आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH: RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER &
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.336/RJT/2023
(**निर्धारण वर्ष** / Assessment Year : 2009-10)

Kumar Ramesh Sahu Sundaram, 72/3, New College Wadi 150Ft5. Ring Road Opp. Meera Apartment Rajkot – 360 005 (Gujarat)	**बनाम**/ Vs.	The ACIT, Cirtcle-2(3) Rajkot – 60 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AESPS 5531 C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by :	Shri M.N. Manvar, Ld. AR
Revenue by :	Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख / **Date of Hearing**	13/01/2025
घोषणा की तारीख /**Date of Pronouncement**	04/04/2025

आदेश / O R D E R

PER DINESH MOHAN SINHA, JUDICIAL MEMBER:

Captioned appeal filed by the Assessee pertaining to Assessment Year (AY) 2009-10 is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [(in short "Ld. CIT(A)"] vide order dated 30/08/2023, which in turn arises out of an assessment order dated 30/12/2016 passed by the Assessing Officer (AO) u/s. 143(3) rad with section 147 of the Income Tax Act, 1961 (in short, "the Act").

2. The grounds of appeal raised by the Assessee are as follows:

"1. CIT(A)-NFAC erred in Law and facts in confirming the addition made by AO of Long Term Capital Gain Rs. 12,79,751 and denial of exemption u/s.54 of the Act on alleged finding that bill of purchase of Gold Bar dtd. 25/12/1985 is bogus and to treat sale proceed of Gold Bar as income from undisclosed sources. Further, CITA)-NFAC observed that sale bill is for sale of gold bar, whereas as per Wealth Tax Return the items shown are gold ornaments and the Appellant did not file copy of Valuation Report at any stage in support of valuation of jewellery.

2. CIT(A)-NFAC erred in Law and Facts in confirming the addition made by AD for unsecured deposits/gifts aggregating Rs.13,54,250 as unexplained income u/s 68 of the Act on the alleged finding that assessee has failed to prove the credit worthiness and genuineness of the deposits/ Gifts and the appellant has not responded to the remand report of AO.

3. Ld. AD erred in law and facts to issue of notice u/s 148 of the income Tax Act, 1961 (the Act) as the assessing officer has no reason to believe that any income chargeable to tax has escaped assessment within the meaning of section 147 of the Act.

The appellant craves leave to add/alter/amend/substitutes any or all grounds of appeal."

3. The assessee is an individual and for A.Y. 2009-10 assessee derived income from remuneration and interest from M/s. Hotel Rajmahel on a capital gain and other sources of income. The return was filed on 18.11.2009 declaring net income of Rs. 5, 40,010/-. The case was passed under Section 143(1) of the Act upon noticed that there is an unsecured loan of Rs. 65,73,083/- to KRN Alloys Pvt. Ltd. and a cash was deposited before issuing a cheque for loan to above said company. Thereafter, the reasons are recorded and approval was obtained to PCIT-2 and Notice under Section 148 dated 30.03.2016 was issued and served upon the assessee. The assessee requested vide letter dated 17.10.2016 submitted

that my original return filed on 18.11.2009 will be treated as return in response to notice under Section 148 of the Act. The assessment of the assessee was completed subject to the above remarks and after discussion; the total income of the assessee is recomputed as under:

Total income as per the return of income		***Rs.***	*Rs. 5,40,010/-*
Add: (i) unaccounted income as discussed in para 5.10 above	*Rs.12,79,751/-*		
(ii) unexplained cash credit u/s. 68 and interest thereon as discussed in para 7.3	*Rs. 10,30,250/-*		
(iii) unexplained cash credit u/s. 68 and interest thereon as discussed in para 8.3	*Rs. 10,30,250/-*		
(iv) unexplained cash credit u/s. 68 and interest thereon as discussed in para 9.2	*Rs. 1,80,000/-*		
(v) unexplained cash credit u/s. 68 as discussed in para 10.1	*Rs. 94,000/-*		
(vi) unexplained deposit by cheque u/s. 68 as discussed in para 11.1	*Rs. 50,000/-*	***Rs.***	*Rs.36,64,251/-*
Total Income...			*Rs. 42,04,261/-*
Rounded off to...		***Rs.***	***Rs. 42,04,260/-***

The Assessing Officer assessed the income of Rs. 42, 04,260/- under Section 143(3) r.w.s. 147 of the Act. Further, the A.O. initiated penalty proceedings under Section 271(1) (c) of the Act.

4. Aggrieved, the assessee has filed an appeal before the Ld. CIT (A) only two additional grounds:

Ground of appeal No.-3: "Ld. Assessing officer erred in law and facts to issue of notice u/s 148 of the I.T. Act, the assessing officer has no reason to believe that any income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

Ground of Appeal No.-4: "Ld. CIT (A), NFAC, Delhi, in his appeal order having DIN & Order No.: ITBA/NFAC/S/250/2023-24/1055595028(1), dtd. 30/08/2023, is silent for Rs. 30,250 being interest amount on unsecured deposit of M/s. Ghewarchand Mohanlal Rs. 10, 30,250 disallowed u/s 68 by Ld. AO in assessment order. CIT (A) granted relief for Rs. 10, 00,000 instead of Rs. 10, 30,250. Similarly, CIT (A) is silent on gift Rs. 25,000 from Kamladevi Goyal and gift Rs. 25,000 from Shashikala Bansal aggregating Rs. 50,000 disallowed u/s 68 by Ld. AO in the assessment order."

4.1. Ld. CIT (A) has partly allowed the appeal of the assessee order dated 30.08.2023, according to Ld. CIT (A), the appellant failed to explain the discrepancies pointed out by the Assessing Officer during the course of remand proceedings. Hence, the additions made in respect of unsecured loan/gifts in the cases of Shri Blau Ram Bodu Ram, Shri Naresh Sahu and Smt. Nooridevi Gehlot are confirmed.

5. The appellant has challenged the legality and validity of order of the Ld. CIT (A) dated 30.08.2023 before the Ld. ITAT.

6. During the course of arguments, the assessee submitted additional ground of appeal and made a specific request by moving an application with the grounds may kindly be taken on record and adjudicate accordingly.

7. We had accepted the request of the assessee counsel in respect of additional grounds of appeal. Since ground no. 3 is a legal ground and ground no. 3 goes in the root of the matter, hence we will first adjudicate ground no. 3.

8. That the assessee has filed return of income and the return was processed u/s. 143(1) of the Act. "It is noticed that the assessee had given unsecured loan of Rs.65, 73,083/- in KRN Alloys Pvt. Ltd. Further it was noticed that cash was deposited in the assessee's account prior to issuance of cheque for said loan. The source of aggregate loan of Rs.65, 73,083 remained unexplained. Therefore after recording reasons the case of the assessee was reopened u/s. 147 of the I.T. Act with approval of the Principal CIT-2, Rajkot and notice u/s.148 dated 30.03.2016 was issued and served upon the assessee. That the ground of reopening is reproduced:

9. The Ld. AR has submitted the written statement that reopening of assessment after four years in contravention of section 147 is bad in law:

> A. In the entire reasons recorded, there is no allegation of income having escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all materials facts. Hence, the notice u/s. 148 issued on the basis of the reasons recorded is bad in law and requires to be quashed and cancelled.

B. First proviso u/s 147 of the Act reads as under:

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

C. Reliance is placed on decision of Hon'ble Bombay High Court in case of Bhor Industries Ltd. vs. Assistant Commissioner of Income Tax & Ors. (2004) 267 ITR 161 (Bom): (2003) 183 CTR (Bom) 248 wherein it is held under Para-5 as under:

> *"In the case of Ipca Laboratories Ltd. vs. Dy. CIT (2001) 170 CTR (Bom) 582: (2001) 251 ITR 416 (Bom), this Court has taken the view that in view of the proviso to s. 147 of the Income-tax Act, no action can be taken for reopening of an assessment after four years unless the Ld. AO has reason to believe that income had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. In the present case, we have gone through the reasons submitted in support of the notice under s. 148 of the Income-tax Act. In the entire reasons, there is no allegation of income having escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts. In this case, we are concerned with reopening of an assessment after four years.*
>
> *……..in cases of reopening after four years, the Ld. AO must have reason to believe that income has escaped assessment by*

reason of failure on the part of the assessee to disclose fully and truly all material facts."

Reopening of Assessment is not permitted for verification:

"During the course of assessment proceedings of KRN Alloys P. Ltd., for A.Y. 2009-10. It is observed that the assessee has given unsecured loans of Rs. 65, 73,083/- to the above referred company. Further, it is seen that the cash was deposited in the assessee's account prior to issuance of cheques for unsecured loans.

The source of loan advanced of Rs. 65,73,083/- to KRN Alloys P. Ltd. and cash deposits made in the bank account is required to be verified. The secure of aggregate loan of Rs. 65,73,083/- remained unexplained." Hon'ble Gujarat High Court in the case of Inductotherm (India) (P.) Ltd. v. M. Gopalan, Deputy Commissioner of Income Tax (2023) 256 CTR (Guj.) 61: (2017) 77 DTR (Guj.) 1: (2023) 356 ITR 481 (Guj.) under Para 17 held as under:

"we are in agreement with the contention of the counsel for the petitioner that for mere verification of the claim, power for reopening of assessment could not be exercised. The Ld. AO in guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment."

Reopening of Assessment based on information received from another Ld. AO without any material to form an independent opinion for escapement of income by Ld. AO on the borrowed satisfaction not permitted u/s 147 of the of the Act. Hence, notice u/s 148 is bad in law:

(i) That Ld. AO (ACIT, Cir.-2(2), Rajkot), of the assessee received information from ACIT, Cir.-1, Rajkot. Hence, the reason for reopening was merely information received from another officer (i.e. ACIT, Cir.-1, Rajkot) that during the assessment of KRN Alloys Pvt. Ltd. it was observed that the assessee has given unsecured loan Rs. 65, 73,083 to the company and further that cash was deposited in the assessee's account.

Prior to issuance of cheque for unsecured law is required to be verified. On the basis of such information.

(ii) According to the written statement the appellant has filed the return of income of AY 2009-10 on 18/11/2009 under e-filing ack. no. 10150147 of the Act of the 0181109 declaring total income Rs. 5, 40,000 Ld. AO, in the reasons recorded, has written that the assessee has not filed the return of income for AY 2009-10. This stand proves that Ld. AO recorded the reasons for reopening of assessment without verifying its own records. Hence, the initiation of reopening of assessment is purely on borrowed satisfaction from the information supplied by Ld. AO of the Company was not permitted to record the escapement of income within the meaning of provision of Section 147 of the of the Act.

(iii) According to written statement, the reasons recorded on the basis of the information by some other officer could not satisfy the requirement in law. This is a case of only borrowed satisfaction, which is not at all permissible and therefore the power u/s 147 of the Act should not be exercised mechanically or as a manner of routine manner. Hon'ble High Court of Gujarat in the case of Shree Chalthan Vibhag Khand v. Deputy Commissioner of Income Tax, (2015) 376 ITR 419 (Guj.) has held that:
"On the basis of the order passed by the Commissioner of Income Tax (Appeals) in the case of some other assessees, the satisfaction of the Ld. AO and the formation of opinion in the case of the assessee therein could not be sustained and the same could be said to be a borrowed satisfaction from another officer. Such borrowed satisfaction in the absence of any

application of mind and any real finding in the case of the assessee, would not constitute valid reason to believe that the income has escaped assessment."

10. According to written statement, it is well settled law that the reason to believe cannot be merely a reason to suspect. There must be a direct nexus between the material coming to the notice of the Ld. AO and the formation one of the belief that there has been escapement of income by the appellant. The material for formation of belief must be relevant and not vague. The Hon'ble High Court of Gujarat in the case of Sheth Brothers Vs Joint Commissioner of Income tax (251 ITR 270) held that

> *"In order to reopen an assessment, (a) there must be material for belief, (b) circumstances must exist and cannot be deemed to exist for arriving at an opinion, (c) reason to believe must be honest and not based on suspicion, gossip, rumour or conjecture, (d) reasons referred must disclose the process of reasoning by which the Ld. AO holds reason to believe (e) there must be nexus between material and belief and (f) the reasons referred must show application of mind by the Ld. AO and not someone else."*

11. Reliance is placed on following decisions:

(a) Hon'ble High Court of Delhi in the case of CIT vs. Kamdhenu Steel & Alloys Ltd (2012) 248 CTR 33 (Delhi)

(b) Hon'ble High Court of Delhi in the case of CIT vs. SFIL Stock Broking Ltd.,

(c) Hon'ble High Court of Delhi in the case of Signature Hotels (P) Ltd. vs. ITO(W.P.(C) No. 8067 of 2010 dated 21-7-2011)
(d) DCIT vs. Mrs. Rainee Singh 125 TTJ(Del) 816

(e) Sterlite Industries (India) Ltd. vs. ACIT & ANR (305 ITR 339)

(f) Hon'ble High Court of Rajasthan in the case of CIT vs. Smt Sohandevi Sodani 303/TR 342(Raj)

12. According to written statement, Reopening was based on information passed on by another Ld. AO; it is a case of another Ld. AO not having jurisdiction over the Appellant stating that it is observed that the assessee has given unsecured loan to the company and cash was deposited in assessee's bank account prior to issuance of cheques. Obviously therefore, the Ld. AO of Appellant has acted on this information and not independently, which further goes to show borrowed satisfaction and non-application of mind independently by the Ld. AO of Appellant.

It appears that the Ld. AO has not made any independent inquiry/investigation or applied his own mind before issue of notice u/s. 148 of the Act and he merely relied on the information received from the other Assessing officer. It is a case when the Ld. AO failed to record his own satisfaction as to the escapement of income by the Appellant.

13. The Ld. DR. has relied on two judgments of the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. reported at (2007) 291 ITR 500 and in the case of Raymond Woollen Mills Ltd. vs. ITO (1999) 236 ITR 34 (SC). Relevant portion of judgement is reproduced hereunder:

> *"In this case, we do not have to give a final decision, as to whether there is suppression of material facts by the assessee or not. 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 this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority, The appeals are dismissed. There will be no order as to costs."

14. We have heard both the parties and carefully gone through the submission on behalf of the assessee along with documents furnished and the case law relied upon and perused the facts of the case including the finding of the Ld. CIT (A) and other materials brought on record. Looking to the facts and circumstances of the case, ground No.3 of assessee's appeal is dismissed.

15. The facts of the case are that --

15. **Inductotherm (India)... v. M. Gopalan, Dy. Comm...** held as under:

Akil Abdul Hamid Kureshi, J.

1. The petitioner has challenged a notice dt. 20th Dec., 2004 issued by the respondent--Dy. CIT under **s. 148 of the IT Act, 1961 ("the Act" for short)**. The petitioner has also challenged the subsequent notices issued by the respondent under s. 143(2) of the Act. However, the principal challenge of the petitioner is to the notice dt. 20th Dec., 2004 issued by the AO seeking to reopen the assessment of the petitioner for the asst. yr. 2002-03. The petition arises in following factual background.

1.1 The petitioner is a company registered under the **Companies Act**, **1956** and is regularly assessed to tax under the Act. For the asst. yr. 2002-03, the petitioner filed its return of income on 28th Oct., 2002. On such return, the AO sent intimation under s. 143(1) of the Act on 16th Jan., 2003.

1.2 It is not in dispute that during the statutory period envisaged under s. 143 of the Act, the AO issued no notice under s. 143(2) of the Act. Such period expired on 1st Nov., 2003. The return of income, thus, remained at the stage of intimation under s. 143(1) of the Act and was never taken in scrutiny.

1.3 The AO, however, issued the impugned notice on 28th Dec., 2004 seeking to reopen the assessment for the asst. yr. 2002-03. In response to such notice, the petitioner issued a communication dt. 30th Dec., 2004 and besides objecting to the reopening of the assessment, also demanded that the reasons recorded by the AO may be supplied. The respondent-AO did not supply the reasons. Instead, he issued a notice dt. 21st Oct., 2005 under s. 143(2) of the Act, stating that there were certain points with respect to return of income for the asst. yr. 2002-03 on which he would like to have further information.

1.4 The petitioner thereupon wrote a letter dt. 8th Nov., 2005 and reiterated the request for supply of the reasons recorded by the AO for reopening the assessment. He referred to the decision of the apex Court in case of GKN Driveshafts (India) Ltd. vs. ITO **(2003) 179 CTR (SC) 11**: (2003) 259 ITR

19 (SC). He also relied on the decision of this Court in case of **Arvind Mills Ltd. vs. Asstt. CWT** (2004) 191 CTR (Guj) 233: (2004) 270 ITR 467 (Guj) in support of such a prayer.

1.5 In response to such letter, the AO supplied the reasons recorded under his communication dt. 8th Nov., 2005. Such reasons read as under:

In this case, the assessee company has filed its return of income for asst. yr. 2002-03 on 28th Oct., 2002 showing total income at Rs. 7,23,29,973. The case was processed under s. 143(1) on 16th Jan., 2003. On perusal of the case records, it is noticed that there is escapement of income chargeable to tax on the following points:

(1) The assessee company has claimed deduction under s. 80HHC at Rs. 59,86,965. The involvement of CST and SST in the total turnover and other income in the net profit should not be allowable for the purpose of deduction under s. 80HHC calculation relying on the decision in the case of Sterling Foods Ltd. (supra).

(2) Admissibility of bad debts written off at Rs. 74,73,003 is to be verified.

(3) The assessee had debited warranty expenses at Rs. 1,43,48,347 to the P & L a/c, out of which an amount of Rs. 1,05,48,633 has actually been incurred during the financial year under consideration. Therefore, the remaining amount of Rs. 37,99,714 is not allowable expenses under the IT Act.

(4) Admissibility of royalty claimed at Rs. 62,92,773 is to be verified. However, due to wrongful claim of deduction under s. 80HHC, excess claim of warranty expenses etc., income chargeable to tax has escaped assessment within the meaning of **s. 147 of the IT Act, 1961**. Under the

circumstances, the assessment for asst. yr. 2002-03 is hereby reopened. Issue notice under s. 148 of the IT Act, 1961.

1.6 Upon receipt of such reasons, the petitioner raised detailed objections to the notice of reopening under communication dt. 16th Nov., 2005. It was contended that in absence of any material to tax the income, even in proceedings under s. 147 of the Act, it would not be open for the AO to proceed. The petitioner placed considerable reliance on the expression "reason to believe" used in s. 147 of the Act. Such objections were disposed of by an order dt. 12th Jan., 2006. At that stage, the petitioner filed the present petition and challenged the impugned notice issued by the respondent-AO.

2. Appearing for the petitioner, Shri R.K. Patel contended that the notice is invalid. The AO has assumed jurisdiction not vested in him. He, therefore, submitted that the notice be quashed. This contention the counsel sought to support on the following four arguments:

(1) That the reasons were not recorded by the AO before issuing notice. In this respect, counsel pointed out that though immediately upon receipt of notice under s. 148 of the Act, the petitioner demanded a copy of the reasons recorded by the AO, such reasons were not supplied for a long time. In the meantime, notices were issued under s. 143(2) of the Act.

(2) The counsel contended that the assessment proceedings cannot be reopened to circumvent time-limit for issuing the notice under s. 143(2) of the Act. He submitted that time-limit provided in the proviso to s. 143(2) of the Act, must be given its due weightage. If the AO for any reason failed

to issue such a notice within the time-limit, he cannot proceed under s. 147 for taking such a return in scrutiny.

In support of this contention, counsel relied on the following decisions:

(a) In case of **Dy. CIT vs. Maxima Systems Ltd. (2010) 236 CTR (Guj) 443: (2010) 40 DTR (Guj) 49: (2012) 344 ITR 204 (Guj)**, wherein a Division Bench of this Court observed that assessment which was framed under s. 143(3) of the Act pursuant to a notice under s. 143(2) which was served beyond the period of limitation prescribed under the proviso, was not a valid assessment.

(b) In case of Asstt. CIT & Anr. vs. Hotel Blue Moon (2010) 229 CTR (SC) 219: **(2010) 35 DTR (SC) 1**: (2010) 321 ITR 362 (SC) wherein the apex Court held that notice under s. 143(2) of the Act was mandatory even in the block assessment proceedings if the AO desired to complete such assessment under s. 143(3) of the Act.

(c) In case of Kanubhai M. Patel (HUF) vs. Hiren Bhatt or His Successors to Office & Ors. **(2010) 43 DTR (Guj) 329: (2011) 237 CTR (Guj) 544: (2011) 334 ITR 25 (Guj)**, wherein a Division Bench of this Court had the occasion to interpret the term "to issue" the notice in context of the provisions contained under ss. 147, 148 and 149 of the Act.

(3) The third contention of the counsel was that the reasons recorded by the AO were not germane. Such reasons only recorded that the AO wanted to verify certain claims made by the assessee. Counsel submitted that for a fishing inquiry or for mere verification of the claims made, reopening cannot be permitted even in the assessment which was accepted under s. 143(1) of the Act.

In support of this contention, counsel relied on following decisions:

(a) In case of **Bakulbhai Ramanlal Patel vs. ITO (2011) 56 DTR (Guj) 212**, wherein a Division Bench of this Court finding that all reasons recorded by the AO for reopening of assessment, only provided that the AO desired to carry out a detailed investigation/verification to bring the assessee in the tax net, held that the notice for reopening the assessment was not valid. We may record that this was also a case where the return filed was accepted under s. 143(1) of the Act without any scrutiny.

(b) In case of **Balkrishna Hiralal Wani vs. ITO & Ors. (2010) 230 CTR (Bom) 243: (2010) 36 DTR (Bom) 161**: (2010) 321 ITR 519 (Bom), wherein a Division Bench of the Bombay High Court, also in relation to reopening of assessment which was previously accepted without scrutiny, quashed the notice on the premise that the AO could not have any reason to believe that the income chargeable to tax has escaped assessment.

3. On the other hand, learned counsel Shri Manish Bhatt for the Department, opposing the petition, contended as under:

(1) In the present case, the AO had recorded reasons for reopening of assessment. Such reasons were recorded before issuance of notice. He took us through the documents on record in the original file to contend that though the reasons recorded did not carry a specific date, from the record, it can be ascertained that such reasons were recorded before issuance of notice.

(2) Notice for reopening has been issued after recording proper reasons. The return of the assessee was previously not taken in scrutiny. In that

view of the matter, in view of the decision of the apex Court in case of Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 210 CTR (SC) 30: (2007) 291 ITR 500 (SC), the Revenue would have much greater latitude for reopening the assessment.

(3) He further submitted that the reasons recorded by the AO would demonstrate that he had valid reasons to believe that the income chargeable to tax had escaped assessment.

4. Having, thus, heard the learned counsel for the parties and having perused the documents on record, we may first deal with the question of recording of the reasons before issuance of notice. It is undoubtedly true that to reopen an assessment, the AO must record his reasons before issuing notice for reopening. In that view of the matter, the question of such reasons having been recorded before issuance of notice assumes significance. As noted, counsel for the petitioner contended that such reasons were not recorded before issuance of notice. For this purpose, he highlighted that such reasons were not supplied immediately though the petitioner demanded the same. Such reasons when produced before the Court showed that they do not carry any date.

5. We have perused the original file in context of this controversy. The file reveals that the reasons recorded by the AO and signed by himself are found at p. 324 which is immediately after p. 323 which is the notice for reopening of the assessment. Immediately after the reasons recorded at p. 325, is the acknowledgement receipt of service of the notice dt. 20th Dec., 2004 issued under s. 148 of the Act. Further we find that the AO had drawn

a note-sheet in which on 20th Dec, 2004, he recorded that, "Notice under s. 148 issued after recording reasons for reopening." Such note-sheet also contains reference to subsequent notice under s. 143(2) issued on 8th Nov., 2005 and other details.

6. We also notice that the audit party had brought certain discrepancies to the notice of the AO. The AO thereupon examined such issues and wrote to the CIT on 17th Oct., 2003 that in view of such issues, remedial action is required to be taken. He noted that the assessment was accepted under s. 143(1) of the Act and therefore, remedial actions available would be proceedings under s. 263 of the Act, or under s. 147 of the Act or under s. 154 of the Act. In the concluding portion of his letter, he stated thus, "Secs. 263 and 254 do not appear to be applicable to the facts of the case. Therefore, in my humble submission, the most proper remedial action to set right the audit objections appears to be recourse to s. 147. Approval may kindly be accorded."

6.1 Such approval was granted by the CIT under communication dt. 16th Feb., 2004. Thereupon, the impugned notice came to be issued.

7. In addition to above materials emerging from the original files, we also have an affidavit-in-reply filed by one Shri James Kurian, Asstt. CIT Circle-4, Ahmedabad on behalf of the respondent in which he has stated that the reasons were recorded before issuance of notice for reopening. He pointed out that a proposal of reopening of the assessment was sent for approval of the CIT and the CIT had accorded such approval and thereafter, the notice was issued.

8. From such materials, we are of the opinion that it cannot be stated that the AO had not recorded reasons before issuance of the notice. Firstly, the reasons recorded are found on the file immediately after the original notice under s. 148 of the Act. Though such reasons are not dated, the note-sheet maintained by the AO concerned recorded that the notice is issued after recording reasons. Further, as noted, the issue arose when the audit party brought certain discrepancies to the notice of the AO. He mulled over various options available to the Revenue and suggested to the CIT that the best option would be to exercise powers under s. 147 of the Act. These factors coupled with the affidavit-in-reply filed by the respondent would convince us that in exercise of writ jurisdiction, it would not be open for us to hold that reasons were not recorded by the AO before issuance of notice.

9. This brings us to the second limb of the petitioner's challenge namely, that the power under s. 147 of the Act cannot be exercised to circumvent the proceedings under s. 143(3) of the Act because the notice under s. 143(2) of the Act has become time-barred and further that in any case, reasons recorded would not permit the AO to reopen the assessment.

10. It is undoubtedly true that proviso to s. 143(2) of the Act prescribes a time-limit within which such notice could be issued. It is equally well-settled that such notice is mandatory and in absence of notice under s. 143(2) of the Act within the time permitted, scrutiny assessment under s. 143(3) cannot be framed. However, merely because no such notice was issued, to contend that the assessment cannot be reopened, is not backed

by any statutory provisions. Counsel for the petitioner did not even stretch his contention to that extent. The case of the petitioner as we understand is that in guise of reopening of an assessment, the AO cannot try to scrutinize the return. This aspect substantially overlaps with the later contention of the petitioner that the reasons recorded by the AO were not germane and were not sufficient to permit reopening.

11. We must recall that the return filed by the petitioner was not taken in scrutiny. No assessment, thus, took place. The AO without any assessment, merely issued an intimation under s. 143(1) of the Act accepting such return. In that view of the matter, it cannot be stated that the AO formed any opinion with respect to any of the aspects arising in such return. Whether beyond or within four years from the end of the relevant assessment year, is substantially wider. The apex Court in case of Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (supra) noticed such distinction and noted that the scheme of s. 143(1) and 143(3) of the Act is entirely different. It was noticed that after 1st April, 1989, the provisions contained in s. 143 underwent substantial changes. It was noticed that the intimation under s. 143(1) of the Act is given without prejudice to the provisions of s. 143(3) of the Act and though technically the intimation would be deemed to be demand notice under s. 156, that did not per se preclude the right of the AO to proceed under s. 143(2)(a) of the Act. The apex Court observed that the word "intimation" as substituted for assessment carried different concepts. It was observed that while making an assessment, the AO is free to make any addition after granting an opportunity to the assessee. The apex Court observed that, "It may be noted

above that under the first proviso to the newly substituted s. 143(1), w.e.f. 1st June, 1999, except as provided in the provision itself, the acknowledgement of the return shall be deemed to be an intimation under s. 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgement is not done by any AO, but mostly by ministerial staff. Can it be said that any assessment is done by them? The reply is an emphatic no. The intimation under s. 143(1)(a) was deemed to be a notice of demand under s. 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under s. 143(1)(a), the question of change of opinion, as contended, does not arise."

12. Despite such difference in the scheme between a return which is accepted under s. 143(1) of the Act as compared to a return of which scrutiny assessment under s. 143(3) of the Act is framed, the basic requirement of s. 147 of the Act that the AO has reason to believe that income chargeable to tax has escaped assessment. This power to reopen assessment is available in either case, namely, while a return has been either accepted under s. 143(1) of the Act or a scrutiny assessment has been framed under s. 143(3) of the Act. A common requirement in both of cases is that the AO should have reason to believe that any income chargeable to tax has escaped assessment.

13. The term "reason to believe" has come up for consideration in various decisions before this Court as well as the apex Court. It is not necessary to trace long line of decisions on the point. We may, however, refer to two of the recent decisions. In case of CIT vs. Kelvinator of India Ltd. (2010) 228 CTR (SC) 488: **(2010) 34 DTR (SC) 49:** (2010) 320 ITR 561 (SC), in the context of amended provision of s. 147 w.e.f. 1st April, 1989, the Court stressed on the expression "reason to believe", observing that the Court has to give a schematic interpretation to such words, failing which s. 147 would give arbitrary powers to the AO to reopen the assessments on the basis of mere change of opinion. On that basis, the apex Court concluded that even in the case of assessment which is sought to be reopened within a period of four years from the end of relevant assessment year, the concept of change of opinion is not given a go-bye. It was observed that. "Hence, after 1st April, 1989, the AO has power to reopen, provided that there is tangible material to come to the conclusion that there is escapement of income from assessment. Reasons must have a live-link with the formation of the belief." The apex Court noticed that previously, the Parliament had introduced the expression "opinion" under s. 147 of the Act, however, on receipt of representations from various quarters, the same was substituted as was originally used to "reason to believe".

14. In case of Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (supra), the apex Court observed that phrase "reason to believe" means cause or justification. If the AO has cause or justification to know or subjective satisfaction that income had escaped assessment, it can be stated to have

reason to believe that income chargeable to tax had escaped assessment. It was observed as under:

Sec. 147 authorizes and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers As observed by the Delhi High Court (sic--Supreme Court) in **Central Provinces Manganese Ore Co. Ltd. vs. ITO** (1991) 98 CTR *(SC) 161: (1991) 191 ITR 662 (SC),* for initiation of action under s. 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction [see **ITO vs. Selected Dalurband Coal Co. (P) Ltd.** (1996) 132 CTR (SC) 162: (1996) 217 ITR 597 (SC);

Raymond Woollen Mills Ltd. vs. ITO (1999) 152 CTR (SC) 418: (1999) 236 ITR 34 (SC)].

15. It would, thus, emerge that even in case of reopening of an assessment which was previously accepted under s. 143(1) of the Act without scrutiny, the AO would have power to reopen the assessment, provided he had some tangible material on the basis of which he could form a reason to believe that income chargeable to tax had escaped assessment.

9. The Assessing Officer completed the assessment with following remarks:

Total income as per the return of income			
Add: (i) unaccounted income as discussed in para 5.10 above	Rs.12,79,751/-		
(ii) unexplained cash credit u/s.68 and interest thereon as discussed in para 7.3.	Rs.10,30,250/-		
(iii) unexplained cash credit u/s.68 and interest thereon as discussed in para 8.3	Rs.1,80,000/-		
(iv) unexplained cash credit u/s.68 and interet thereon as discussed in para 9.2	Rs.94,000/-		
(v) unexplained cash credit u/s.68 as discussed in para 10.1.	Rs.94,000/-		
(vi) unexplained deposit by cheque u/s.68 as discussed in para 11.1	Rs.50,000/-	Rs.	Rs.36,25,251/-
	Total income		Rs.42,04,261/-
	Rounded off to…	Rs.	Rs.42,04,260/-

10. The assessee filed the appeal before the Ld.CIT(A), who has partly allowed the appeal.

11. The Ld.AR submitted that the assessee has not been granted opportunity for hearing. Number of documents have been supplied by the assessee during the assessment proceedings. The AO did not accept the documents submitted by the assessee. Therefore, assessee may be provided reasonable opportunity for hearing.

12. We have heard both the sides and perused the material available on record as well the orders of the authorities below. We find that -

(1) The3 AO made addition of Rs.12,79,751/- on account of unaccounted income. The assessee declared Long Term Capital Gain of Rs.12,79,751/- and claimed exemption u/s.54F of the Act. In support of his claim, the assessee submitted copy of sale bill, purchase bill of gold. The assessee has also filed balance-sheet where the investment shown. The assessee has also filed wealth-tax return in support of his claim. The AO calculated on the basis of documents submitted by the assessee and reached at a conclusion that this income is to be added to the total income of the assessee. However, during the first appellate proceedings, the Ld.CIT(A) has observed that the assessee could not file the valuation report in support of assessee's claim. Hence, the addition is confirmed.

(2) Regarding addition of Rs.22,74,000/- (transactions from four persons, u/s.68 of the Act, as per tabulated hereunder),

Sr.No(s)	Name of the depositor(s)	Amount of loan (Rs.)
1.	Baluram Baduram	10,00,000/-
2.	Ghewarchand Mohanlal	1,00,000/-
3.	Nareshkumar R.Sahu	1,80,000/-
4.	Noortidevi Gehlot	94,000/-
	Total	22,74,000/-

one addition in the name of Ghewarchand Mohanlal which has been deleted by the CIT(A). However, in all other three additions, the CIT(A) has confirmed in absence of documentary evidences, such as, genuineness of the transactions and creditworthiness from the assessee. We find that the addition made by the Ao of Rs.50,000/- in respect of unexplained credits, the Ld.CIT(A) has not dealt with the issue in his order. Therefore, we set aside the findings of the ld.CIT(A) on this count. Since the assessee has also not able to file any documentary evidence in respect of these three additions, we remand back the issue to the file of AO fore fresh adjudication after providing reasonable opportunity of being heard to the assessee.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 04 / 04 /2025 at Rajkot.

Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

RAJKOT; Dated 04 / 04 /2025

टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A) / (NFAC), Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट **/ ITAT, Rajkot**

1. Date of dictation .. (dictation-pad -pages attached at the end of this File)
2. Date on which the typed draft is placed before the Dictating Member …
3. Other Member…
4. Date on which the approved draft comes to the Sr.P.S./P.S……..
5. Date on which the fair order is placed before the Dictating Member for pronouncement……
6. Date on which the fair order comes back to the Sr.P.S./P.S…….
7. Date on which the file goes to the Bench Clerk……
8. Date on which the file goes to the Head Clerk……...
9. The date on which the file goes to the Assistant Registrar for signature on the order……..
10. Date of Despatch of the Order……

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