

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A Nos.462 & 463/Del/2024**

**निर्धारणवर्ष/Assessment Years: 2015-16 & 2016-17**

<b>CHAMPION BUILDER PVT. LTD.</b> 5, J.B.S., Halden Avenue, Silver Arcade, 2 <sup>nd</sup> Floor, Room No.52, Kolkata, West Bengal, 700105	<b>बनाम Vs.</b>	<b>ITO,</b> Ward-1(3), Gurgaon, Haryana.
PAN No.AAACC0281G		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	<b>Shri Manoj Kataruka, Adv.</b>
राजस्वकीओरसे /Revenue by	<b>Shri Om Parkash, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	<b>01.07.2024</b>
उद्घोषणाकीतारीख/Pronouncement on	<b>21.08.2024</b>

**आदेश /ORDER**

These two appeals are filed by the assessee against different orders of the Ld.CIT(A)-NFAC, Delhi dated 18/01/2024 for the assessment years 2015-16 & 2016-17. The assessee in its appeals raised the following common grounds of appeal: -

- 1) *“That on the facts and in the circumstances of the case the illegality of the notice issued u/s 148 by the AO and upheld by the CIT(A) is illegal and bad in law.*
- 2) *That on the facts and in the circumstances of the case the action of the CIT(A) in upholding the reopening of the case made by the AO u/s 148 of the Act, and the*

*assessment framed u/s 147 is illegal, arbitrary and excessive.*

- 3) *That on the facts and in the circumstances of the case the action of the CIT(A) in upholding the action of the AO in making addition of Rs.30,00,000/- u/s 68 of the Act, is without any basis is arbitrary, excessive and illegal and bad in law.*
- 4) *That on the facts and in the circumstances of the cases the action of the CIT(A) in upholding the action of the AO in making addition of Rs.30,00,000/- u/s 68 of the Act, is contrary to the material evidences on record and therefore the addition is illegal.*
- 5) *That the order passed by the A.O. and upheld by the CIT(A) is arbitrary, excessive and illegal.*
- 6) *That the above grounds of appeal will be argued in detail at the time of hearing and the appellant crave leave to submit additional grounds of appeal, if any, and/or alter, verify, modify or rectify any grounds of appeal at or before the time of hearing.”*

2. In ground nos. 1 & 2 of appeals the assessee is challenging the legality of the notice issued u/s 148 of the Act and the reopening of assessment as illegal and bad in law.

3. The Ld. Counsel for the assessee referring to page 39 of the Paper Book which are the reasons recorded u/s 148 of the Act for reopening of assessment for the AY 2015-16 submits that reasons recorded for reopening are vague and they are only based on the report from DDIT (Investigation), Kolkata on the basis of the search and seizure action in the case of Banka Group conducted on

21/05/2018, wherein Shri Mukesh Banka was said to have been providing accommodation entries. Ld. Counsel submits that the reasons recorded by the AO did not specify the name of the party from whom the assessee is said to have obtained entries. Ld. Counsel further submits that in the reasons recorded it is observed by the AO that the accommodation entries are in the nature of *bogus* unsecured loans or in other form. The AO did not even mention the date on which the entry was said to have been obtained by the assessee. The Ld. Counsel further submits that in the reasons recorded the AO stated that the assessee has taken accommodation entry during the FY 2014-15 relevant to the AY 2015-16 and all these discrepancies mentioned in the reasons needs to be scrutinized as per the provisions of Income Tax Act. Ld. Counsel further referring to the reasons submits that the AO in the reasons stated that on analyzing the information available with him assessee is a beneficiary who has taken accommodation entry and therefore the transactions required verification. Thus, the Ld. Counsel for the assessee submits that all these goes to show that the reasons are vague and on the basis of these vague reasons the AO could not have formed any reason to believe that the income

had escaped assessment and consequently the reassessment made u/s 144B r.w.s. 147 of the Act is bad in law.

4. Ld. Counsel for the assessee placed reliance on the following decisions in support of the above contentions: -

- PCIT Vs. Meenakshi Overseas Pvt. Ltd. [395 ITR 677 (Del)];
- CIT Vs. Insecticides (India) Ltd. [357 ITR 330 (Del)];
- Signature Hotel Pvt. Ltd. Vs. ITO [338 ITR 51 (Del)];
- Pr. CIT Vs. G.G. Pharma (India) Ltd. [384 ITR 147 (Del)];
- DCIT Vs. Great Wall Marketing (P) Ltd. ITA No.660/Kol/2011.

5. The Ld. Counsel for the assessee further submits that the approval accorded by the Ld. Pr. CIT is without application of mind, mechanical and the approval was granted within 24 hours and on the same day. The Ld. Counsel for the assessee referring to page 43 of the Paper Book which is the approval given by the Ld. Pr. CIT submits that the PCIT has simply accorded approval in a routine manner and without proper application of mind. The Ld. Counsel submits that the approval was granted on the same day within 24 hours in a mechanical manner, therefore, the approval granted by the Ld. PCIT is bad in law and consequently the notice issued u/s

148 of the Act and the reassessment made based on such notice is also bad in law. Reliance was placed on the following decisions: -

- CIT Vs. Yes Goenka Line & Chemical Ltd. [453 ITR 242 (SC)];
- Maruti Clean Coal & Power Ltd. Vs. ACIT [400 ITR 397 (Chattisgarh)];
- PCIT Vs. N.C. Cables Ltd. [391 ITR 11 (Del)].

6. Coming to merits of the addition Ld. Counsel submits that the AO based on the statements recorded during the search proceedings in the case of Banka Group from one Mr. Mukesh Banka and the Investigation report from DDIT (Inv.), Kolkata, was of the view that the assessee has taken unsecured loan from Tuberose Agencies P. Ltd. and required the assessee to justify unsecured loan of Rs.30 lakhs by proving identity, genuineness and creditworthiness of the transaction. Ld. Counsel for the assessee submits that the assessee has furnished all the documents required by the assessee and AO also issued notice u/s 133(6) of the Act to the creditor and the creditor had also confirmed the transaction and filed letter before the AO providing copy of account of the assessee in their books, copy of relevant bank extracts etc.. The assessee also provided confirmation of the creditor which is placed at page 70 of the Paper Book, bank statement of the creditor which is placed at pg 72 of the

Paper Book, confirmation of account which is placed at page 71 of the Paper Book shows that the assessee has repaid the amount to the creditor in the next financial year, page 81 is the balance sheet of the creditor which is having share capital, reserves and surplus to the extent of Rs.4,75,00,000/-. Referring to page 82 of the Paper Book which is the P&L Account the Ld. Counsel submits that the creditor has income from operations of Rs.24 lakhs during the FY 2014-15. Referring to page 73 of the Paper Book the Ld. Counsel submits that the creditor had also given the source of credit. Referring to page 74 of the Paper Book it is submitted that the creditor had also filed bank statement reflecting the repayment of amount by the assessee through RTGS. The creditor is an Income tax assessee filing returns of income and for the AY 2015-16 it had filed return on 30/10/2015 and the acknowledgment is at page 75 of the Paper Book. Therefore, the Ld. Counsel for the assessee submits that the assessee has filed all the information proving the identity, genuineness and creditworthiness of the creditor and therefore there is no justification in treating the unsecured loan as an unexplained credit u/s 68 of the Act based on the statement recorded from Mr. Mahesh Banka.

7. The Ld. Counsel further referring to page 93 of the PB submits that as a matter of fact Mr. Mukesh Banka had in fact retracted his statement and filed affidavit before the Assessing Officer and those copies of retraction are also placed at pages 93 to 97 of the Paper Book. Therefore, it is submitted that the addition made based on the statement of Mr. Mukesh Banka which were already retracted has to be deleted in view of all the evidences furnished by the assessee and also confirmed by the creditor in response to notice issued u/s 133(6) of the Act.

8. Ld. Counsel for the assessee also made further submissions as under: -

- *“The whole basis for addition is that Tuberose Agencies Pvt. Ltd is a shell company whereas there is no definition of a shell company in the Income Tax Act.*
- *The reliance based upon the statement of Mukesh Banka was retracted and therefore cannot be relied upon and even otherwise statement recorded itself cannot constitute incriminating material unless proved independently (CIT vs. Harjeev Aggarwal 290 ITR 263 (Del).*
- *Assessee had received loans on which interest was debited and the entire loan was refunded in the subsequent year along with interest and the assessee had fully discharged its onus before the AO and could not do anything further. CIT vs. Orissa Corporation Pvt. Ltd 159 ITR 78 (SC) - the assessee had given the names of the loan creditors and it was in the knowledge of the AO that such loan creditors were Income Tax assessee. The*

*assessee has also filed the confirmation and their accounts and could not have done anything further. The AO other than issuing summons u/s 131 did not pursue the matter further and it was held by the Hon'ble Supreme Court that the assessee had duly discharged its initial onus and only because the summons were returned back or could not be issued did not leave to the conclusion that the loans were unexplained. In the case of S.K. Bothra & Sons (HUF) vs. ITO reported in 203 Taxmann 436 (Cal), the Calcutta High Court examining the loan additions u/s 68 wherein the assessee had filed confirmations and PAN numbers it was observed that the initial onus had been discharged and it shifted to the AO to prove otherwise.*

- *In response to notice u/s 133(6) Tuberose Agencies Pvt. Ltd had filed reply with supporting documents.*
- *The AO without any adverse finding on the materials on record has made the addition. Kale Khan Mohd. Hainif reported in 50 ITR 1 (SC) and Roshan Di Hatti 107 ITR 38 (SC).*
- *The loans were interest bearing and interest debited in books on which tax was deducted at source and deposited. Even though disallowance has been made for loan received there is no disallowance of interest paid. Rohini Builders vs. DCIT 76 TTJ 521 (Ahd) wherein it was observed that it was unusual that the interest on the loans were not disallowed whereas the loan per se was disallowed. It was also noted that the TDS on the interest has been deducted in respect of the interest payment on such loan and therefore the Income Tax Department was not justified on making addition on such loans. The Tribunal further held that the loans were repaid and therefore the genuineness of the transaction has been established and the assessee had discharged its onus and there was no requirement of the assessee to prove anything else. The decision of the ITAT was upheld by the Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360 (Guj).*

- *Calcutta High Court in the case of CIT, Kolkata - III vs. M/s. Dataware Private Limited ITAT No.263 of 2011 dated 21-09-2011 (Cal), wherein it was observed that as long as the return filed by the loan creditor has not been rejected by the AO, the AO is bound to accept the same as genuine when the identity and genuineness by account payee cheque has been established.*
- *The creditworthiness of a transaction is to be determined not by the profits but by the company's capital and reserve CIT vs. Mayawati in 338 ITR 563 (Del) and the company Tuberose Agencies Pvt. Ltd was having capital including reserves of Rs.4.74 crores as on 31.3.2015 (Page 84 of PB) and revenue from operations of Rs.23,90,673/- (Page 82 of PB).*
- *CIT(A) reliance on NRA Iron & Steel decision is not relevant to the facts of the case because there the issue was of share capital and the shareholders could not be traced and some shareholders were not existing whereas in the case of the assessee all the details have been filed and nowhere such adverse finding is there.*
- *The test of human probabilities cannot be applied to a business transaction as they are based on cogent materials (Janani Infrastructure Pvt. Ltd vs. ACIT ITA No. 698 - 699/Bang/2018 dated 2.8.2019)”*

9. On the other hand, Ld. DR submits that at the stage of recording reasons no final finding is required to be given and only *prima facie* is required to be reached by the assessing authority. It is the submission of the Ld. DR that the AO can initiate reassessment proceedings u/s 147 of the Act on the basis of credible and specific information available with him. It is the submission of the Ld. DR that even if AO from perusal of an extensive report from

Investigation Wing culls out information or entries specify to the assessee is an evidentiary exercise in the form of application of mind on the part of the AO and on examination thereof on merits is again to *prima facie* belief. It is the submission of the Ld. DR that AO is not to conclusively prove the escapement of income to assume jurisdiction u/s 147 of the Act.

10. The Ld. DR in support of the above contentions relied upon various case laws as under: -

- Rakesh Gupta Vs. CIT [93 taxmann.com 271 (P&H)];
- Raymond Woollen Mills Ltd. Vs. ITO [236 ITR 4 (SC)];
- ITO Vs. Purshottam Das Bangur [224 ITR 362 (SC)];
- Paramount Communications Ltd. Vs. Pr. CIT [392 ITR 444 (Del)].

11. Coming to sanction of approval u/s 151 of the Act by the Ld. Pr. CIT, Ld. DR submits that there is no infirmity in the approval/sanction granted by the Competent Authority u/s 151(1) of the Act. It is the submission of the Ld. DR that the statute does not lay down any manner or format in which the approval is to be granted. It is also the submission of the Ld. DR that the remarks of the competent authority in the sanctioned letter that “Considering the reasons recorded by the AO, as per annexure, I am satisfied that

it is a fit case for the issue of notice u/s 148 of the Income Tax Act, 1961, approval is hereby accorded for issue of notice u/s 148 of the I.T. Act, 1961” are more than the requirement as per the statute. Reliance was placed on the decisions of Kolkata High Court in the case of Prem Chand Shaw [Jaiswal] Vs. ACIT 67 taxmann.com 339 and the decision of the Hon’ble Delhi High Court in the case of Experion Developers (P) Ltd. vs. ACIT 115 taxmann.com 338 (Del.).

12. Heard rival submissions, perused the orders of the authorities below and the material placed before me. In so far as the legal ground 1 & 2 of the grounds of appeal are concerned the assessee has challenged the reopening of assessment on the ground that the reasons are vague, non application of mind by the AO/PCIT and there is mechanical approval by the PCIT u/s 151 of the Act. The reasons for reopening of assessment as recorded by the AO for the AY 2015-16 are as under: -

*“Sir/ Madam/ M/s.*

*Subject: Reasons for opening of the assessment In case of Champion Builder Pvt. Ltd. for AY 2015-16 U/S 147 of the Act Reg:-*

1. *Brief details of the Assessee:*

*As per records available, the assessee is a company. Assessee filed return of income for A.Y. 2015-16 declaring an income of Rs. 760/-.*

2. *Brief details of information collected/ received by the AO:*

*As information received from of the DDIT(Inv.)-1, Kolkata vide his office letter no.7197 dated 16.01.2019 in the case of the assessee that a search and seizure action in the case of M/s Banka Group was conducted on 21.05.2018, it was found that the Sh. Mukseh Banka is the key/controlling person who looks after day to day financial affair and accommodation entry business of Banka Group. On verification of the bank accounts of the paper/shell companies of Banka group, various beneficiaries have indentified who obtain accommodation entry in the nature of bogus unsecured loans or in other form, from the paper/shell companies of Banka group. The assessee is one beneficiary of them. The assessee has taken accommodation entry of Rs.3000084/- during the F.Y. 2014-15 relevant to the assessment year 2015-16. Therefore, all these discrepancies and of the above-mentioned issues as per the relevant provisions of Income tax Act 1961, needs to be scrutinized.*

3. *Analysis of information collected/ received:*

*The information available with this office was analyzed in this case and on analyzing the information it has been transpired that the assessee is beneficiary of them who have taken accommodation entry. Therefore, the transactions are required verification.*

4. *Enquiries made by the AO as sequel to information collected/ received:*

*Details of the assessee were duly checked in the ITBA/AST. The assessee filed his return of income .or the A.Y. 2015-16 declaring income of Rs.760/-. Therefore, all these discrepancies and of the above-mentioned issue as per the relevant provisions of income tax act 1961, needs to be scrutinized. Total amount of Rs.3000084/- should be brought to tax.*

5. *Findings of the AO:*

*In view of Para 4, total amount of Rs.3000084/- received on accommodation entries should be tax in the case of the assessee.*

6. *Basis of forming reason to believe and details of escapement of income:*

*It is pertinent to mention here that in this case the assessee has chosen to file return income for the year under consideration but he failed to disclosed fully and truly income. No assessment has been made in the assessee's case and it is noticed by the undersigned the assessee has understated the income. In view of the above, the provisions of clause (b) of Explanation 2 of section 147 are applicable to facts of the case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*Keeping in view the statutory provisions, legal principles, and factual matrix that the assessee has filed ITR for the year under consideration, but he failed to furnish fully and truly Income, the income of the assessee of Rs.3000084/- which is chargeable to tax, has escaped assessment for the year under consideration. Therefore, I have reason to believe that the income to the extent of Rs.3000084/- chargeable to tax, has escaped assessment for the assessment year 2015-16 within the meaning of section 147 of the Income Tax Act, 1961. In order to assess the above income or any other income which comes to my notice subsequently in the course of assessment proceedings u/s 147, I proceed to initiate proceedings u/s 147 of the IT. Act, 1961 in the case for A.Y. 2015-16.*

7. *Seventh paragraph will include escapement of income chargeable to tax in relation to any assets (including financial interest in any entity located outside India):*

*Income to the extent of Rs.3000084/- chargeable to tax or any other income which comes to my notice subsequently in the course of assessment proceedings u/s 447, has escaped assessment for the A.Y. 2015-16.*

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

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

*In this case four years have been lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 is being obtained from Pr. Commissioner of Income Tax, Faridabad as per the provisions of section 151(1) of the Income Tax Act, 1961.”*

13. Perusal of the above reasons show that as per the information received from DDIT, Investigation-1, Kolkata dated 16/01/2019 there was a search and seizure action in the case of M/s Banka Group on 21/05/2018 and it was found that Shri Mukesh Banka is the key/controlling person who looks after day to day financial affairs and accommodation entry business of Banka group, on verification of the bank accounts of paper/shell companies of Banka group various beneficiaries have identified who obtained accommodation entry in the nature of *bogus* unsecured loans or in other form. The assessee is one of the beneficiaries of them and obtained

accommodation entry of Rs.30,00,084/- during the FY 2014-15 relevant to AY 2015-16. It is the observation of the AO in the reasons that all these discrepancies and above mentioned issues as per relevant provisions of I.T. Act needs to be scrutinized. The AO also records in the reasons that, information available with his office and on analyzing the information assessee is a beneficiary who has taken accommodation entry and, therefore, the transactions are required verification.

14. On perusal of the reasons recorded it is observed that it is not clear as to from whom the assessee has taken entry the name of the entry provider is not mentioned. It is also not known as to the nature of entry and the date of entry. The AO in the reasons records that Banka group of companies have provided various accommodation entries and the assessee is one of the beneficiaries and according to him these are all discrepancies and they are needed to be scrutinized as per the provisions of the Act and the AO in the reasons records stated that the transactions are required to be verified. The AO in the reasons recorded states that all these discrepancies need to be scrutinized. If AO wanted to scrutinized the discrepancies as per the provisions of the Income Tax Act and also required the transactions to be verified and if it is so it is not

understandable how the AO has arrived at a conclusion that he has reason to believe that income chargeable to tax had escaped assessment. The reasons which have been recorded to reopen the case of the assessee are based upon the Investigation Wing report and without any further enquiry made or independent opinion formed. The reasons recorded are incomplete and vague with non specific information, no information about the nature of the transaction, the date of transaction or the name of the party from where the transaction has taken place was mentioned in the reasons. The reasons recorded are very general in nature and without application of mind. Further assessment cannot be reopened to scrutinize and verify the discrepancies in the investigation report and the transactions with assessee without making any sort of enquiry by AO before recording reasons for reopening with independent application of mind to form a belief that income had escaped assessment.

15. In the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (supra) the Hon'ble Delhi High Court held that 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. It has been held that the conclusions of the AO are at

best a reproduction of the conclusion in the Investigation Report and indeed it is a borrowed satisfaction. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

16. In the case of CIT Vs. Insecticides (India) Ltd. (supra) the Hon'ble Delhi High Court, wherein the reopening was made on vague information the notice was struck down holding as under: -

*"We may point out at this juncture itself that the tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, In essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any material. As such, on the available material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid. 8. The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. Instead of adding anything to the said reasons, we think it would be appropriate if the same are reproduced: - "In the case at hand, as is seen from the reasons recorded by the AO, we find that the AO has merely stated that it has been informed by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 that the above named company was involved in giving and taking bogus entries/transactions during the relevant year, which is actually unexplained income of the assessee company. The AO has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons*

*recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions, it is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.00.2005 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The AO has vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the AO did not mention the facts mentioned in the said communication except that from the information gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries*

*or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or-deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with reference to those amounts mentioned in the assessment order. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place, in this respect, we may rely upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT v. Atul Jain [2000] 299 ITR 383, in which case the information relied upon by the AO for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the AO was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P.) Ltd. (supra) also supports the view we have taken above." 9. We do not see any reason to differ with the view expressed by the Tribunal. No substantial question of law arises for our consideration. The appeals are dismissed. There shall be no order as to costs."*

17. In the case of Signature Hotels P. Ltd. Vs. ITO (supra) the Hon'ble Delhi High Court while analyzing the reasons recorded for

reopening of the case on the basis of vague information held as under: -

*“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. 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.”*

18. In the case of Pr. CIT Vs. G.G. Pharma (India) Ltd. (supra) the Hon’ble Delhi High Court observed that where the AO did not apply his mind in that case post mortem exercise of analyzing the

materials will not rescue and inherently defective reopening. The

Hon'ble High Court held as under: -

*"In the present case, after setting out four entries, stated to have been received by the assessee on a single date i.e. 10<sup>th</sup> Feb., 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the assessee, which must have been tendered along with the return, which was filed on 14th Nov.,2004 and was processed under s. 143(3). Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". The basic requirement that the AO must apply his mind to the materials in order to have reasons -to believe that the income of the assessee escaped assessment is missing in the present case. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced*

*subsequent to the reopening will not rescue an inherently defective reopening order from invalidity.”*

19. It is further observed that following 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, I have reason to 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- OS; 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 8<sup>th</sup> 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:*

<b>Date</b>	<b>Particulars of cheque</b>	<b>Debit Amt.</b>	<b>Credit Amt</b>
<b>18,11.96</b>	<b>305002</b>	<b>5,00,000</b>	

*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.”

20. In the case of PCIT Vs. RMG Polyvenyl (396 ITR 5) the Hon'ble jurisdictional High Court the information received from investigation wing cannot be said to be tangible material *per se*

without a further enquiry undertaken by AO. The 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.”*

21. The Kolkata Tribunal in the case of DCIT Vs. Great Wall Marketing Pvt. Ltd. in ITA No.660/Kol/2011, following the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Insecticides(India) Ltd. on the issue of where the reasons recorded did not mention the name of the person from whom the alleged *bogus* entry was received as well as there was no dates of the transactions held as under: -

*“We have given a careful consideration of the submissions made by the learned counsel for the assessee. It is clear from the reasons recorded by the AO that the AO acted only on the basis of a letter received from Investigation Wing, New Delhi. The reasons recorded does not give as to who has given the bogus entries to the assessee. The reasons recorded also does not mention as to on which dates and through which mode the bogus entries were made by the assessee. The reasons recorded which are extracted in the earlier part of the order does not show, what was the information given by DIT(lnv.),New Delhi. The date of the information received by the AO was not spelt out in the reasons recorded. The involvement of the assessee is also not spelt out, except mentioning the corporate bodies who had subscribed to the share capital of the assessee were non-existent and not creditworthy. On identical facts the Hon'ble Delhi High Court in the case of CIT vs. Insecticides (India) Ltd (supra) has taken a view that the reasons recorded were vague and uncertain and cannot be construed as satisfaction on the basis of the relevant material on the basis of which a reasonable person can form a belief that income has escaped assessment. The Hon'ble Delhi High Court has also come to the conclusion that the reasons recorded did not disclose the AO's mind regarding escapement of income. The Hon'ble Delhi High Court ultimately held that initiation of proceedings u/s 148 of the Act was not valid and justified in the eyes of*

*law. The facts and circumstances in the present case are identical to the case decided by the Hon'ble Delhi High Court. Following the said decision we hold that initiation of re-assessment proceedings is not valid. On this ground, the assessment is liable to be annulled.”*

22. The ratios of the above decisions applies to the facts of the assessee's case as the reasons recorded by the AO are vague without application of mind and could not have formed a reason to believe that the income had escaped assessment. The decisions relied on by the Ld. DR are of no help to the Revenue as they are distinguishable on facts and on law. Therefore, in view of the above discussion I hold that the reasons for reopening the assessment are bad in law and consequently the reassessment made u/s 144B read with section 147 of the Act for the AY 2015-16 on the basis of such invalid reasons is also bad in law and thus, the reassessment order is hereby quashed. Ground nos. 1 & 2 of grounds of appeal of the assessee are allowed.

23. Since the reassessment for the AY 2015-16 is quashed on legal issue in ground nos. 1 & 2 of grounds of appeal, I am not inclined to go into the merits of the addition made in this assessment year as it would be of only academic in nature at this stage.

24. The grounds in appeal of the assessee for the AY 2016-17 is identical to the grounds in appeal for the AY 2015-16 and the decision taken for the AY 2015-16 applies *mutatis mutandis* to the appeal for the AY 2016-17. Thus, the reassessment order for the AY 2016-17 passed u/s 144B r.w.s. 147 is also hereby quashed.

25. Since the reassessment for the AY 2016-17 is quashed on legal issue in ground nos. 1 & 2 of grounds of appeal, I am not inclined to go into the merits of the addition made in this assessment year as it would be of only academic in nature at this stage.

26. In the result, both the appeals of the assessee are partly allowed as indicated above.

Order pronounced in the open court on 21/08/2024

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 21.08.2024

\*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