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

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.2252/Del/2024
निर्धारणवर्ष/Assessment Year: 2012-13

RAGHUBIR SINGH PUNIA 834/1 Block-K, Mahipal Pur, New Delhi. PAN No. AGDPP9564F	बनाम Vs.	**ITO,** Ward 30(8), Room No.1804, E-2 Block, Pratyaksh Kar Bhawan, Civic Centre, New Delh.
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे **/Assessee by**	**Shri I.P. Bansal, Adv.** **Shri Vivek Bansal, Adv. &** **Shri Vishal Chechi, Adv.**
राजस्वकीओरसे **/Revenue by**	**Shri Ram Krishan Meena, Sr. DR**

सुनवाईकीतारीख/ Date of hearing:	06.08.2024
उद्घोषणाकीतारीख/Pronouncement on	10.09.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 30.11.2023 for the AY 2012-13. The assessee raised the following grounds in its appeal: -

"1. That under the facts and in circumstances of the case the Ld. CIT(A) erred in law as much us in fact in upholding the initiation of reassessment proceedings in as much as he has failed to appreciate that the reasons recorded to initiate the reassessment proceedings did not meet the requirement of law and therefore, reassessment proceedings were invalid.

2. *That under the facts and in circumstances of the case the Ld. CIT (A) erred in law as much as in fact in upholding the initiation of reassessment proceedings in as much as he has failed to appreciate that without calling for the assessment record, the validity of reassessment proceedings could not be upheld as it was required to dispose of the ground of appeal of the assessee that there exists no proper sanction by the appropriate authority as required under the provisions of section 151 of the Act. Ld. CIT(A) has plenary powers to do so.*

3. *That under the facts and in circumstances of the case the Ld. CIT(A) erred in law us much as in fact in upholding the initiation of reassessment proceedings in as much as he has failed to appreciate that the initiation of reassessment proceedings was invalid as there was no proper service of notice issued u/s 148 of the Act.*

4. *That under the facts and in circumstances of the case the Ld. CIT(A) erred in law as much as in fact in upholding the initiation of reassessment proceedings in as much as he has failed to appreciate that non-disposal of objections filed by the assessee has rendered the reassessment proceedings as invalid in the eyes of law.*

5. *That under the fact and in circumstances of the case the Ld. CIT(A) erred in law as much as in fact in upholding the initiation of reassessment proceedings in as much as he has failed to follow the mandate given in the decision of Hon'ble Supreme Court in the case of GKN Drive Shaft (lndia) Ltd. Vs ITO, 269 ITR 19 (SC).*

6. *That under the facts and in circumstances of the case the Ld.CIT(A) erred in law as much as in fact in upholding the addition of Rs.29,49,000/- u/s 69A of Act, by treating the amount of cash deposited in the bank account as unexplained. Such addition is bad in law and section 69A has no applicability in the facts*

and circumstances of the case.

7. *That under the facts and in circumstances of the case the Ld.CIT(A) erred in law as much as in fact as he has failed to appreciate the submissions of the appellant made vide reply dated 12-12-2019 along with which all necessary documents and justification in support of total cash deposited of Rs.29.49 Lakh with United Bank of India were filed. The addition made by the AO was required to be deleted in view of the explanation submitted by the assessee.*

8. *That under the facts and in circumstances of the case the Ld. CIT(A) erred in law as much as in fact upholding the addition of Rs.29,49,000/- without application of his own mind as he has failed to appreciate that the assessee was not statutorily required to maintain books of account and also that the evidences were submitted to support the explanation like, bank statement showing withdrawals and deposits; data-wise cash flow statement was also submitted; the purpose of withdrawal was also submitted and also the reason for redeposit of the said amount into the said account. Therefore, it has been wrongly observed by the Ld. CIT(A) at page 31 of the impugned order that these were not submitted.*

9. *That under the facts and in circumstances of the case the Ld. CIT(A) erred in law as much as in not accepting the ground relating to the invalidity of the assessment order on account of jurisdictional aspect u/s 127 of the Act.*

10. *That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact in holding that issue regarding levy of penalty u/s 271(1)(c) of the Act is premature, therefore, need not be to adjudicated.*

11. *That under the facts and circumstances of the case, the Ld. CIT(A) has erred in law as much as in fact in*

upholding the levy of tax demand of Rs.18,06,250/- on an assessed income of Rs.39,90,720/- which include interest u/s 234A, 234B, 234C. No such tax and interest is leviable as no income other than returned income arises in the hands of the assessee.

12. *That the present appeal is being belatedly filed. The application for condonation of delay is being filed separately and is prayed to be admitted.*

13. *That each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.*

14. *The Appellant craves leave to add, after, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal."*

2. The Ld. Counsel for the assessee, at the outset, submits that the appeal has been filed with the delay of 100 days and the assessee has filed petition for condonation of delay explaining the reasons for the delay in filing the appeal. Referring to the condonation petition the Ld. Counsel submits that the assessee was not aware of the order having been passed by the Ld.CIT(A)-NFAC as the registered e-mail address at the portal of the assessee is of the company in which the assessee is a Director and the e-mail, if any, received on such e-mail from the Ld.CIT(A) never came to the knowledge of the assessee. The assessee has been diligent in pursuing the matter which is apparent from the assessment proceedings and also first appellate proceedings the assessee has

always complied with all the notices and submitted the relevant submissions and the details as and when required. Therefore, the Ld. Counsel submits that the delay in filing the appeal is neither willful nor wanton but for the circumstances explained above and, therefore, he prayed for condoning the delay in filing the appeal. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Katiji (1987) 167 ITR 471 (SC).

3. On hearing both the parties and perusing the petition for condonation of delay filed by the assessee it is observed that the assessee had reasonable cause in not filing the appeal in time and therefore the delay in filing of appeal is hereby condoned and the appeal is admitted.

4. Referring to ground no.1 of grounds of appeal the Ld. Counsel for the assessee submits that assessee challenged the order of the Ld.CIT(A)-NFAC in upholding the initiation of reassessment proceedings in as much as the CIT(A) has failed to appreciate that the reasons recorded to initiate the reassessment proceedings did not meet the requirement of law and therefore reassessment proceedings were invalid. Ld. Counsel for the assessee referring to page 24 of the Paper Book submits that the reasons recorded for reopening of assessment by the AO u/s 147 of the Act are vague.

Ld. Counsel submits that in the reasons recorded the AO stated that an information was received from the office of ITO, Ward 33(1) that the assessee has deposited cash of Rs.10 lakhs or more in savings bank account during the FY 2011-12 pertaining to AY 2012-13. Ld. Counsel for the assessee submits that the AO in the reasons recorded did not mention the exact amount of escapement and also did not mention in which bank account the assessee has deposited cash. The AO also did not mention on which date the assessee has deposited cash and the reasons recorded are completely vague about the transactions of cash deposits. Therefore, the Ld. Counsel submits that the case of the assessee was reopened on mere information available from accountable information management system regarding cash deposit of Rs.10 lakhs or more in the savings bank account maintained by the assessee without any documentary evidence and enquiry and merely on suspecision.

5. The Ld. Counsel further referring to page 31 of the Paper Book which are the objections filed against reasons recorded u/s 147 of the Act submits that these objections were uploaded on 08.12.2019 by the assessee and the AO has not disposed of these objections which is in violation of the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO [259 ITR 19] and

therefore the reassessment order passed u/s 143(3) r.w.s. 147 of the Act is invalid and *void ab initio*.

6. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

7. Heard rival submissions, perused the orders of the authorities below. In the ground no.1 of grounds of appeal the assessee has challenged the reopening of assessment and it is stated that the reasons recorded are vague, therefore, the reopening of assessment is bad in law. The reasons recorded for reopening of assessment by the AO are as under:

> *"In this case, an Information has been received from the office of the I.T.O, Ward-33(1) in this case assessee has deposited cash of Rs.10,00,000/- or more in saving bank during the F.Y.201I-12 pertaining to assessment year 2012-13.*
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> *2. On physical verification as well as from the ITD database it is gathered that the return has been filed by the assessee for A.Y. 2012-13 but no scrutiny assessment u/s 143(3) has taken place in the case of the assessee for the relevant year. In view of the above, letter dated 05.03.2019 is written to the assessee to furnish the details regarding the cash deposit during the A.Y.2012-13. However, the assessee has not submitted reply in response to the said letter. This shows that the assessee has no explanation to offer on the said transactions. The assessee was also informed that in case of non-compliance steps would be taken as per the provisions of Income Tax Act.*

3. In view of the above facts, the undersigned has information as well as sufficient reason to believe that the income for A.Y. 2012-13 has escaped assessment as the assessee had deposited Cash Rs.10,00,000/- or more during the A.Y.2012-13. Further despite given opportunity, the assessee has failed to submit any written explanation regarding the cash deposit made during the A.Y.2012-13.

4. It is also in accordance with the judicial principles laid down by the Hon'ble Supreme Court in the case ACIT v. Rajesh Jhaveri Stock Brokers P. Ltd (2007) 291 ITR 500(SC) [BCAJ]-wherein issuance of notice u/s 148 has been validated under similar circumstances-

> *"As per our considered view, at the lime of issue of notice, it is sufficient that prima- facie reasons and material should be with AO that there is escapement of some income. At the time of issue of notice the AO is not required to conclusively establish that there is escapement of income is sufficient for issue of notice u/s 148."*

It is pertinent to mention that in the case of CIT v Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

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

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

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

Also, in the case of Phoolchand Bajrang Lai vs. 1TO 203 ITR 456 (SC), the Hon'ble Apex Court has held that:

"An assessment completed u/s 143(3) but later on Information received which was indefinite, specific and reliable and the AO duly recorded the reasons for his belief that the assessee had not fully and truly disclosed particulars of his income and hence there was escapement of income. Held that the reopening of the case was valid."

Also, in the case of Raymond Woollen Mills Ltd. 236 ITR 34 (SC), the Hon'ble Apex Court has held that:

"Assessee did not include certain direct manufacturing costs and fiscal duties in the valuation of closing stock. This came to light in the subsequent years assessment proceedings. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The' sufficiency or correctness of the material is not a thing to be considered at the stage of issue of notice u/s 148."

Furthermore, in the case of Jyoti Goyal vs ITO (ITA No. 1259/De 1/2010), the Hon'ble ITAT Delhi held that

"As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity of reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement

with the finding of the Ld. CIT (A) that the reopening of assessment u/s 147 of the Act was valid."

5. Considering the factual matrix, statutory provisions and legal principles, the undersigned has the reason to believe that the assessee has not disclosed fully and truly the material facts necessary for assessment and there has been an escapement of income to the extent of Rs. 10,00,000/- or more during the A.Y.2012-13. Hence it is a fit case for initiation of proceedings in terms of section 147 of the I.T. Act, 1961.

6. Accordingly, necessary approval u/s 151 of the Act, 1961 is solicited for issuance of notice u/s 148 of the I.T. Act for the AY 2012-13."

8. Perusal of the reasons show that AO received information from the office of ITO, Ward 33(1) and according to which assessee has deposited cash of Rs.10 lakhs or more in savings bank during the FY 2011-12 pertaining to AY 2012-13. Except this information the AO do not possess any other information to come to a conclusion that the income of the assessee for the AY 2012-13 had escaped assessment. The reasons are general and very vague. It appears that the AO is not even in possession of bank account of the assessee before recording reasons for reopening of assessment. The reasons recorded did not specify the exact amount of cash deposit made by the assessee and the name of the bank, the account number of the assessee and also the date of transaction. All these

goes to show that the AO do not possess any credible information to form a belief that income had escaped assessment.

9. In the case of Nisha Goel Vs. ITO in ITA No.2767/Del/2023 dated 04.06.2024 the coordinate bench of the Tribunal almost on identical facts held that the assessment made u/s 147 of the Act is bad in law as there is complete non application of mind by the AO. The Tribunal while holding so observed as follows: -

> *"11. On careful perusal of the reasons, it is noticed that the AO nowhere stated which branch of the HDFC Bank and the account number of bank account in which the cash deposits of Rs.1,25,46,000/- is made. It is very much clear that while recording the reasons for reopening the AO is not in position of even the bank statement where he has alleged that the assessee made cash deposits to the tune of Rs.1,25,46,000/-. Perusal of the assessment order also reveals that ultimately on verification of bank statement the AO could only find that the cash deposits were only to the tune of Rs.64,67,000/-. This clearly shows that the AO has not applied his mind for recording reasons that the income had escaped assessment to the tune of Rs.1,25,46,000/-. There is complete non-application of mind by the AO. It appears that AO has not cross verified the information which he possessed with that of the bank statement before recording the reasons as there are factual inconsistencies in the reasons recorded. The proceedings initiated u/s 148 and the reasons suggests that reopening was attempted on mere suspicion that the income to the tune of Rs.1,25,46,000/- had escaped assessment.*
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> *12. In the case of Rajiv Aggarwal Vs. ACIT (395 ITR 255) held as under: -*

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

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

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

> *"19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.*
>
> *20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the above said instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".*
>
> *21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the*

bona-fide one. Therefore, 1 have reason to be believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

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

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

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the

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

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

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

belief or the reason to believe that income has escaped assessment.

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

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

> *"11. Reasons for the belief that income has escaped assessment.- Information is received from the DIT (Inv.-l), 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 hasnot 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."*

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

30.1 In Commissioner of Income Tax, New Delhi v. Highgain Finvest (P) Limited (2007)

164 Taxman 142 (Del) relied upon by Mr. Chaudhary, the reasons to believe read as under:

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

Date	Particulars of cheque	Debit Amt.	Credit Amt
18.11.96	305002	5,00,000	

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

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

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

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

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

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

32. In Oriental Insurance Company Limited v. Commissioner of Income Tax 378 ITR 421 (Del) it was held that "therefore, even if it is assumed that, in fact, the Assessee"s income has escaped assessment, the AO would have no jurisdiction to assess the same if his

reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the assessment, the question of assessing or reassessing income under Section 147 of the Act would not arise."

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

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

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

35. In the decision of this Court dated 16th March 2016 in W.P. (C) No. 9659 of 2015 (Rajiv Agarwal v. CIT) it was emphasized that "even in cases where the AO comes across certain unverified information, it is necessary for him

to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment."

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.

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

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

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

31. We find, following the above decision, the Coordinate Benches of the Tribunal are taking the consistent view that when there is non-application of mind by the AO to the report of the

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

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

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

"12. Recently, in its decision dated 26th May, 2017 in ITA No.692/2016 (Principal Commissioner of Income Tax-6 v. Meenakshi Overseas Pvt. Ltd.), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of

the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."

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

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

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

10. This decision applies to the facts of the assessee's case as the AO did not possess any credible information before recording reasons that the income had escaped assessment since the reasons are general and vague and there is complete non application of mind by the AO in recording reasons for reopening assessment. Thus, the reassessment made u/s 143(3) r.w.s. 147 of the Act is hereby quashed in view of the above discussion. Ground no. 1 of grounds of appeal of the assessee is allowed.

11. Since the reassessment order is quashed on the legal issue of vague reasons and non application of mind and not inclined to go into the other legal issues as well as the merits of the addition/disallowance made in the reassessment order as it would be of only academic in nature at this stage.

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

Order pronounced in the open court on 10/09/2024

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

Dated: 10.09.2024

**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