

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 527/Del/2020
(Assessment Year: 2011-12)

Ultra Modern Exports Pvt. Ltd, Flat No. 116A, 1 st Floor, Somdutt Chamer-I, 5, Bikaji Cama Place, New Delhi	Vs.	ITO, Ward-27(1), New Delhi
(Appellant)		(Respondent)
PAN: AAACU8087G		

Assessee by :	Shri S. K. Tulsiyan, Adv Shri Paramshree Banerjee, Adv Shri Lakshya Budhi Raja, CA Smt Boomija Verma, Adv
Revenue by:	Shri Om Prakash, Sr. DR
Date of Hearing	02/07/2025
Date of pronouncement	06/08/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.527/Del/2020 for AY 2011-12, arises out of the Id. Commissioner of Income Tax (Appeals)-9, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2019-20/1021120820(1) dated 26.11.2019 against the order of assessment passed u/s 147 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.12.2018 by

the Assessing Officer, ITO, Ward-27(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The Ground No.1 raised by the assessee is challenging the validity of reopening of assessment under section 147 of the Act. The Ground Nos. 2 and 3 raised by the assessee are challenging the addition made on account of receipt of share application money in the sum of Rs 2,40,00,000/- from Concise Exim Pvt Ltd and Reinforce Recruiter Private Ltd as unexplained cash credit under section 68 of the Act together with alleged commission expenditure thereon in the sum of Rs 4,80,000/-.

3. The assessee has also filed additional grounds expanding the original grounds on the validity of assumption of jurisdiction under section 147 of the Act by bringing in various facets thereon. These additional grounds go to the root of the matter and the facts relevant for its adjudication are already placed on record. Hence in view of the decision of the Hon'ble Supreme Court in the case of NTPC Limited reported in 229 ITR 383 (SC), these additional grounds are hereby admitted and taken up for adjudication along with the original grounds. The additional ground numbers 6 and 7 raised by the assessee are akin to the original grounds 2 and 3 raised by the assessee in Form No. 36.

4. We have heard the rival submissions and produced the materials available on record. The assessee company was incorporated on 07-03-2006. The return of income for the Assessment year 2011-12 was electronically filed by the assessee company on 30-9-2011 declaring loss of Rs 11,74,50,000/- and also had shown income from short term capital gains amounting to Rs 1,39,060/-. This return was duly processed under section 143(1) of the Act on 30-1-2012. No regular assessment under section 143(3) of the Act was made on this return.

5. Based on the information received on 22-03-2018 from DDIT Investigation Unit 1(1), Mumbai vide letter dated 16-03-2018, the assessment of the assessee was sought to be reopened vide issuance of notice under section 148 of the Act. The said information informed that huge amount of bank transactions were carried out by Concise Exim Private Limited with many concerns and one of the company is the assessee company. It was also informed that during the investigation, Concise Exim Private Limited could not be found at the registered address and address reported in the ITRs. Further on perusal of the financials reported by Concise Exim Private Limited, it was observed that the said company is not having any fixed assets and reporting meager income, but had carried out huge financial transactions in its bank account. It was further informed that monies were transferred from Concise Exim Private Limited to the assessee company and the same has been shown as non-current investments / equity instruments. It was also informed that Concise Exim Private Limited had received huge share premium from various concerns. The information revealed that Concise Exim Private Limited had received back Rs 1.20 crores on 13-2-2015 and on 8-3-2011 had invested in assessee company in the sum of Rs 1.20 crores. For the sake of convenience, the information passed on by the investigation wing to the Learned AO of the assessee vide letter dated 16-3-2018 is reproduced below:-

Confidential



Office of the
Deputy Director of Income-tax (Inv.), Unit 1(1)
Address: 439, Scindia House, Ballard Estate, Mumbai 400 038
Tele (022) 22635314
Email: mumbai.ddit.inv.1.1@incometax.gov.in

No. DDIT(Inv.)/Unit 1(1)/Information/UMEPL/17-18

Date: 16.03.2018

To

The Income-Tax Officer
Ward-27(1), Delhi

Sub.- Forwarding of Information in the case of M/s Ultra Modern Exports Pvt. Ltd.
(PAN-AAACU8087G)

Please refer to the above.

2. This office has received information from credible sources in respect of huge amount of bank account transactions carried out by Concise Exim Private Limited with many concerns and one of the company is M/s Ultra Modern Exports Pvt. Ltd. (PAN-AAACU8087G).
3. During the course of investigation M/s. Concise Exim Private Limited could not be found at the registered address and address reported in ITRs. On perusal of financials reported by Concise Exim Pvt. Ltd., it is observed that company is not having fixed assets and reporting meager income since its formation and carried out huge amount of banking transactions with many concerns. It is further gathered that monies were transferred from concise to ULTRA has been shown as non-current investments/equity instruments. It is also observed that share capital on huge amount of premium has been received by Concise from many concerns.
4. The details of bank transactions between M/s. Concise Exim Pvt. Ltd. and M/s Ultra Modern Exports Pvt. Ltd. is as under:-

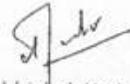
Confidential

Amount in Rs.

Sl. No.	Date	Amount Received in Concise Account	Amount transferred from Concise Account
1.	08.03.2011	-	12000000
2.	13.02.2015	12000000	-
Total		1,20,00,000	1,20,00,000

5. On perusal of the above transaction pattern it appears that rotation of huge amount of funds have been taken place without any economic rationale and M/s Ultra Modern Exports Pvt. Ltd. is one of the company in network of companies which is engaged in rotation of huge amounts of funds without any genuine economic rationale.

6. Since the jurisdiction over PAN- AAACU8087G lies with your office, the information for F.Y. 2010-11 (relevant to A.Y. 2011-12) (getting time barred by limitation on 30.3.2018) and for later assessment years is hereby forwarded for further deep/thorough enquiries in respect of financials reported, verification and take necessary action as per provisions of section 147 of the Income-Tax Act, 1961. You are also requested to ascertain other bank account transactions carried out by the company with other concerns pertaining to F.Y. 2010-11 and later years and verify the genuineness of these transactions. If the information is not pertained to your charge, you are requested to forward it to the Jurisdictional A.O. for taking necessary action under intimation to this office.


(Abhishek Yadav)
Dy. Director of Income tax (Inv.)
Unit 1(1), Mumbai

Copy to:- 1) The Addl. CIT , Range-27, Delhi
2) The Addl. DIT (Inv.), Unit-1, Mumbai


Dy. Director of Income tax (Inv.)
Unit 1(1), Mumbai

6. Based on the aforesaid communication, the Learned AO recorded reasons for reopening the assessment and issued notice under Section 148 of the Act on 28-03-2018 to the Assessee Company after obtaining the prior approval of Learned Principal Commissioner of Income Tax, New Delhi in terms of Section 151 of the Act. The reasons recorded by the Learned AO are reproduced here under:-

Reasons for reopening of the assessment in case of M/s Ultra Modern Exports Pvt. Ltd. for A.Y.2011-12 u/s 147 of the Act.

1. Brief details of the Assessee:-

The assessee company M/s Ultra Modern Exports Private Limited was incorporated on 07.03.2006 As per ITD data, the assessee company has filed its return of income for the relevant assessment year i.e. 2011-12 on 30.09.2011 declaring loss of Rs.11,74,50,000/- and also shown income from short term capital gain amounting to Rs. 1,39,055/-. The return of income in the case was processed u/s 143(1) on 30.01.2012 on total income of Rs.48,640/-. The regular assessment u/s 143(3) of the I.T. Act, 1961 has not been made in the case. 2. Details of Information received by AO.

Information in the case has been received by e-mail on 21.03.2018 from DDIT(Inv.), Unit-1(1), Mumbai vide their letter F.No. DDIT(Inv.)/Unit1(1)/Information/UMEPL/17-18 dated 16.03.2018. Further original letter of the DDIT(Inv.), Unit(1)(1) was received on 22.03.2016. As per information, it has been informed that huge amount of bank account transactions carried out by M/s Concise Exim Pvt. Ltd. with many concerns and one of the company is M/s Ultra Modern Exports Pvt. Ltd. (PAN No.- AAACU8087G). It was also informed that during the investigation M/s Concise Exim Pvt. Ltd. could not be found at the registered address reported in ITRs. Further, during the investigation, on perusal of financial reported by M/s Concise Exim Pvt. Ltd., it was also reported that the said company is not having fixed assets and reporting minger income since its formation and carried out huge amount of banking transactions with many concerns. It is further informed that monies were transferred from M/s Concise Exim Pvt. Ltd. to M/s Ultra Modern Exports Pvt Ltd, has been shown as non-current investments/equity instruments. It was also informed by said information that share capital on huge amount of premium has been received by M/s Concise Exim Pvt. Ltd. from many concerns. The details of transactions between M/s Concise Exim Pvt. Ltd. and M/s Ultra Modern Exports Pvt. Ltd is as under:-

S No.	Date	Amount received in M/s. Concise Exim Pvt. Ltd account	Amount transferred from M/s. Concise Exim Pvt. Ltd account
1	08.03.2011		1,20,00,000/-
2.	13.02.2015	1,20,00,000	----
	Total	1,20,00,000	1,20,00,000/-

Further, it was reported that on perusal the said transactions pattern, it appears that rotation of huge amount of funds have been taken place without any economic rational and M/s Ultra Modern Exports Pvt. Ltd. is one of the

company in network of companies which is engaged in rotation of huge amounts of funds with any genuine economic rationale.

3. Analysis of information:

On perusal the information forwarded by DDIT(Inv.), Unit1(1), Mumbai revealed that the M/s Concise Exim Pvt. Ltd. without having any asset reported meager income since its formation and carried out huge amount of banking transactions with many concerns prima facie appears a company involved in providing the accommodation entries. Further, as reported the company could not found to be at registered address reported in ITRs had received huge share capital on huge amount of premium from various concerns also indicate that no one company can make investment in such a company which is not doing any business and even also not available at its registered address. Even though, said company made investment in the M/s Ultra Modern Exports Pvt. Ltd. which is also not doing any business for the last three years as appears from ITRs. The ITRs of last two years show huge share premium and meager receipts which are odd. Further, the assessee company has not shown any assets from the A.Y. 2008-09 to 2011-12. Hence, prima facie it appears that the transactions made between M/s Concise Exim Pvt. Ltd. and M/s Ultra Modern Exports Pvt. Ltd is not genuine and both companies are engaged in rotation of huge amounts of funds without any genuine economic rationale.

4. Independent, Enquiries Conducted pursuant to information received:

In connection with the aforesaid information received from Investigation of the department, Mumbai, the perusal of the return of income for the A.Y. 2011-12 revealed that the assessee has shown gross /receipt of business or profession Nil, however, the assessee company has shown loss of Rs. 11,72,53,684/- at loss on sale of other investment. Perusal of the balance sheet also reveals that the assessee company has not shown fixed assets. Our assessee has the following financials for the F.Y. 2009-10 and 2010-11.

	FY 2009-10	FY 2010-11
Paid up share capital	Rs. 1,49,50,000/-	Rs. 1,49,50,000/-
Share application money	Rs. 16,20,00,000/-	Rs. 15,21,50,000/
Security Premium	Rs.15,21,00,000/-	Rs.15,21,00,000/-
Loan/advances taken	Nil	Nil
Loan/advances given	Rs. 71,62,403/-	Rs. 71,37,965/-
Investment made with Govt. and other	Rs. 14,28,25,689/	Rs.14,22,25,689

<i>securities-quoted</i>		
<i>Investment made with Govt. and other securities-quoted</i>	<i>Rs. 14,71,29,753/-</i>	<i>Rs.5,17,26,755/-</i>

It shows that the assessee has received share application money amounting to Rs. 2,40,00,000/- during the year including Rs. 1,20,00,000/- from M/s Concise Exim Pvt. Ltd. whose credentials point to it being a shell company or a company indulging in providing accommodation entries and also could not be traced at registered office during the investigation and found having meager income from since its formation without having any asset as reported by Investigation Wing. In view of the above facts, prima facie it appears that transaction made between M/s Concise Exim Pvt. Ltd. and our assessee is the rotation of huge amount of fund without any economic rationale.

Further, on perusal the ITRs, it seems that though the company was not engaged in any business activity for the last two years despite that the company has received huge share application money. The assessee has shown loss of Rs. 11,72,53,684/- on sale of other investment in the Assessment Year 2011-12. On perusal the Long term capital gain schedule, the assessee has shown in column 4 full value of consideration Rs. 65,50,000/- and cost of acquisition without indexation Rs. 12,40,00,000/- and calculated loss of Rs. 11,74,50,000/- which appears abnormal since the sale relates to unquoted securities.

Findings:-

After analyzing all the available information, it is observed that the assessee company has credit in its books of accounts amounting to Rs. 2,40,00,000/- including Rs. 1,20,00,000/- received from M/s Concise Exim Pvt. Ltd. as share application money. It appears to be nothing but accommodation entry through which the assessee company routed its own unaccounted money in its business. Further it is noticed that fund invested by M/s Concise Exim Pvt. Ltd. of Rs 1.20 Crore dated 08.03.2011 is shown as non-current investment/equity instruments by M/s Concise Exim Pvt. Ltd. but after 4 years same has been returned on dt 13.02.2015. Therefore, it seems to be a sham transaction made by both the companies. Further the loss booked by the assessee company on sale of other investment of Rs. 11,74,50,000/- prima facie appears to be sham transaction made by the assessee company.

6. Reasons for formation of belief

In view of the above narrated facts as mentioned in para 3,4 and 5, I have reached to the conclusion that the assessee company has introduced its own

undisclosed income in its business through banking channel by taking entries of Rs. 2,40,00,000/- and also booked loss of Rs. 11,74,00,000/- on sale of other investment by making sham transaction. Thus, I have reason to believe that the income of Rs. 14,14,00,000/- has escaped assessment as defined under section 147 of the Act for assessment year 2011-12. / The escapement of income has been clearly on account of failure on the part of the assessee company to furnish correct particulars of income. Therefore, this is a fit case for initiation of proceedings u/s 147 of the Act and action is required to be taken by reopening the case to tax the escaped income.

7. Applicability of the provisions of section 147/151:-

In this case the assessee has filed its return of income for the A.Y. 2011-12 in which the assessment u/s 143(3) of the Act has not been made. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income of Rs. 14,14,00,000/-chargeable to tax has escaped assessment. Since more than four years have been elapsed from the end of the relevant A.Y. i.e. A.Y. 2011-12 necessary statutory approval u/s 151(1) of the I.T. Act may kindly be accorded to issue notice u/s 148 for the AY 2011-12 for the purpose of opening of the case u/s 147 of the IT Act, 1961. The limitation for issuing the notice is expiring on 31.03.2018.

Submitted for kind perusal and onward transmission to the Pr. CIT-9 for kind perusal and obtaining approval to issue notice u/s148 of the I.T. Act, 1961 within the meaning of provisions of section u/s 147 of the I.T. Act, 1961.

*(Laxman Singh)
Income Tax Officer,
Ward-27(1), New Delhi*

7. Hence, from the above reasons, it could be seen that the Learned AO had formed a belief that income to the extent of Rs 14.14 crores of the assessee company had escaped assessment warranting reopening of assessment. This amount comprise of two components – (1) long term capital loss on sale of investments of Rs 11,74,50,000/- which was sought to be treated as sham transaction by the Learned AO and (2) Rs 2,40,00,000/- being the receipt of share application money from Concise Exim Private limited and Reinforce Recruiter

Private limited. As far as the long term capital loss on sale of other investments of Rs 11,74,50,000/-, there is no need to adjudicate as ultimately the Learned AO in the reassessment order had accepted the same to be genuine and had not made any disallowance thereon. Hence, we confine our observations and findings for the receipt of share application money in the sum of Rs 2.40 crores which is subject matter of reasons recorded for reopening the assessment.

8. On harmonious reading of the information received by the Learned AO from Mumbai Investigation Wing dated 16-03-2018 and the reasons recorded for reopening of assessment of the assessee by the Learned AO, we find that the Learned AO had merely relied on the information received from the Mumbai Investigation Wing for forming a belief that income of the assessee had escaped assessment. Even though he records in the reasons that he had made some independent inquiries regarding the information received by him, no such independent inquiry has been carried out by the Learned AO. The Learned AO actually had merely looked into the balance sheet of the assessee company for the year under consideration and for immediately preceding year (that are already available with him). He has reproduced the financials from the said balance sheet in the reasons recorded and found that a sum of Rs 2.40 crores has been found credited in the books in the form of share application money. Thereafter, he relies on the information received from Investigation Wing wherein Concise Exim Private limited and Reinforce Recruiter Private limited had been stated to be shell entities. The Learned AO also merely forms the same belief and conclusion and concludes that these two entities are shell entities and accordingly monies received from these two shell entities by the assessee company takes the character of accommodation entries warranting addition as unexplained cash credit under section 68 of the Act. This goes to prove that there is absolutely no

tangible material available with the Learned AO which would have a live link to form a belief that income of the assessee had escaped assessment warranting reopening. There is absolutely no basis for the Learned AO to conclude that assessee company had introduced its own undisclosed income in its business through banking channels by taking in accommodation entries of Rs 2.40 crores from these two entities . Hence, it could be safely concluded that the entire reopening of the assessment had been made merely on borrowed satisfaction of the investigation wing of Mumbai vide letter dated 16-3-2018 and without having any tangible material . It is trite law that the reasons for formation of belief for reopening an assessment must have a rational , intimate and direct connection or relevant bearing on the formation of the belief. The existence or otherwise of such a belief, on the part of the Assessing Officer, is not a mere question of limitation but the very foundation of his jurisdiction. Accordingly the law postulates the presence of the following four essential ingredients for issue of notice under section 148 of the Act:-

- (a) Existence of some material and not mere fancy imagination, speculation or suspicion
- (b) Application of mind by the Assessing officer to such material
- (c) Nexus between such material and the belief of escapement of income from assessment and
- (d) an inference based on reason drawn by the Assessing officer that income has escaped assessment

9. As stated earlier in the instant case, all the information received from the investigation wing has been relied upon by the Learned AO without independently

verifying the same by any degree of application of mind or conducting any relevant enquiries. The reliance on the Investigation carried out in the case of independent third parties may have led to some adverse findings which by itself cannot be ipso facto applied to the assessee company whereby it is clear that the notice in question is merely based on 'reason to suspect' as opposed to 'reason to believe'. The manner in which affairs are conducted by independent third parties, acting in their own self-interest and the results of any proceedings carried out in their cases cannot, without any concrete evidence, lead to a formation of belief as to escapement of income in the case of the assessee company. Reliance in this regard has been rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of Signature Hotels Private Limited vs ITO reported in 338 ITR 51 (Del) wherein it was held as under:-

"4. The aforesaid section is wide but it is not plenary. We have to consider and examine the crucial expression "reason to believe" used in the said section. The Assessing Officer must have "reason to believe" that an income chargeable to tax has escaped assessment. This is mandatory and the "reasons to believe" are required to be recorded in writing by the Assessing Officer. Sufficiency of reasons is not a matter, which is to be decided by the writ court, but existence of belief is the subject-matter of the scrutiny. A notice under section 148 can be quashed if the "belief" is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reason. There should be a link between the reasons and the evidence/ material available with the Assessing Officer. However, as we are dealing with initiation of proceedings, it is not necessary that the material should conclusively prove the escapement. The "reasons to believe" would mean cause or justification of the Assessing Officer to believe that the income has escaped assessment and do not mean that the Assessing Officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the Assessing Officer.

5. *Before dealing with the facts of the case, we may notice some judgments of the Supreme Court when proceedings under section 147/148 of the Act can be initiated on statements made by third person on the account of "accommodation entry". In ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC), the Supreme Court affirmed the decision of the High Court and held that there was nothing to show in the confession made by a third party related to the loan taken by the assessee much less a loan which was shown to have advanced by that person to the assessee and, therefore, live link or close nexus, which should be there between the material and the belief formed by the Assessing Officer was missing or was too tenuous to provide a legally sound basis for initiation of assessment proceedings under section 147. After referring to this judgment, a Division Bench of the Delhi High Court, in ITO v. Dwarka Dass and Bros. [1981] 131 ITR 571 (Delhi) has held as under (page 574) :*

"The Supreme Court, affirming the decision of the High Court, held that there was nothing to show that the confession of M. K. related to a loan to the assessee, much less to the loan which was shown to have been advanced by that person to the respondent and the live link or close nexus which should be there between the material before the Income-tax Officer and the belief which he was to form was missing or was, in any event, too tenuous to provide a legally sound basis for reopening the assessment . . .

The position in the present case falls within the same category. At the time of the original assessment all the facts relating to the cash credits in question were fully disclosed. This has been found by the learned judge at page 960 (of 118 ITR) and indeed this is the accepted position on the basis of which even the proposal of the Income-tax Officer to the Commissioner (set out at page 964) proceeded. Thereafter, the only material received by the Income-tax Officer appears to be that the Revenue authorities had carried out certain investigations, that they had discovered the existence of bogus hundi brokers who were allegedly lending their names to the assessee and that a list had been circulated to various Income-tax Officers of the hundi brokers who were allegedly indulging in malpractices. The internal audit party appears to have discovered that some of the creditors whose credits had been accepted in the assessee's case fell within this category and raised an audit objection which was the immediate provocation for the reopening of the assessment. In this case also, as in the case before the Supreme Court, there is no live connection or link established between the information or the facts, in the possession of

the Income-tax Officer, and the genuineness of the particular loans recorded in the assessee's books. The mere fact that the names of some of the creditors figured in a list made out by the Department would be too general and vague to lead to an inference regarding the truth or otherwise of the loans recorded by the assessee. We are wholly unable to find any material point of distinction between the facts of the present case and those considered by the Supreme Court in the case of Lakhmani Mewal Das [1976] 103 ITR 437 (SC)."

6. *The view taken by the Supreme Court in Lakhmani Mewal Das [1976] 103 ITR 437 (SC) was followed in Ganga Saran and Sons P. Ltd. v. ITO [1981] 130 ITR 1 (SC). The matter was again examined by the Supreme Court in Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456 (SC). In the said case, information was received by the Assessing Officer that the third company had never actually advanced loans to any person and the said third company was in the business consisting entirely of name lending. Noticing the judgment in Lakhmani Mewal Das [1976] 103 ITR 437 (SC) it was held that the nature of information which was available was vastly different. In the case of Lakhmani Mewal Das [1976] 103 ITR 437 (SC), the information was extremely vague and scanty whereas in the case of Phool Chand Bajrang Lal [1993] 203 ITR 456 (SC), the information was specific, unambiguous and clear.*

7 to 13.

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 lakhs during the financial year 2002-03 as per the details given in the annexure. The said annexure, reproduced above, relates to a cheque received by the petitioner on October 9, 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.*

(emphasis supplied by us herein)

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 the annexure, which has been quoted above. The annexure cannot be regarded as a material or*

evidence that prima facie shows or establishes nexus or link which discloses escapement of income. The 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.

16. *It may be noted here that a company by the name of Swetu Stone Pvt. Ltd. had applied for and was allotted shares in the petitioner-company on payment by cheque of Rs. 5 lakhs. As noticed above, in the annexure the name of the company/account holder is mentioned as Swetu Stone PV. The same is also mentioned in the undated reasons mentioned above.*

17. *In the counter-affidavit it is stated that M/s Swetu Stone Pvt. Ltd. had applied for allotment of shares worth Rs. 5 lakhs and the same were allotted by the petitioner. It is further stated that statements of Mahesh Garg and Shubhash Gupta were recorded by the Director of Income-tax (Investigation) and on the basis of the statements they have come to the conclusion that the said persons were entry operators. Copy of the statements of Mahesh Garg and Shubhash Gupta have not been placed on record by the respondent. The petitioner has, however, enclosed a copy of statements of Mahesh Garg and Shubhash Gupta recorded on different dates. The said persons have not specifically named the petitioner though other parties have been named and details have been given and it is stated that they were provided accommodation entries. However, it is stated that the entries were made by giving cheque/DD/PO after receiving cash and sometimes expenses entries were provided. The reasons recorded by the Assessing Officer do not make reference to any statement of Mahesh Garg or Shubhash Gupta. This may not also be necessary, if the statements were on record and it is claimed and prima facie established that they were examined by the Assessing Officer before or at the time of recording reasons. On the other hand, in the present case, information as enclosed as annexure, has been referred. This is the only material relied upon by the Assessing Officer. The said annexure has been quoted above. In this connection, we may notice that M/s. Swetu Stone Pvt. Ltd. is an incorporated company and the petitioner has pleaded*

and stated that the said company has a paid-up capital of Rs. 90 lakhs. The company was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. To this extent, there is no dispute. In these circumstances, we feel the judgments of the Delhi High Court in CIT v. SFIL Stock Broking Ltd. [2010] 325 ITR 285 (Delhi) and Sarthak Securities Co. P. Ltd. v. ITO [2010] 329 ITR 110 (Delhi), in which CIT v. Lovely Exports P. Ltd. [2009] 319 ITR (St.) 5 ; [2009] 216 CTR 195 (SC) has been applied and followed, are applicable. We may notice here that the respondent in their counter-affidavit have stated that Swetu Stone Pvt. Ltd. is unidentifiable and, therefore, the aforesaid decisions should not be applied and the ratio of the decision dated January 7, 2011, in Writ Petition (Civil) No. 7517 of 2010, (AGR Investment Ltd. v. Addl. CIT [2011] 333 ITR 146 (Delhi)) should be applied. In the said decision, decisions in the case of Sarthak Securities Co. P. Ltd. [2010] 329 ITR 110 (Delhi) and SFIL Stock Broking Ltd. [2010] 325 ITR 285 (Delhi) were distinguished by giving the following reasons (page 162) :

"In SFIL Stock Broking Ltd . [2010] 325 ITR 285 (Delhi), the Bench has interfered as it was not discernible whether the Assessing Officer had applied his mind to the information and independently arrived at a belief on the basis of material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the factual matrix in the case at hand. In the case of Sarthak Securities Co. P. Ltd . [2010] 329 ITR 110 (Delhi), the Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into transaction and the Assessing Officer was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee-company through the banking channel. Regard being had to the aforesaid fact situation, this court had interfered. Thus, the said decision is also distinguishable on the factual score."

18. *The facts indicated above do not show that M/s. Swetu Stone Pvt. Ltd. is a non-existing and a fictitious entity/person. Decision in AGR Investment Ltd. [2011] 333 ITR 146 (Delhi), therefore, does not help the case of the respondent.*

19. *For the reasons stated above, the present writ petition is allowed and writ of certiorari is issued quashing the proceedings under section 148 of the Act. In the facts of the case, there will be no order as to costs.*

10. We find that the Hon'ble Jurisdictional High Court in yet another case of PCIT vs Meenakshi Overseas Private Limited reported in 395 ITR 677 (Del) had made the following pertinent observations:-

"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.

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 147 of 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.

33. In Rustagi Engineering Udyog (P.) Ltd. (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 (supra), it was emphasized that the reasons to believe "should have a link with an 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) 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."

11. In the instant case before us, the assessee was in receipt of share application money from the following two parties:-

Concise Exim Pvt Ltd – Rs 1,20,00,000/-

Reinforce Recruiter Pvt Ltd – Rs 1,20,00,000/-

11.1. With regard to the aforesaid two parties, the learned AO in the course of assessment proceedings asked the assessee company to prove the identity, genuineness and creditworthiness of the subscribers. In response, the assessee company duly filed the requisite details with the learned AO including

confirmations from the investors, copies of their ITRs, bank statements and audited accounts of the subscribers for the relevant period. The entire amounts had been received by the assessee company through regular banking channels by account payee cheques/ demand drafts/ online fund transfers . The confirmations filed by all the parties clearly reveal the source of funds, particulars of the bank account through which payment has been received and their income tax particulars which go on to establish the identity and creditworthiness of the respective share applicants authoritatively and conclusively. The monies invested by the share subscribers are duly reflected in the audited balance sheet of the subscribers company thereby proving the genuineness of the transactions. Notice under section 133(6) of the Act issued to Concise Exim Private Limited by the learned AO was stated to be returned back. But we find from page 101 of the paper book, M/s Concise Exim Private Limited had duly replied before the Learned AO on 14-12-2018 confirming the fact that they have invested Rs 1.20 crores in the assessee company as share application money during the year under consideration. They had also given the details of their bank accounts from which they had invested the monies together with the copy of the bank statements, copy of computation of income, income tax return, balance sheet of their company along with all the relevant annexures. They had also clarified that no shares were issued by the assessee company against the said investment. The fact that Concise Exim Private Limited having filed the requisite details called for under section 133(6) of the Act had been duly admitted by the Learned AO at the end of paragraph 11 of the assessment order.

11.2. The Learned AO noted that the notice under section 133(6) of the Act issued to Reinforce Recruiter Private Limited was not complied with by the said party. But assessee on its part had filed the ITR acknowledgement of the said investor

company for the Assessment year 2011-12 which is enclosed in page 102 of the paper book; bank statements of investor company which is enclosed in page 115 of the paper book; confirmation from the said subscriber enclosed in page 116 of the paper book and audited balance sheet of the said subscriber enclosed in pages 103 to 114 of the paper book. Since the said party had not complied with the notice under section 133(6) of the Act, the assessee requested the Learned AO to issue summons under section 131 of the Act to the said investor which was not carried out by the Learned AO. Hence, it could be safely concluded that assessee had duly furnished all the requisite documents that are available at its side. Merely because the particular notice under section 133(6) of the Act had not been complied by the subscriber company, no adverse inference could be drawn on the assessee. Further when the assessee had requested the Learned AO to issue summons to the said party, the Learned AO had remained silent. Reliance in this regard was rightly placed by the Learned AR on the decision of Hon'ble Supreme Court in the case of CIT vs Orissa Corporation P Ltd reported in 159 ITR 78(SC). The ratio decidendi of this judgement comes to the rescue of the assessee and hence no adverse inference whatsoever could be drawn on the assessee with regard to this investor company.

11.3. Hence it could be seen that the assessee had duly proved all the three ingredients of section 68 of the Act with regard to both the investor companies.

12. Since the assessee in the instant case before us had duly furnished all the relevant documents before the Learned AO, the decision rendered by the Hon'ble Jurisdictional High Court in the case of PCIT vs Laxman Industrial Resources Ltd reported in 397 ITR 106 (Del) would squarely apply to the facts of the instant case. It was held in this case that no substantial question of law arises where the

reassessment proceedings had been initiated on the basis of information received from the Investigation Wing and where the assessee had provided several documents with a view to prove that the transactions were genuine.

13. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to hold that the Learned AO had invalidly assumed jurisdiction under section 147 of the Act and validity of reopening fails for more than one reason as detailed supra. Even on merits, there is no case for sustaining the addition under section 68 of the Act in respect of share application monies received from the aforesaid two investor companies in the facts and circumstances of the instant case. Hence the original grounds and the additional grounds raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06/08/2025.

-Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 06/08/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi