld. CIT (A) erred in holding that A.O. was correct in initiating proceedings u/s 148 of the Act.*
4. *For that the Ld. CIT (A) ought to have accepted the documentary evidences adduced by the appellant in support of the purchases made by it from Sancheti Diamonds Pvt. Ltd.*
5. *For that the Ld. CIT (A) erred in appreciating the fact that the payments made to Sancheti Diamonds Pvt. Ltd. were through banking channel and that invocation of Sec.69C has been wrongly made without any basis.*
6. *For that the Ld. CIT (A) erred in passing its order without taking into consideration that the appellant is in the wholesale business of diamonds and that all its transactions of purchases have direct connection with the sales.*
7. *For that the appellant was maintaining proper books of accounts duly supported by documentary evidences & in view of the fact that the same have not been rejected by the A.O., the treatment given by the A.O. to purchases made from Sancheti Diamonds Pvt. Ltd are on wrong basis.*
8. *For that the Ld. CIT (A) erred in confirming addition of Rs.2,69,76,121/-being the payment made by the appellant to Sancheti Diamonds Pvt. Ltd. treating the same as bogus.*
9. *For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

Assessment Year 2012-13

1. *For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
2. *For that the Ld. CIT (A) erred in holding that the A.O. had correctly and legally assumed jurisdiction u/s 147 of the Act and that the reopening of the assessment u/s 148 of the Act is valid and lawful.*
3. *For that issue of notice u/s 148 of the Act by the A.O. proceeded on non-appreciation of the factual aspect of the case of the appellant and the Ld. CIT (A) erred in holding that A.O. was correct in initiating proceedings u/s 148 of the Act.*
4. *For that the Ld. CIT (A) ought to have accepted the documentary evidences adduced by the appellant in support of the purchases made by it from Sancheti Diamonds Pvt. Ltd.*

5. *For that the Ld. CIT (A) erred in appreciating the fact that the payments made to Sancheti Diamonds Pvt. Ltd. were through banking channel and that invocation of Sec.69C has been wrongly made without any basis.*
6. *For that the Ld. CIT (A) erred in passing its order without taking into consideration that the appellant is in the wholesale business of diamonds and that all its transactions of purchases have direct connection with the sales.*
7. *For that the appellant was maintaining proper books of accounts duly supported by documentary evidences & in view of the fact that the same have not been rejected by the A.O., the treatment given by the A.O. to purchases made from Sancheti Diamonds Pvt. Ltd are on wrong basis.*
8. *For that the Ld. CIT (A) erred in confirming addition of Rs.1,41,55,45,281/- being the payment made by the appellant to Sancheti Diamonds Pvt. Ltd. treating the same as bogus.*
9. *For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

Assessment Year 2013-14

1. *For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
2. *For that the Ld. CIT (A) erred in holding that the A.O. had correctly and legally assumed jurisdiction u/s 147 of the Act and that the reopening of the assessment u/s 148 of the Act is valid and lawful.*
3. *For that issue of notice u/s 148 of the Act by the A.O. proceeded on non-appreciation of the factual aspect of the case of the appellant and the Ld. CIT (A) erred in holding that A.O. was correct in initiating proceedings u/s 148 of the Act.*
4. *For that the Ld. CIT (A) ought to have accepted the documentary evidences adduced by the appellant in support of the purchases made by it from Sancheti Diamonds Pvt. Ltd.*
5. *For that the Ld. CIT (A) erred in appreciating the fact that the payments made to Sancheti Diamonds Pvt. Ltd. were through banking channel and that invocation of Sec.69C has been wrongly made without any basis.*
6. *For that the Ld. CIT (A) erred in passing its order without taking into consideration that the appellant is in the wholesale business of diamonds and that all its transactions of purchases have direct connection with the sales.*
7. *For that the appellant was maintaining proper books of accounts duly supported by documentary evidences & in view of the fact that the same have not been rejected by the A.O., the treatment given by the A.O. to purchases made from Sancheti Diamonds Pvt. Ltd are on wrong basis.*
8. *For that the Ld. CIT (A) erred in confirming addition of Rs.19,28,62,081/-being the payment made by the appellant to Sancheti Diamonds Pvt. Ltd. treating the same as bogus.*
9. *For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

3. Facts in brief are that the assessee is a private limited company engaged in the wholesale business of jewellery and diamond. Return of income for AYs 2011-12, 2012-13 and 2013-14 were filed on 29.09.2011, 30.09.2012 and 28.09.2013 respectively. The return for Ay 2011-12 was processed u/s. 143(1) of the Act but the returns for Ay 2012-13 and 2013-14 were selected for scrutiny and the assessments were framed u/s. 143(3) of the Act on 31.03.2015 and 15.03.2015 respectively. Subsequently, information received from the Investigation Wing, Mumbai about the suspicious business activities of Sancheti Diamonds Pvt. Ltd. (in short "SDPL") which was having huge turnover but declared meagre profit and also neither proper business set up was located nor any details of transportation were obtained. Mr. Vijay R. Rathod, key person of the SDPL recorded his statement on 14.01.2017 and 17.01.2017 in which he has allegedly accepted to be engaged in providing of entries of bogus purchases. Further, it was also revealed that the assessee company has also entered into transaction of purchase of goods from SDPL during all the three impugned years. Accordingly, notice u/s. 148 of the Act dated 29.03.2018 for Ay 2011-12 and dated 30.03.2018 for AY 2012-13 and 2013-14 were issued and served upon the assessee for reopening of the assessment proceedings. The reasons recorded are common except for change of figures of purchases made by the assessee from SDPL. Copy of reasons recorded for AY 2011-12 is reproduced below:

"The information received from reliable is that Ms. Sancheti Diamonds Private Limited is a private company having account No. 034805003043 with Mumbai Opera House branch having PAN AALCS2336M. The account was opened on 25.01.2008. Date of incorporation 01.10.2007. The account has triggered for high value of non-cash transactions in the current account. As per the information obtained through bank officials the customers is a Gems and Jewellery Trader Transaction pattern shows that account get credit mainly by RTGS & transfer and get debits by clearing, RTGs and transfer. Total deposits between 29.01.2011 to 30.03.2012 amounted to Rs. 385.76 cr. out of which Rs: 380.60 cr. are debited

through transfer. Large value of non-cash transactions in the account seems to be unusual and raises a suspicion.

M/s. Sancheti Diamonds Private Limited is engaged in trading of Diamond and gold jewellery business. On perusal of financials of the Ms. Sancheti Diamonds Private Limited, it is noticed that the company M/s. Sancheti Diamonds Private Limited does not have sound financial and it has shown meagre profits against huge sales. For A. Y. 2010-11 & A.Y. 2011-12 the company has shown net profit of Rs. 50982/- and Rs. 295669/-against the total turnover of Rs. 323.67 cr. and 177.04 cr. respectively.

It appears that directors are dummy directors only who have no creditworthiness. During investigation proceedings summons were to its Director, Shri. Vijay R. Rathod and statement was also recorded in the statement he asked state where the stock and books are maintained at Sural office at H. NO. 6/1365. Office No. 32, L. B. Palace, 3rd floor, Jadakhadi Road, Sural - 395 003. However, on field enquiry and verification unit inspector has reported (fiat no business activity is carried out from the Sural Address and no stock is maintained there. Further. Shri Vijay R. Rathod was also asked to provide transportation details of material purchased but he could not provide. He was also asked many questions related diamond business but he could not satisfactorily explain. From the statement it became ample clear that he is not engaged in diamond trading business. On further verification of Mumbai office at the company at 104. Home Land CHS Ltd., 3rd Lane, Lokhandwala Compound Andheri (West), Mumbai- 400 053, no business activity was found to be carried out as reported by unit inspector. Though, Ms. Ms. Sancheti Diamonds Private Limited has replied that credits in banks are against the sales. However, no supporting evidences have been produced by the assessee company to justify the credits in its bank accounts. The transaction in the bank account does not match with income profile of the assessee. Considering the facts discussed above, it appears that the company is not engaged in any genuine business activity and exists on paper only and credits in its banks accounts are suspicious.

One perusal of the bank statements and reply received from Ms. Sancheti Diamonds Private Limited, it is noticed that following parties pertaining to your charge/jurisdiction have entered made purchases from Ms. Sancheti Diamonds Private Limited which are suspicious and need verification.

Further on perusal of financials of Ms. Purple Suppliers Pvt. Ltd. the company has poor financials and it has shown either NIL income loss or meagre income against the huge turnover. The huge turnover does not match with the financial profile and seems suspicious. Every year, huge creditors and debtors are outstanding which further raises suspicious. Both the registered address and return addresses of the company are in Kolkata but directors are based in Mumbai."

4. In the reassessment proceedings assessee submitted certain details to explain that the purchases are genuine and sales have also

been made against the said purchases. Against the final show cause notice Ld. AR of the assessee filed submission on 20.11.2018 providing complete details of purchase bills, copy of trade receivables, financial statement of the company, VAT returns. However, Ld. AO was not and he completed reassessment proceedings making the addition u/s. 69C of the Act on account of bogus purchases from SDPL for the following amount:

<u>Assessment Year</u>	<u>Amount</u>
2011-12	Rs.2,69,76,121/-
2012-13	Rs.141,55,45,281/-
2013-14	Rs.19,28,62,081/-

5. Aggrieved, assessee preferred appeal before the Ld. CIT(A) but failed to succeed on the legal issues as well as merits of the case. Ld. CIT(A) held that reopening proceedings are valid and since M/s. SDPL is a bogus entity, therefore, the purchases made by the assessee from such bogus entity are also bogus. Aggrieved, assessee is now in appeal before this Tribunal.

6. The assessee has raised common ground of appeal firstly challenging the validity of reopening of the assessment proceedings and subsequently on merit of the case stating that the transaction were carried out through proper banking channel and, proper VAT bills and VAT returns are available and that corresponding sales have been accepted.

7. Since the assessee has raised the legal question of usurpation of jurisdiction by the AO to reopen the completed assessment u/s. 143(3) of the Act in the instant case, it would be pertinent to deal with the aforesaid question at the outset as it goes to the root of the matter. The Ld. Counsel for the assessee submits at the outset that AO has

wrongly assumed jurisdiction by issuing notice u/s. 148 of the Act without authority of law. The Ld. Counsel further submits that the ingredients of section 147/148 of the Act are not fulfilled in the instant case to enable the AO to exercise jurisdiction and to proceed with the reassessment proceedings. The Ld. Counsel for the assessee submitted that reopening for AYs 2011-12 and 2012-13 has been carried out after the lapse of four years and also for AY 2012-13 and 2013-14 the transactions in dispute have already been examined by the AO in the regular assessment proceedings u/s. 143(3) of the Act. He submitted that during AY 2011-12 against the purchase of Rs.2,69,76,121/- from SDPL the assessee has made sales of approx. Rs.254.32 Cr. and Ld. AO has only disputed the genuineness of purchases but has accepted the sale transaction entered into SDPL. Same is the case for AY 2012-13 where against the purchase of Rs.131.56 Cr. which has also been held to be bogus the Ld. AR accepted the sale made to SDPL at Rs. 4.69 Cr. He also submitted that this fact clearly indicates that on one hand they have accepted the sale transaction entered between the assessee and SDPL but on the other hand, treated the purchases from SDPL as bogus which is not at all justified and not in accordance with law. He also submitted that for AY 2011-12 Ld. AO had merely suspected the transaction carried out by SDPL by only relying on the statement of Mr. Rathod which was subsequently retracted stating that the statement on 14.01.2017 & 17.01.2017 was under duress. Therefore, the reopening has been carried out mainly on suspicion and there is no reason to believe. Also for AYs 2012-13 and 2013-14, in absence of any material information not found to be filed before the Ld. AO in the assessment proceedings, the reopening proceedings are merely on borrowed satisfaction and change of opinion. Therefore, the reassessment

proceeding for AY 2011-12 and 2013-14 are illegal, bad in law and deserve to be quashed. Reliance also placed on the following decisions:

- (i) *CIT Vs. TVS Motor Co. Ltd. 319 ITR 192,*
- (ii) *Urban Homes Realty Vs. Union of India 459 ITR 95*
- (iii) *Knight Riders Sports Pvt. Ltd. Vs. ACIT 459 ITR 16*
- (iv) *Pr. CIT Vs. Salarpuria Soft Zone 458 ITR 345*
- (v) *Calcutta Discount Co. ltd. Vs. ITO 41 ITR 192 (SC)*
- (vi) *German Remedies Ltd. Vs. DCIT 287 ITR 494*
- (vii) *CIT Vs. Motor & General Finance Ltd. 184 Taxman 465*
- (viii) *Austin Engineering Co. ltd. Vs. JCIT 312 ITR 70*
- (ix) *CIT Vs. Shri Tirath Ram Ahuja (HUF) 306 ITR 173 (Del.)*
- (x) *Haryana Acrylic Manufacturing Co. Vs. CIT 308 ITR 38*
- (xi) *Avted Vs. DCIT 395 ITR 434.*

8. Further, ld. Counsel for the assessee referred to the following written submissions:

“In the order of assessment which has been framed by A.O. u/s 143(3)/147, he has made various observations which pertain to the nature of the business of the appellant. The A.O. has proceeded to hold that the business carried on by the appellant is bogus. He has noted various aspect of the matter for example Directors are staying in Bombay/Surat. Transportation expenses regarding transactions of purchase and sales could not be noted and verified. There is some notings about deposition of one Shri Vijay Singh Rathod.

Thereafter, the A.O. has taken into consideration the purchases made by the appellant from Sancheti Diamonds Pvt. Limited and has held that the same are not genuine. There have been three bills of purchases made by the appellant from Sancheti Diamonds Pvt. Limited totalling to Rs.2,69,76,121/- which the A.O. has added back to the returned Income.

Be kind enough and refer to the Ledger account copy of transactions with Sancheti Diamonds Pvt. Ltd which is duly confirmed by the said party. A reference to this document would show that the appellant has made sales to Sancheti Diamonds Pvt Limited of the total amount of Rs.256,84,57,511/-. There are three transactions of purchases made

by the appellant from Sancheti Diamonds Pvt. limited and these are as under:

Bill No.	Date	Amount
SDPL/001/10-11	12.03.2011	Rs.51,82,050/-
SDPL/002/10-11	15.03.2011	Rs.1,08,09,880/-
SDPL/001/10-11	16.03.2011	Rs.1,09,84,191/-

Sales by appellant to Sancheti Diamond Pvt. Ltd. amount to Rs.256,84,57,511/-.

Purchases made by appellant from Sancheti Diamonds Pvt. Ltd. amount to Rs.2,69,76,121/-.

There does not appear to be any valid and acceptable reason for not accepting the purchases of total of Rs 2,69,76,121/- made by the appellant from Sancheti Diamonds Pvt. Limited as against total sales made by the appellant to Sancheti Diamonds Pvt. limited amounting to Rs. 256,84,57,511/- which have not been disturbed by the A.O. and have been accepted. Thus whereas sales made by the appellant to Sancheti Diamonds Pvt. Ltd have been accepted by the A.O., purchases made by the appellant from Sancheti Diamonds Pvt Ltd have not been accepted.

As a matter of fact the A.O. has not found any fault regarding sales made by the appellant to Sancheti Diamonds Private Limited but purchases made by the appellant from Sancheti Diamonds Private Limited for an amount of Rs. 2,69,76,121/- have not been accepted which has resulted in addition of this amount as income of the appellant.

In the order of assessment the A.O. has made observations in connection with statement of one Shri Vijay Rathod taken by the DDIT, Bombay on 14.01.2017. A copy of this statement is submitted in the Paper Book. This statement recorded by the DDIT has been retracted by Shri Vijay Rathod. The appellant submits that there is no mention in the statement recorded by DDIT, Bombay about the appellant and nowhere the name of the appellant appears. In any case this is not a material to be considered in adjudicating the issue involved about the purchases made by the appellant from Sancheti Diamonds Pvt. Ltd.

In any case, where facts, if they are supported by documentary evidences cannot be thrown out unless there are other documentary evidences, which would negate the genuineness of the transaction. Transactions are duly supported by documentary evidences that is,

Bills. Sancheti Diamonds Pvt. Ltd. are assessed to Tax and had filed return of income. Assessment has been made in their case.

The items are not iron and steel or any bulky merchandise which has to be carried on via transportation by use of vans, trucks, etc. The items dealt with by the appellant are Diamonds and allied jewellery for which transporters are staff of the appellant who would carry them personally.

Further the A.O. has not brought on record any acceptable evidence for not accepting appellant purchases from Sancheti Diamonds Pvt. Ltd. which are duly supported by bills.

The appellant submits party wise total purchases and sales of the appellant made during the year.

In this view of the matter it is the submission of the appellant that the appeal may kindly be allowed.”

9. On the other hand, Ld. DR vehemently argued supporting the order of the lower authorities and stated that M/s. SDPL is an established bogus entity and that Ld. CIT(A) has rightly held the reassessment proceeding as valid and confirmed the addition made for unexplained expenditure u/s. 69C of the Act. Reference was further made to the following written submission filed on 05.06.2024:

“The information received from reliable is that M/s. Sancheti Diamonds Private Limited is a private company having account No. 034805003043 with Mumbai Opera House branch having PAN AALCS2336M. The account was opened on 25.01.2008. Date of incorporation 01.10.2007. The account has triggered for high value of non cash transactions in the current account. As per the information obtained through bank officials the customers is a Gems and Jewellery Trader Transaction pattern shows that account get credit mainly by RTGS & transfer and get debits by clearing, RTGs and transfer. Total deposits between 29.01.2011 to 30.03.2012 amounted to Rs.385.76 cr. out of which Rs.380.60 cr. are debited through transfer. Large value of non cash transactions in the account seems to be unusual and raises a suspicion.

M/s. Sancheti Diamonds Private Limited is engaged in trading of Diamond and gold jewellery business. On perusal of financials of the M/s. Sancheti Diamonds Private Limited, it is noticed that the company M/s. Sancheti Diamonds Private Limited does not have sound financial and it has shown meagre profits against huge sales. For A.Y 2010-11&

A.Y. 2011-12 the company has shown net profit of Rs.50982/- and Rs.2,95,669/- against the total turnover of Rs. 323.67 cr. and 171.04 cr. respectively.

It appears that director are dummy directors only who have no creditworthiness. During investigation proceedings summons were to its Director, Shri Vijay R. Rathod and statement was also recorded in the statement he asked state where the stock and books are maintained at Surat office at H. NO. 6/1365, Office No. 32 L. B. Palace, 3rd floor, Jadakhadi Road, Surat - 395 003. However, on field enquiry and verification unit inspector has reported that no business activity is carried out from the Surat Address and no stock is maintained there. Further, Shri Vijay R. Rathod was also asked to provide transportation details of material purchased but he could not provide. He was also asked many questions related diamond business but he could not satisfactorily explain. From the statement it became ample clear that he is not engaged in diamond trading business. On further verification of Mumbai office at the company at 104, Home Land CHS Ltd., 3rd Lane, Lokhandwala Compound Andheri (West), Mumbai- 400 053, no business activity was found to be carried out as reported by unit inspector. Though, M/s. Sancheti Diamonds Private Limited has replied that credits in banks are against the sales. However, no supporting evidences have been produced by the assessee company to justify the credits in its bank accounts. The transaction in the bank account does not match with income profile of the assessee. Considering the facts discussed above, it appears that the company is not engaged in any genuine business activity and exists on paper only and credits in its banks accounts are suspicious.

One perusal of the bank statements and reply received from M/s. Sancheti Diamond Private Limited, it is noticed that following parties pertaining to your charge/jurisdiction have entered made purchases from M/s. Sancheti Diamonds Private Limited which are suspicious and need verification and details of such transactions are as follows:

S. No.	Name of the party/purchase	PAN	F.Y.	Total amount of purchase
1.	M/s. Purple Suppliers Pvt. Ltd.	AAFCEP2218P	2010-11 2011-12 2012-13	Rs.2,69,76,121/- Rs.141,55,45,281/- Rs.19,28,62,081/-

Further on perusal of financials of M/s. Purple Suppliers Pvt. Ltd. the company has poor financials and it has shown either NIL income/loss or meagre income against the huge turnover. The huge turnover does not match with the financial profile and seems suspicious. Every year, huge creditor and debtors are outstanding which further raises suspicious. Both the registered address and return addresses of the company are in Kolkata but directors are based in Mumbai.

Hence, I have reason to believe that income has been escaped by the assessee i.e. M/s. Purple Suppliers Pvt. Ltd. (PAN: AAFCP2218P) for AY 2013-14 to the tune of Rs.19,28,62,081/-. This may be treated as a fit case for reopening for AY 2013-14 invoking the provision of section 147 of the IT Act'1961."

10. We have heard rival submissions and carefully perused the material placed before us. The assessee has raised common legal issue challenging the validity of the reopening of the assessments for AYs 2011-12, 2012-13 and 2013-14. We notice that assessee a private limited company is engaged in the business of purchase and sale of diamonds for past many years. Books of accounts are regularly audited and audited financial statements are uploaded on the website of the Income Tax Department as well as Ministry of Corporate Affairs. The assessee is also registered with the Value Added Tax Department and has been regularly filing returns and also being assessed by VAT Authorities from time to time. Regular returns of income for AYs 2011-12 to 2013-14 were filed on 29.09.2011, 30.09.2012 and 28.09.2013 respectively. Reopening for AY 2011-12 has been carried out after four years. But, the return for AY 2011-12 was processed u/s. 143(1) of the Act and no scrutiny proceedings were undertaken. So far as the AYs 2012-13 and 2013-14 are concerned, original returns were selected for scrutiny and assessment u/s. 143(3) of the Act was framed on 31.03.2015 and 15.03.2016. Copies of the assessment orders u/s. 143(3) of the Act for AY 2012-13 and AY 2013-14 are placed on record which suggest that assessee had furnished reply to each of the query raised by the AO in the questionnaire and the books of accounts were produced and the business transaction including purchase and sales have been examined by the AO to the best possible extent. The reasons recorded for reopening for all the three impugned years are similar and

though we have already reproduced the reasons in the preceding para, we deem it appropriate to reproduce it again.

“The information received from reliable is that Ms. Sancheti Diamonds Private Limited is a private company having account No. 034805003043 with Mumbai Opera House branch having PAN AALCS2336M. The account was opened on 25.01.2008. Date of incorporation 01.10.2007. The account has triggered for high value of non-cash transactions in the current account. As per the information obtained through bank officials the customers is a Gems and Jewellery Trader Transaction pattern shows that account get credit mainly by RTGS & transfer and get debits by clearing. RTGs and transfer. Total deposits between 29.01.2011 to 30.03.2012 amounted to Rs. 385.76 cr. out of which Rs: 380.60 cr. are debited through transfer. Large value of non-cash transactions in the account seems to be unusual and raises a suspicion.

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It appears that directors are dummy directors only who have no creditworthiness. During investigation proceedings summons were to its Director, Shri. Vijay R. Rathod and statement was also recorded in the statement he asked state where the stock and books are maintained at Sural office at H. NO. 6/1365. Office No. 32, L. B. Palace, 3rd floor, Jadakhadi Road, Sural - 395 003. However, on field enquiry and verification unit inspector has reported (fiat no business activity is carried out from the Sural Address and no stock is maintained there. Further. Shri Vijay R. Rathod was also asked to provide transportation details of material purchased but he could not provide. He was also asked many questions related diamond business but he could not satisfactorily explain. From the statement it became ample clear that he is not engaged in diamond trading business. On further verification of Mumbai office at the company at 104. Home Land CHS Ltd., 3rd Lane, Lokhandwala Compound Andheri (West), Mumbai- 400 053, no business activity was found to be carried out as reported by unit inspector. Though, Ms. Ms. Sancheti Diamonds Private Limited has replied that credits in banks are against the sales. However, no supporting evidences have been produced by the assessee company to justify the credits in its bank accounts. The transaction in the bank account does not match with income profile of the assessee. Considering the facts discussed above, it appears that the company is not engaged in any genuine business activity and exists on paper only and credits in its banks accounts are suspicious.

One perusal of the bank statements and reply received from Ms. Sancheti Diamonds Private Limited, it is noticed that following parties pertaining to your

charge/jurisdiction have entered made purchases from Ms. Sancheti Diamonds Private Limited which are suspicious and need verification.

Further on perusal of financials of Ms. Purple Suppliers Pvt. Ltd. the company has poor financials and it has shown either NIL income loss or meagre income against the huge turnover. The huge turnover does not match with the financial profile and seems suspicious. Every year, huge creditors and debtors are outstanding which further raises suspicious. Both the registered address and return addresses of the company are in Kolkata but directors are based in Mumbai."

11. From perusal of the above reason, we find that the reopening proceedings have been initiated based on an information received from Investigation Wing, Mumbai in the case of M/s. SDPL which is engaged in trading of diamond and gold jewellery. Based on the poor financial of M/s. SDPL where the profits declared were too meagre in comparison to huge turnover and also in the statement of director Mr. Vinod Rathod has accepted to be engaged in providing accommodation entry, Investigation Wing, Mumbai observed M/s. SDPL to be an accommodation entry provider. It was also observed by the Investigation Wing that M/s. SDPL has issued sale bills to various companies/entities. Since the assessee company had also purchased goods from M/s. SDPL during the impugned three years, the reasons were recorded by Ld. AO for reopening and carrying out the reassessment proceedings. As per provisions of sec. 147 of the Act for valid reopening Ld. AO should have reasons to believe and not merely reason to suspect. Now the common question before us is as to whether the reasons recorded are in the nature of 'reason to suspect' or 'reason to believe'. The assessee in the present case is filing regular returns and also furnishing the audited financial statements. Though the return for AY 2011-12 has been processed u/s. 143(1), however audited Financial Statement are very much available in the Income Tax Records. And for the remaining two assessment years 2012-13 and 2013-14 scrutiny proceedings have been carried out and

transactions declared in the financial statement have been scrutinized.

12. Following chart giving complete detail of ITR processing, total purchase/sale and purchase/sale of SDPL is reproduced as under:

Purple Suppliers Pvt. Ltd.

Sl. No.	Particulars	AY 2011-12	AY 2012-13	AY 2013-14
1.	ITR filed u/s 139 on	29.09.2011	30.09.2012	28.09.2013
2.	Returned Income	88,845/-	77,250/-	(-) 45,62,601/-
3.	Gross Turnover	3,78,87,40,081/-	1,77,03,38,730/-	26,39,22,541/-
4.	Assessed Income	--	74,98,040	(-) 28,70,800/-
5.	Date of Order	--	31.03.2015	15.03.2016
6.	Notice u/s 148	29.03.2018	30.03.2018	30.03.2018
7.	ITR filed u/s 148	21.04.2018	21.04.2018	21.04.2018
8.	Notice u/s 143(2)	20.09.2018	20.09.2018	20.09.2018
9.	Total Purchases	3,78,87,40,081/-	2,55,82,99,537/-	20,90,31,347/-
10.	Purchases from Sancheti Diamonds	2,69,76,121/-	1,41,55,45,281/-	19,28,62,081/-
11.	Total Sales	3,79,45,41,716/-	2,49,47,77,317/-	26,39,22,541/-
12.	Sales to Sancheti Diamonds	2,54,32,49,846/-	4,68,78,445/-	--
13.	Addition u/s 69C towards alleged undisclosed purchases	2,69,76,121/-	1,41,55,45,281/-	19,28,62,081/-
14.	Total income assessed u/s 143(3)/147	2,70,64,970/-	1,42,30,43,321/-	18,99,91,280/-

13. Before us, ld. Counsel for the assessee has also referred to the retraction statement of Mr. Vijay Rathod which is placed at pages 72 to 74 and the affidavit is dated 14.05.2017. The original statements where Mr. Vijay Rathod accepted to be indulged in providing accommodation entry were recorded on 14.01.2017 and 17.01.2017. But, in less than a month, i.e. on 14.05.2017 Mr. Vijay Rathod filed an

affidavit retracting the contents of the statement made on 14.01.2017 and 17.01.2017 stating that he was under tremendous stress and trauma and was not in a proper state of mind and was without sleep and proper food. He has further stated that the statement was dictated by the Officer in Charge of the survey and the said statement was not out of his free volition and the same was also out of tiredness, fatigue and stress.

14. Now, we find that the very basis of the reopening proceeding mentioned the reasons recorded is the statement of Mr. Vijay Rathod given on 14.01.2017 and 17.01.2017 and the impact of this statement has totally been nullified by the affidavit filed by Mr. Vinod Rathod on 14.05.2017. Now, without the support of any statement what was left with the AO was the information of the Investigation Wing about the poor financials of M/s. SDPL. Even though M/s. SDPL which is a private limited company is duly assessed with the direct and indirect taxes department and have also been scrutinized in regular course but still the only fact which could raise concern was about meagre profits against huge turnover. But from these details received by the AO of the assessee from Investigation Wing Member before reopening the assessment proceedings has to first form a belief about the escapement of income and that there is a failure on the part of the assessee to discharge all material facts in the regular return of income filed by it. And this could be figured out only if the AO makes proper application of mind, examine the transaction of the assessee with the available records and then come to a conclusion that certain material information has not been submitted by the assessee in its return and that give rise to escapement of income. However, in the instant case all these actions which the Ld. AO should have carried out, are totally missing. It is clearly discernible from the fact that Ld. AO has only

made the addition for bogus purchases. It seems that the moment information from Investigation Wing was received, Ld. AO in haste recorded the reasons and carried out the reassessment proceeding and without making any verification simply made the addition disallowing the purchases made by the assessee from M/s. SDPL treating them to be bogus purchases. In this haste, Ld. AO even forgot to note that the present assessee apart from making purchase from M/s. SDPL has also made sales to M/s. SDPL for AYs 2011-12 and 2012-13 which has been accepted by the AO. For AY 2011-12 where the alleged purchases from M/s. SDPL is Rs.2,69,76,121/- the sales to M/s. SDPL are almost 100 times at Rs.254,32,99,846/-. Similarly, for AY 2012-13 against the purchase of M/s. SDPL at Rs.141.55 Cr. sales to M/s. SDPL are approx. Rs.4.69 Cr. It is surprising to note that in case the AO had examined the transaction between assessee and M/s. SDPL, why has he raised doubt only about the purchase transactions with M/s. SDPL but fully accepted the sales to M/s. SDPL. This fact in itself makes the picture very clear that reopening has been carried out based only on borrowed satisfaction and a mere change of opinion. Though various judgments have been referred by Ld. Counsel for the assessee, we will first take note of the Co-ordinate Bench of ITAT Delhi in the case of *Captive Commerce Pvt. Ltd. vs. ACIT in ITA No. 2698/Del/2018, Assessment Year 2010-11, vide order dt. 09.08.2023, under identical circumstances has held as under:*

“7. A bare perusal of the reasons recorded suggests that the Assessing Officer has propelled himself to reopen the completed assessment on the grounds of doubts on the correctness of losses claimed in the transactions carried on the platform of the National Stock Exchange. At the first glance of the reasons recorded (supra), it can be seen that the Assessing Officer has merely made averments towards the modus operandi used by the different brokers for transfer of profit and loss of one constituent to another by modification of the client code but however, there is no

reference to any relevant material which can give rise to prima facie believe of an escapement resulted to the Revenue. There is no iota of reference to any transaction wise detail where the client code of the assessee is undergone any modifications causing transfer of profits from assessee to any other party/constituent. The name of the broker facilitating such alleged client code modification is also not mentioned in the reasons recorded. It is a classic case of assumption of jurisdiction under Section 147 by recording 'believe' based extremely vague and non-descript reasons. No reference to any material providing foundation for holding belief is available.

8. Needless to say, the allegation towards escapement of income must be backed by expression 'reasons to believe' and such believe requires to be based on some credible or relevant material. A completed assessment cannot be disturbed based on I.T.A. No.2698/Del/2018 5 fancy or whimsical grounds or on the basis of 'reason to suspect' towards alleged escapement without giving reference to any relevant material which may give rise to a bona fide believe towards escapement to a reasonable person instructed in law. It is a case where one cannot decipher the reasons based on any objective material or relevant which may give rise to believe towards escapement. There is no clarity on the nature of information received by the Assessing Officer. The Assessing Officer is expected to exercise jurisdiction under Section 147 of the Act with scrupulous care and based on material which are clear and beyond reasonable doubt. The reasons recorded in the instant case are in complete disarray. Mere reiteration of statutory language employed in Section 147 of the Act that the Assessing Officer has 'reason to believe' towards escapement of income is not, by itself, adequate. The instances of transactions resulting in loss/profit to the assessee on account of client code modification do not feature in the reasons at all. The reasons recorded appears to be a token exercise for assumption of jurisdiction and without compliance of jurisdictional parameters. The Assessing Officer in the instant case has proceeded on a hypothesis flowing from a generic information rendering the whole exercise to be arbitrary and unsustainable in law.

9. The believe towards escapement in the instant case is only pretense and a mere doubt and suspicion towards probable escapement though worded as 'reasonable to believe'. The Hon'ble Supreme Court in Lakhmani Mewal Das (1976) 103 ITR 437 (SC) has underscored that the word of the statute 'reason to believe' are not 'reason to suspect'. The vague feeling or suspicion of the Assessing Officer towards possible escapement would not permit to reopen a completed assessment in defiance of statutory requirement of substantial nature. The notice issued under Section 148(1) is thus ultra vires the provision of Section 147 of the Act. Therefore, we see considerable force in the plea of the assessee for non maintainability of re-assessment order passed in pursuance of a notice under Section 148 of the Act which is vitiated in law.

10. Hence, the re-assessment notice under Section 148 giving rise to the jurisdiction under Section 147 of the Act is quashed and consequently the re-assessment order appeal against is also similarly quashed and set aside.

11. The objection on assumption of jurisdiction under Section 147 of the Act thus succeeds. Having held that the re-assessment order is bad in law, we do not see any warrant to look into other grounds of the appeal.”

15. Further, the Coordinate Bench of ITAT, Kolkata in the case of *DCIT, Circle-6(1), Kolkata vs. M/s. Coal Sale Co. Ltd. in ITA No. 2364/Kol/2019 & CO No. 46/Kol/2019 Assessment Year 2014-15, order dated 17.12.2021* under identical circumstances has held as under:

“ 8. We have heard rival submissions and gone through the facts and circumstances of the case. Before we examine the legal issue one should bear in mind that the concept of assessment is governed by the time barring rule and an assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments should not be disturbed which is the Rule and exception to this Rule is that it can be done only when there is information or evidence/material before him regarding undisclosed income or the AO has information in his possession showing escapement of chargeable income and when Parliament allows such an action, which can be done only if the condition precedent stipulated therein is strictly satisfied.

9. Attention is sought to the provisions of section 147 of the Act which is reproduced hereunder:-

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment: year)..... "

Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of Section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

10. Hon'ble Bombay High Court in the case of Prashant S. Joshi (2010) 230 CTR 232 (Bom) has observed 'The AO must have reasons to believe that such is the case (i.e. any income chargeable to tax has escaped assessment for a particular year) before he proceeds to issue notice u/s 147'. In other words, reasons have to be recorded for reopening the assessment prior to issuance of notice u/s 148 of the Act. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor any thing can be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever [2004] 267 ITR 332 has inter alia, observes that "..... it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reason not recorded by him. He has to speak through the reasons." Their Lordship added that "The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion & the evidence.....". Therefore reasons are to be examined only on the basis of the reasons as recorded.

11. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly at the stage of recording the reasons for reopening the assessment; all that is necessary is the formation of prima facie belief that an income has escaped the assessment; and it is not necessary the fact of income having escaped is proved to the hilt. What is however, necessary is that there must be something which indicates even if not establishes the escapement of income from assessment. It is only on this basis that the AO can form the belief that an income has escapement. Merely because some further investigation have not been carried out, which if made, could have led to detection to an income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factor which indicate an income escaping the assessment and the factors which indicates a legitimate suspicion 'about income escaping the assessment.' The former category consists of the facts which, if established to be correct, will have a cause & effect relationship with the income escaping assessment. The later category consists of facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. In order to validly reopen, the requirement is that there has to be some kind of cause & effect relationship between reasons recorded and the income escaping assessment. While dealing with this matter it is useful to bear in mind the following observation of Hon'ble Supreme Court in ITO vs. Lakhmani Mewal Das [1976] 103 ITR 437 wherein the Hon'ble Supreme Court has taken note of the additional condition precedent required as per first proviso u/s 147 for reopening the assessment after four (4) years. The relevant portion has held as follows:

“The reasons for the formation of the belief must have a rational connection with or relevant bearing of the formation of the belief . Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of income of the assessee from the assessment in the particular year because of his failure to disclose fully & truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material & substitute its own opinion for that of the ITO on the point as to whether actions should be initiated for reopening assessment. At the same time we have to bear in mind that it is not that any or every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee.”

12. Sec. 116 of the Act also defines the Income Tax Authorities as different and distinct authorities. Such different and distinct authorities have to exercise their powers given to them in specified circumstances. If power conferred on a particular authority are arrogated by another authority without mandate of law, it will create chaos in the administration of law & hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires a thing to be done in a certain manner, it shall be done in that manner alone and the court would not expect its being done in some other manner. It was also held in the decision in State of Bihar vs .J.A.C. Saldanha & Ors. Reported in AIR 1980 SC 326.

Satisfaction recorded should be ‘independent’ and not borrowed or dictated satisfaction. In the decisions reported in (1995) 5 SCC 302 it was held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to his own discretion. If discretion is exercised under the direction or compliance with some higher authorities instruction, then it will be a cases of failure to exercise discretion altogether.

17. In the case of Ganga Saran and Sons P. Ltd. v. ITO, [1981] 130 ITR 1 (SC) the Hon’ble Supreme Court held:

“It is well settled as a result of several decision of this Court that two distinct condition must be satisfied before the AO can assume jurisdiction to issue notice u/s 147. First he must have reason to believe that the income of assessee has escaped assessment. – The important words under Section 147(a) are “has reason to believe” & these words are stronger than the words “is satisfied”. The belief entertained by AO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant & material. The Court of course cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the AO in

coming to the belief the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which he is required to entertain the belief before he can issue notice u/s 147(1). If there is no rational and intelligible nexus between the reasons & the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the AO could not have reason to believe that any part of the assessee had escaped assessment refer 203 ITR 456 (SC) also).

18. Here it is important to understand one more aspect that information adverse may trigger "reason to suspect", then the AO to make reasonable enquiry and collect material which would make him believe that there is in fact an escapement of income. The statutory mandate/condition precedent for an AO to exercise his power is that he should have reason to believe escapement of income. Before an AO proposed to reopen an assessment he should record his reasons as to how he has formed the belief about the escapement of income. In this respect, it is settled that "Reason to believe" postulates a foundation based on information and a belief based on reason. After a foundation based on information, is made there still must be some reason which should warrant the holding of a belief that income chargeable to tax has escaped income. In this context it must be remembered that Hon'ble Supreme Court in M/s Ganga Saran & sons (P) Ltd. vs. 130 ITR 1 (SC) has held that the expression "Reason to believe" occurring in section 147 of the Act "is stronger" than the expression "is satisfied" and such jurisdictional requirement has to be met by the AO before he usurp the jurisdiction to reopen an assessment

19. In the light of the aforesaid well settled principles governing the reopening of assessment, we need to examine as to whether the AO has rightly invoked the reopening jurisdiction. For that we have to examine whether there was reason to believe escapement of income and whether such requirement has been met by the AO in the reasons recorded in the instant cases or not. For that we have to look at the reasons recorded by the AO for reopening the assessment in case of the assessee / M/s. Coalsale Company Limited for AY 2014-15 u/s 147 of the Act. The reasons recorded by the AO to reopen are as under:

"1. The Assessee company M/s Coalsale Company Limited is engaged in trading of coal Assessment u/s 143(3) of the I T Act was completed on 02/12/2016. Income was assessed at Rs. 2,93,04,710/- thereby raising demand of Rs. 44,70,380/-.

2. Subsequently information received from DDIT (INV) UNIT-3(2) KOLPCATA that during the course of search & seizure operation carried out against Kolkata base "Bathwal Group" and one Entry Operator Shri Ajit Kumar Jindal, it was found that the said entry operator was engaged in

facilitating pre-arranged accommodation entries o: bogus billing to various beneficiaries on commission through shell companies managed and controlled by him viz. 1. Aravinda Infrastructure Pvt. Ltd. 2. BBC Projects Services Pvt. Ltd. 3. Bridge & Building Construction Co. Pvt. Ltd. 4. Silverlak Marking Pvt. Ltd which was also accepted and confirmed by the said entry operator namely Shri Ajit Kr Jindal in his statement recorded u/s 132(4) of the I.T. Act 1961 on oath.

A detailed list of beneficiaries has also been provided along with the statement under oath of Shri Ajit Kr. Jindal along with the shared information wherein the name assessee company i.e. name M/s Coalsale Company Limited is mentioned.

3. It is found from the statement of Ajit Kr. Jindal that he has facilitated pre-arranged accommodation entries of bogus billing to various beneficiaries through different paper/ bogus/ shell companies controlled by him viz. M/s Bridge & Building Pvt. Ltd. It is clear from his sworn statement that such entries are also given to the assessee company through said paper/ shell company viz. M/s Bridge & Building Pvt. Ltd. While explaining the modus it is stated by the entry operator that bogus bills are issued b; companies controlled by him against which cheques are issued by the interested parties which is rotated in few layers after which cash is withdrawn & returned back to the concerned party after deducting his commission.

4 . It is found from the facts available in the form of shared statement and information that the assessee has engaged concerned entry operator namely Shri Ajit Kumar Jindal to avail accommodation entry of bogus billing It is also found that the statement of same Entry operator was also recorded earlier on 29-10-2014 m which he had accepted the fact of being engaged in providing bogus accommodation entry in lieu of commission through some companies controlled by him and that of his being director of few such companies including M/s. Bridge & Building Pvt. Ltd.

5. It is clear from the information available on record as discussed above that the assessee M/s Coalsale Company Limited, assessed to this charge, has availed accommodation 'entry of Bogus Billing through shell companies amounting to Rs. 470.08 lakh (Rs. 267.58 + Rs. 202.50 Lakh) during F.Y. 2013-14 which is facilitated by accommodation Entry Operator Shri Ajit Kumar Jindal through his shell company namely Bridge & Building Construction Pvt. Ltd. The said entry operator Shri Ajit Kumar Jindal & Others same has also accepted on oath in his statements recorded u/s 132(4) that the company M/s Bridge & Building Construction Company Pvt. Ltd. is controlled and managed by him and is involved in providing Bogus Billing to the beneficiaries in lieu of Commission. Importantly, Ajit Kr. Jindal is a director of M/s Bridge & Building Construction P/t. Ltd from February, 2003 till date who is a legally competent person to comment about the affairs of the said company and who himself has accepted in his sworn statement that this is a paper company which is used as an instrument of facilitating pre- arranged accommodation entry by

him. It has been found that the assessee company M/s Coalsale Company Limited has availed the bogus - billing accommodation entry through Bridge & Building Construction via bank account no. 60102000065812 of IDBI Bank Brabourne Road.

6. Based on the above facts, the undersigned has reasons to believe -that transactions have been made by M/s Coalsale Company Limited in order to adjust the income/Losses in their return of income which needs to be added to in their income. Hence the undersigned considers the above case fit for issue of Notice u/s 148 of the I.T. Act for Assessment Year 2014-15.

7. In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 02/ 12/2016. Since, 4 years from the end of the relevant year has not expired in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above.”

20. From a perusal of the first para of the reasons recorded it is noted that the AO has recorded that the assessment in this case was completed u/s 143(3) of the Act which is a fact and has nothing to do with escapement of income. In the second para the AO refers to some information from DDIT (Inv.) Unit 3(2) with regard to the search and seizure operation in the case of a third party i.e. Shri Ajit Kumar Jindal. The AO further refer that the said person was engaged in facilitating pre-arranged accommodation entries of bogus billing and has further referred to some list of beneficiaries in which the assessee’s name is there. [Please Note: However, it was brought to our notice that neither the alleged statement formed part of the “reasons recorded” nor the alleged list beneficiaries was therein. And the fact that the AO has also not recorded in the reasons that he had gone through the said statement and the list of the beneficiaries and that the name of the assessee appeared in the alleged list. So according to Ld. A.R. this para only states about a hearsay that assessee is a beneficiary]

21. Para 3 it is noted to be the modus-operandi adopted by the entry provider. The AO in para 3 observes that Shri Ajit Kumar Jindal being an entry provider, gives bogus bills through his shell companies to the beneficiaries and cheques given to these shell companies are later returned back as cash to the beneficiaries after deduction of commission.

22. A perusal of para 4, it is noted that the AO states that the assessee has availed the service of entry provider Shri Ajit for providing it with bogus billing from his company, M/s. Bridge & Building Pvt. Ltd. and again repeated about the admission made by Shri Ajit Kumar Jindal that he was an entry provider.

23. The AO in para 5 refers to the transaction of assessee with M/s. Bridge & Building Pvt. Ltd. to the tune Rs. 470.08 lakhs and alleges it to be accommodation entry availed by the assessee in the form of bogus billing.

This according to AO is based on the statement of Shri Ajit Kumar Jindal recorded by the Investigation Wing on 29.10.2014 wherein he admitted to be an accommodation entry provider through his entities in lieu of commission. And the AO notes in this para the bank account number of M/s. Bridge & Building Pvt. Ltd. wherein the assessee had transferred the amount.

24. In para 6 the AO states on the aforesaid facts, he has reason to believe that assessee has made transaction in order to adjust the income/loss in its return of income (RoI), which needs to be added to their income and in para 7 he says that Explanation 2(c) is attracted and he has taken the approval of Add./Jt.CIT for sanction to issue notice u/s 148 of the Act.

25. So on the strength of the aforesaid reasons recorded the AO has assumed jurisdiction to reopen the assessment made u/s 143(3) of the Act dated 2.12.2016. So when we have to adjudicate as to whether the AO had validly assumed the reopening jurisdiction, then we have to examine the 'reasons recorded' by him as it is on a standalone basis and see whether the reasons stated therein are relevant and have a bearing on the matter in regard to which he is required to entertain the belief before he assumed the reopening jurisdiction by issuance of notice u/s 148 of the Act. And the essential test is when we examine the reasons recorded by the AO to reopen, if we find that there is no rational and intelligible nexus between the reasons and the belief, the conclusion would be inevitable that AO could not have reason to believe that any part of the assessee's income had escaped assessment. Keeping this principle also in mind when we examine the validity of jurisdiction of the AO to re-open we have to see whether there was 'reasons to believe' (escapement of income). Reason to believe postulates a foundation based on information and a belief based on reasons. After a foundation based on information, is made, there still must be some reason which should warrant holding a belief that income chargeable to tax has escaped assessment. So firstly we have to see whether in the reasons recorded by the AO there was any information on which a foundation could be based upon; and if this condition is satisfied i.e. a foundation based on information is there, then the next step, is to see whether there is reasons which should warrant holding the belief that income chargeable to tax has escaped assessment. Here, it has to be kept in mind the assessee's scrutiny assessment u/s 143(3) was completed on 02.12.2016 and the information which the AO relies on is the statement of Shri Ajit Kumar Jindal was recorded as early as on 29.10.2014 (i.e. 2 years before). A reading of the reason recorded by the AO as discussed and analysed reveals that information from the Investigation Wing only says about the statement of Shri Ajit Kumar Jindal who on 29.10.2014 has admitted before them, that he is providing accommodation entry through his entities which includes M/s. Bridge & Building Pvt. Ltd. Accordingly to Shri Ajit Kumar Jindal his entities gives bogus bills in lieu of commission and the cheques given by the beneficiaries are returned back as cash. Taking note of this statement which was recorded when the Income Tax Department

searched him along with "Bathwal Group" he has made the admission of being an entry provider. The Investigation Wing on the strength of his admission has taken out the transaction made by Shri Ajit Kumar Jindal's entities viz. M/s. Bridge & Building Pvt. Ltd. and found that assessee had transaction with M/s. Bridge & Building Pvt. Ltd., so this information was passed on to the AO, who on receipt of it has jumped to the conclusion that since assessee had transacted with M/s. Bridge & Building Pvt. Ltd. and then assessee is a beneficiary who availed for the bogus bills which was paid through bank to it and later got it back as cash as per the modus-operandi admitted by Shri Ajit. According to us, from the discussion made, we note from the reasons recorded that nowhere assessee's name has been said by specifically said by Shri Ajit Kumar Jindal adversely. And since the assessee had transacted with M/s B & B Ltd. which is through banking channel, the AO relying on Shri Ajit Kumar Jindal's general statement that he is also an entry provider, has assumed that assessee is a beneficiary of accommodation entry. According to us, when the AO 12 ITA No. 2364/Kol/2019 & C.O. 46/Kol/2019 M/s. Coal Sale Co. Ltd., AY 2014-15 receives information of such nature from investigation wing it certainly raises suspicion. Then the AO cannot and should not straight away issue notice u/s 148 of the Act and assume jurisdiction to reopen the assessment. Why because, there is subtle difference between 'reason to suspect' and 'reason to believe'. Information adverse may trigger "reason to suspect" then the AO to make reasonable enquiry and collect material, which would make him believe that there is in fact an escapement of income. However the essential condition precedent to re-open, the requirement of law is "Reason to believe" and not 'Reasons to suspect". So when AO receives, such information, then it can be the starting point of preliminary enquiry and the AO cannot straight away assume jurisdiction to reopen, so according to us, the AO erred in jumping to the conclusion that assessee's income has escaped assessment on receipt of the information that a company run by Shri Ajit Jindal had transaction with assessee. Simply because the assessee had transaction with M/s B & B Pvt. Ltd., cannot be the basis to believe escapement of income, unless there is any material there to suggest that so called assessee's transaction was bogus & the cheque given by assessee had been returned as cash to assessee. Thus in the facts discussed and based on the analysis of the reason recorded by the AO according to us, the AO could not have formed a belief that income chargeable to tax has escaped assessment. Simply because Shri Ajit stated once that he is an entry provider doesn't mean that all his actions through his controlled companies are doing only wrong things. It has to be kept in mind that the maxim "Falsus in uno falsus in omnibus" meaning false in one thing is false in everything has no application in India as held by Hon'ble Supreme Court in Gangadhar Behera vs. State of Orissa (2002) 8 SCC 381. Here in this case the information from Investigation Wing is only that Shri Ajit has admitted to be providing accommodation entry to "Bathwal Group" and to beneficiaries. However, when we examine the jurisdiction of AO, we have to look at the 'reasons recorded' on a standalone basis. So in the absence of the list of beneficiaries

attached to the reasons recorded on the statement of Shri Ajit, we do not find the name of assessee as beneficiary. Just because, the assessee had transaction with M/s B & B Pvt. Ltd., cannot be a ground to believe that assessee's income has escaped assessment. Without any other material as discussed the conclusion drawn by the AO merely on receipt of the aforesaid information does not muster the requirement of law to validly form the reason to believe escapement of income. According to our considered opinion the jurisdictional requirement 'reason to believe' escapement of income has not been met in the reason recorded in the instant case. Therefore, the assessee succeeds in its legal challenge, so we quash it.

26. In the result, the appeal of the revenue is dismissed and the cross-objection of the assessee is allowed."

16. We also observe that Hon'ble High Court of Delhi in the case of SABH Infrastructure Ltd. Vs. ACIT in W.P.(C) 1357/2016 dated 25.09.2017 has laid down the following ratio while dealing with the validity of reopening proceeding:

"19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

20. The writ petition is allowed in the above terms. There will be no order as to costs."

17. The above judgment of Hon'ble Delhi High Court was challenged by the revenue before the Hon'ble Apex Court but the said application of the revenue was dismissed by the Hon'ble Apex Court.

A. Reassessment - Income escaping assessment - assessee disclosing all material facts in return filed -no case of wilful suppression of material facts made out - Reopening assessment after four years without assigning sufficient reasons - not valid - CIT vs. TVS Motor Co. Ltd. (Mad.) 319 ITR 192.

B. Reassessment - Initial notice - order for issue of notice - notice - validity - notice based on information from Insight portal that assessee had purchased property - assessee disclosing all details including bank statement in response to notice under section 142(1) and duly examined by Assessing Officer in original assessment - notices and order for issue of notice set aside - Urban Homes Realty vs. Union of India (Born.) ITR 459 /Page 96.

C. Reassessment - Notice - All relevant information provided by assessee prior to original assessment order - Assessing Officer has no power to review his own order - Query raised by Assessing Officer answered and accepted during original assessment - Reopening of assessment on mere change of opinion - Not permissible - KNIGHT RIDERS SPORTS PVT. LTD. vs. ASST. CIT (Born.) ITR 459/ Page 16

D. Reassessment - Notice - Validity - Condition precedent for notice Reason to believe income had escaped assessment - Issues considered in original assessment cannot form basis for notice of reassessment - PRINCIPAL CIT vs. SALAPURIA SOFT ZONE (Cal.) ITR 458/Page 345.

18. Now, in the light of the above judgment and decisions and also considering the facts of the instant case, we observe that only the purchase transactions have been doubted by the Ld. AO but the sale transaction with the company viz., M/s. SDPL has been accepted and the profit arising therefrom has been taxed. We also note that even though for AY 2011-12 the return was not selected for scrutiny but still the reopening proceedings which have been carried out after a span of almost five and half years, Ld. AO failed refer to any material evidence or any material facts which the assessee failed to disclose in its regular returns of income. Proviso to section 147 of the Act provides that –

“147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recomputed the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).”

19. Now, for the purpose of carrying out the reassessment proceedings beyond four years or in cases where regular scrutiny proceedings have been carried out u/s. 143(3) of the Act one of the important aspects is that there has to be a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, for all the three impugned years assessee has fully disclosed all material facts and the transactions of

purchases and sales and they have also passed through the processing for AY 2011-12 and assessment proceedings u/s. 143(3) of the Act for AYs 2012-13 and 2013-14 and the transaction of purchases and sales have been accepted by the revenue authorities for these years. In the case of an assessee a consistent view has been taken by the revenue authorities accepting the business transaction of the assessee. Before carrying out of the reassessment proceedings Ld. AO failed to find that the assessee has not disclosed fully and truly all material facts. The reassessment proceedings have been carried on a very poor foundation i.e. borrowed satisfaction in the form of information from Investigation Wing that too in the given scenario where the statement recorded before the survey team by the key person of M/s. SDPL has been retracted. This brings us to a firm conclusion that Ld. AO has carried out the reassessment proceedings merely based on borrowed satisfaction 'reason to suspect' and merely 'change of opinion' and, therefore, such reopening of the reassessment proceeding cannot be held to be valid in the eyes of law. Therefore, the impugned reassessment proceedings for AYs 2011-12 - 2013-14 are void, illegal and bad in law and, therefore, the assessment orders in question are hereby quashed on the very same ground that there was no proper reason to believe with the AO to reopen the cases of the assessee. Accordingly, this common legal ground challenging the validity of reopening of reassessment proceedings raised for all the three impugned years are hereby allowed.

20. Since we have quashed the reopening proceedings all additions stand deleted. Though the assessee has filed relevant details to explain the genuineness of transaction for purchases and sales and having been carried out through proper banking channel and proper bills but still since the addition has been deleted on the legal ground itself, we

find it merely academic to deal with the merit of the case, therefore, the same are rendered infructuous.

21. In the result, all the three appeal for AYs 2011-12 to 2013-14 of the assessee are allowed.

Order is pronounced in the open court on 26th August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Dr. Manish Borad]
Accountant Member

Dated: 26th August, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Purple Suppliers Pvt. Ltd., Office No. 33, L. B. Palace, 3rd Floor, Jadakhadi Road, Mahidharpura, Surat, Gujarat.**
- 2. Respondent – ACIT, circle-5(1), Kolkata**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata