

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21999 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

ARADHNA ESTATE PVT. LTD.....Petitioner(s)

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(1)

(1)....Respondent(s)

Appearance:

MR MANISH J SHAH, ADVOCATE for the Petitioner(s) No. 1

MRS KALPANAK RAVAL, ADVOCATE for the Respondent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 20/02/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged a notice dated 31.3.2017 issued by the respondent Assessing Officer to reopen the petitioner's assessment for the assessment year 2010-2011.
2. Brief facts are as under. The petitioner is a private limited company. For the assessment year 2010-2011, the petitioner had filed return of income on 21.9.2010 declaring a total income of Rs.15.14 lacs (rounded off). Such return was taken in scrutiny by the Assessing Officer. During such scrutiny assessment, he had raised queries about share application money received by the company from various entities. The petitioner replied to such queries, upon which, the order of assessment under section 143(3) of the Income Tax Act came to be passed on 1.1.2013 making no addition with respect to such share application money.
3. To reopen such assessment, the Assessing Officer issued impugned notice. In order to do so, he had recorded the

following reasons :

“The assessee has filed its return of income for FY. 2009-10 on 21/09/2010 declaring total income at Rs.. The assessment u/s 143[3] of the Act was completed on 15,14,993/and income as determined at Rs.15,14,990/-.

In the case of the assessee, information have been received from the DDIT[Inv] Unit-3(1), Kolkata in reference to sharing of information of shell companies which have given accommodation entries for share premium in Surat based companies. Vide the referred communication, the DDIT[Inv] Unit-3(1), Kolkata has provided list of 114 Kolkata based shell companies which have given accommodation entries in Surat based companies. It has also been stated by the DDIT[Inv] that master data of paper/shell companies maintained by th Kolkata Directorate which has been prepared/complied on the basis of statement of many entry operators/dummy directors recorded during various search & seizure operation/survey operations/investigations/Inquires was checked.

On perusal of data so provided by the DDIT(Inv) Unit-3(1), Kolkata, it is noticed that during the period under consideration, the assessee company has accepted share capital/ share premium from the following entities/parties which have been proved to be shell companies based on the investigation conducted by the DDIT(Inv) Unit-3(1), Kolkatta :

Sr. No.	Name of the Investor	Equity shares	Share capital	Share Premium
1	Welon Advisory Services Pvt. Ltd, 6, Hanspukur Lane, 1 st floor, Room No. 106, Kolkata	30000	3000000	5700000
2	Bonaza Vyapaar Pvt. Ltd, 136, Amlangshu Sen Road, 1 st floor, Kolkatta	17500	175000	3325000

3	ETL Infrastructure Finance Limited 1 B Black Burn Lane 4 th Floor, Kolkatta	25000	250000	4750000
4	Ishunand Trading Pvt. Ltd, 29A Weston Street, 3 rd Floor, R.No.C-2, Kolkatta	31000	310000	5890000
5	J.P. Engineering Corporation Pvt. Ltd., AE-326, Salt Lake City, Ground Floor, Kolkatta	42000	420000	7890000
6	Subhlabh tradcomm Pvt Ltd., 29A Weston Street 3 rd Floor, C-2, Omer Mansi, Kolkata	12500	125000	2375000
7	Swift Vyapaar Pvt Ltd. 27, Braboune Road, 4 th floor, Room No. 401, Kolkata	12500	125000	2375000
8	ACOLYTE TIE-UP PVT LTD. 574, DAKHINDARI ROAD, GRUND FLOOR, KOLKATA-700048	12500	125000	2375000
9	BRAVEMEN TRADERS PVT LTD RGM-744, CHAINAR PARK, P.O. HATIARA, OPP CLUB TOWN ENCLAVE KOLKATA-700157	14000	140000	2660000
10	SAHIBA AGENCIES PVT LTD 23A, KALAKAR STREET, 2ND FLOOR, KOLKATA-700007	14000	140000	2660000
11	TRANSTARDE VINIMAY PVT LTD 8/1b, CENTRE SINTHEE ROAD, PO SINTHEE KOLKATA-700050	12500	125000	2375000
12	SLOW AND SOUND ELECTRONICS PVT LTD 2, DIGAMBER JAIN TEMPLE ROAD, 1ST FLOOR, ROOM NO. 28, KOLKATA-700007	58500	585000	11115000
13	SUBHREKHA VYAPPAR PVT LTD 6, HANSPUKUR LANE, 1ST FLOOR ROOM NO.106 KOLKATA 7000007	65000	650000	12350000
14	ARIHANT ENTERPRISE LTD 27, SIKDAR PARA STREET, GROUND FLOOR, KOLKATA	19000	550000	3610000
15	ELGIN SALES PROMOTION LTD.6, HANSPUKUR LANE, 1ST FLOOR KOLKATA 700007	55000	190000	10450000

16	GALORE SUPPLIERS PVT LTD.2, DIGAMBER JAIN TEMPLE ROAD, 1ST FLOOR, ROOM NO.28, KOLKATA-700007	60000	600000	11400000
17	MSV FISCAL SERVICES PVT LTD-2, DIGAMBER JAIN TEMPLE ROAD 1ST FLOOR KOLKATA-700007	68500	685000	13015000
18	RADIANT MERCHANDISE PVT LTD 2, DIGAMBER JAIN TEMPLE ROAD, 1ST FLOOR, KOLKATA 700007	61000	610000	11590000
19	ROSEBERRY DISTRIBUTORS PVT LTD 2, DIGAMBER JAIN TEMPLE ROAD, 1ST FLOOR, KOLKATA 700007	48500	485000	9215000
20	SK STOCK DEALERS PVT LTD2, DIGAMBER JAIN TEMPLE ROAD, 1ST FLOOR, KOLKATA 700007	65500	655000	12445000
		724500	9945000	137655000

On verification of the materials available on record and facts and circumstances of the case, it is seen that the assessee has shown to have received share capital/share premium amounting to Rs. 14,76,00,000/- (share capital Rs. 99,45,000 + share premium Rs. 13,76,55,000). Since, the investor companies have been proved to be shell companies indulged in providing accommodation entries, the share capital/share premium claimed to have been received, from such companies by the assessee company is not genuine. Therefore, this amount is nothing but assessee company's own money introduced in the grab of share capital/share premium from the shell company and as such liable for taxation under the provisions of section 68 of the IT. Act.

In view of the above facts, since the above companies are proved to be bogus/paper companies and were given accommodation entries to the assessee company by way of share capital and share premium during the F.Y. 2009-10.

I have reason to believe that the share capital/share premium received to the extent Rs. 14,76,00,000/- (share capital Rs. 99,45,000 + share premium Rs. 13,76,55,000) has escaped the assessment for A.Y. 2010-11 and the assessee company had failed to disclose full and true facts of its case, within the meaning of provisions of sec. 147 of the IT. Act. Therefore, I am satisfied that this is a fit case for issue of notice u/s.148 r.w.s. 147 of the Act for action u/s 147 of the Act for the A. Y. 2010-11”.”

4. The petitioner raised objections to the notice of reopening under letter dated 13.5.2017. Such objections were however, rejected by the Assessing Officer by an order dated 28.7.2017, upon which, the petitioner filed the present petition.

5. Taking us through the materials on record, counsel for the petitioner raised the following contentions in support of the challenge :

1) The notice of reopening has been issued beyond a period of four years from the end of relevant assessment year, the original assessment having been framed after scrutiny. There was no failure on part of the assessee to disclose truly and fully all material facts necessary for assessment. Impugned notice therefore, is bad in law.

2) During the scrutiny assessment, the Assessing Officer had minutely examined the nature and source of share

application money received by the assessee company. The assessee had supplied all necessary details. Only upon being satisfied about the genuineness of such investments that the Assessing Officer made no additions. Any attempt on his part to revisit this issue would be a change of opinion. In this connection, counsel relied on judgment of Division Bench of Delhi High Court in case of **Allied Strips Ltd. v. Assistant Commissioner of Income-tax** reported in (2016) 384 IR 424 (Del).

3) The reasons recorded by the Assessing Officer lack validity. Nowhere has it come on record that the Director of the companies who had invested in share capital of the petitioner company had stated that such investments are bogus. The Assessing Officer has not demonstrated any material at his command to form a belief that the income chargeable to tax had escaped assessment.

4) Our attention was drawn to the newly inserted proviso to section 68 of the Income Tax Act, 1961, to contend that the case of the assessee would be governed by pre-amended section 68 of the Act and in any case, the assessee had during the original assessment complied with the requirements of the proviso newly inserted to the said provision.

5) The counsel contended that the Assessing Officer has merely relied on the report of the investigation wing without independent application of mind. He has thus acted on borrowed satisfaction that income chargeable to tax has escaped assessment. In this respect counsel relied on judgment of Division Bench of this Court in case of **Harikishan Sunderlal Virmani v. Deputy Commissioner of Income-tax** reported in (2017) 394 ITR 146 (Guj).

6. On the other hand, learned counsel Shri Nikunt Raval for the department opposed the petition contending that after the assessment was framed, the department received information suggesting that the transactions of share application money received in case of the assessee company were not genuine and were merely entries provided by different entities and in reality it was nothing but the assessee's own funds which were being introduced in the guise of share capital or share premium through shell companies. In that view of the matter, reopening even beyond the period of four years would be permissible. Merely because the Assessing Officer during the assessment proceedings had examined this issue would not preclude him from resorting to reopening of the assessment when fresh material was brought to his notice

to which he had applied his mind and formed a belief that income chargeable to tax had escaped assessment, that too, on account of failure on part of the assessee to disclose truly and fully all material facts. Counsel submitted that at this stage in exercise of judicial review, the Court would not go into the sufficiency of such reasons. As long as it is pointed out that the Assessing Officer had tangible materials at his command to form such a belief and he after application of mind formed such bona fide belief, the Court would not scuttle the reopening process. Counsel relied on judgment of the Supreme Court in case of **Raymond Woolen Mills Ltd. v. Income-tax officer and others** reported in 236 ITR 34 in which it was observed as under :

“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.”

Counsel also relied on judgment of the Division Bench of this Court in case of **Yogendrakumar Gupta v. Income-tax Officer** reported in (2014) 366 ITR 186 (Guj) in which the Court permitted reopening to the department which was based on similar transaction of bogus share application money. Counsel pointed out that the judgment in case of **Yogendrakumar Gupta**(supra) was followed later in case of **M/s. Aaspas Multimedia Limited v. Deputy Commissioner of Income tax, Circle-1(1)** reported in (2017) 83 Taxmann.com 82 (Guj).

7. We have reproduced the reasons recorded by the Assessing Officer for reopening the assessment. In such reasons, he pointed out that the information was received from the investigation wing of the department at Calcutta regarding shell companies which had given accommodation entries for share premium to Surat based companies. A list of 114 Calcutta based companies was provided which had given accommodation entries to such Surat based companies. Statements of many entry operators and dummy Directors recorded during various search and seizure operation, survey operation and investigation were checked. The

Assessing Officer thereupon proceeded to record that “ On perusal of data so provided by the DDIT(Inv) Unit-3(1), Kolkatta, it is noticed that during the period under consideration, the assessee company has accepted share capital/share premium from the following entries/parties which have been proved to be shell companies based on the investigation conducted by the DDIT(Inv) Unit-3(1), Kolkatta”. Underneath, he provided a list of 17 companies who had transacted with the assessee company during the year under consideration and were allotted equity shares by purported investment of sizeable share capital and share premium amounts. On verification of such materials, the Assessing Officer noted that the assessee had received share capital/share premium amount, amounting to Rs.14.76 crores. Since the investor companies were found to be shell companies indulging in providing accommodation entries, the Assessing Officer was of the opinion that the share capital/share premium claimed to have been received from the company by the assessee was not genuine. Amount is nothing but assessee's own money introduced in the garb of share capital/share premium from the shell companies and therefore, such amount is liable to be taxed under section 68 of the Act. He therefore, recorded his satisfaction that the income to the tune of Rs.14.76 crores had escaped assessment and that this was due to the assessee having failed to disclose truly and fully

all facts.

8. Section 147 of the Act provides inter-alia that if the Assessing Officer has the reason to believe that any income chargeable to tax has escaped assessment, he may subject to the provisions of section 148 to 153 of the Act, assess or reassess such income. Proviso to section 147 of-course requires that where the assessment under sub-section(3) of section 143 of the Act has been made for the relevant assessment year, no action shall be taken under this section after the expiry of the four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on part of the assessee to make return under section 139 or in response to a notice issued under sub-section(1) of section 142 or 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. In this context, it is well settled that the requirement of full and true disclosure on part of the assessee is not confined to filing of return alone but would continue all through out during the assessment proceedings also. In this context, the materials on record would suggest that the Assessing Officer had received fresh information after the assessment was over prima facie suggesting that sizeable amount of income chargeable to tax in case of the assessee had escaped assessment and

that such escapement was on account of failure on part of the assessee to disclose truly and fully all material facts. The Assessing Officer formed such a belief on the basis of such materials placed before him and upon perusal of such material. This is not a case where the Assessing Officer was reexamining the materials and the documents already on record filed by the assessee along with the return or subsequently, brought on record during the assessment proceedings. It is a case where entirely new set of documents and materials was placed for his consideration compiled in the form of report received from the investigation wing. Such material was perused by the Assessing Officer and upon examination thereof, he formed a belief that the petitioner company had received share application and share premium money from as many as 20 different investor companies who were found to be shell companies and indulging in giving accommodation entries. From our view point, the Assessing Officer had sufficient material at his command to form such a belief. Such materials did not form part of the original assessment proceedings and was placed before the Assessing Officer only after the assessment was completed. Since on the basis of such materials, Assessing Officer, as we have recorded, came to a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the Assessing

Officer during the original assessment also would not preclude him from reopening the assessment. His scrutiny during the assessment will necessarily be on the basis of the disclosures made by the assessee.

9. With these foundational conclusions, we may deal with the contentions of the counsel for the petitioner :

10. The contention that there was no failure on part of the assessee to disclose truly and fully facts cannot be accepted. The Assessing Officer, as noted, received fresh material after the assessment was over, prima facie, suggesting that the assessee company had received bogus share application/premium money from number of shell companies.

11. Merely because the transactions in question were examined by the Assessing Officer during the original assessment would not make any difference. The scrutiny was on the basis of disclosures made and materials supplied by the assessee. Such material is found to be prima facie untrue and disclosures not truthful. Earlier scrutiny or examination on the basis of such disclosures or materials would not debar a fresh assessment. Each individual case of this nature is bound to have slight difference in facts. Judgement of Delhi High Court in case

of **Allied Strips Ltd.**(supra) does not suggest that merely because a particular issue was examined during the original assessment proceeding, the Assessing Officer would be debarred from resorting to reopening of the assessment, even if he had sufficient fresh materials at his command, to form a reasonable belief that the assessee had made incorrect disclosures or had not made full disclosures which would have a vital bearing on the assessment of his income. If that is the ratio, counsel for the petitioner wishes to cull out from such judgment, we record our respectful disagreement. In case of **Yogendrakumar Gupta**(supra), the Court rejected a petition challenging the notice of reopening which was issued beyond a period of four years from the end of relevant assessment year, in which also one of the grounds was that the issue was previously scrutinised during the assessment proceedings. The Court observed as under :

“16. Ostensibly, thus, there was disclosure and the occasion would not arise to term this as the assessee not having disclosed fully and truly all the material facts necessary for assessment. However, in essence, if the unsecured loans obtained from Basant Marketing Pvt. Ltd. from the material supplied by them, the DCIT, Kolkata reveals that the same was as a result of accommodation entry in the form of loans and advances from Basant Marketing Pvt. Ltd. to the tune of Rs.8.71 crore, the case of

the assessee would surely be covered under the said provision of law as it would not amount to full and true disclosure on the part of the assessee.

At this stage, the reasons recorded shall have to be regarded, which have been based on the information contained in the report of the DCIT, Kolkata, dated March 24, 2013, wherein it had been noticed that the assessee company obtained accommodation entry in the form of loans and advances from Basant Marketing Pvt. Ltd. and, therefore, the Assessing Officer based his reason to believe that the income chargeable to tax had escaped the assessment.

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17. In the post notice correspondence dated March 05, 2014, it has been stated by the Assessing Officer that Basant Marketing Pvt. Ltd. provided accommodation entry to various companies, where assessee company is one of them. Basant Marketing Pvt. Ltd. is a dummy company of one Shri Arun Dalmia and substantial material is found to base such reasons recorded during the search by CBI, Mumbai and, therefore, the Assessing Officer issued a notice to show cause as to why the said amount of Rs.8.71 crore received from Basant Marketing Pvt. Ltd. should not be treated as cash credit under section 68 of the Act.

21. This Court has examined the belief of the Assessing Officer to a limited extent to inquiry as to whether there was sufficient material available on record for the Assessing Officer to form a requisite belief whether there was a live link existing of the material and the income chargeable to tax that escaped assessment. This does not appear to be the case where the Assessing Officer on vague or unspecific information initiated the proceedings of reassessment, without bothering to form his own belief in respect of such material. We need to notice that the Joint

Director, CBI, Mumbai, intimated to the DIT (Investigation), Mumbai. A case is registered against Mr. Arun Dalmia, Harsh Dalmia and during the search at their residence and office premises, the substantial material indicated that 20 dummy companies of Mr. Arun Dalmia were engaged in money laundering and the income-tax evasion. The said entities included Basant Marketing Pvt. Ltd. also. From the analysis of details furnished and the beneficiaries reflected, which are spread across the country, the CIT, Koklata, suspected the accommodation entry related to the assessment year 2006-07 as well, this information has been provided to Director General of Income-tax, Kolkata, who in turn, communicated to the Chief Commissioner of Income-tax, Ahmedabad. Further revelation of investigation as could be noticed from the record examined (file) deserves no reflection in this petition. Insistence on the part of the petitioner to provide any further material forming the part of investigation carried out against Dalmias also needs to meet with negation, as the law requires supply of information on which Assessing Officer recorded her satisfaction, without necessitating supply of any specific documents. The proceedings initiated under section 147 of the Act would not be rendered void on non-supply of such document for which confidentiality is claimed at this stage, following the decision of the Delhi High Court in case of **Acorus Unitech Wireless (P.) Ltd. (supra)**. Assumption of jurisdiction on the part of the Assessing Officer is since based on fresh information, specific and reliable and otherwise sustainable under the law, challenge to reassessment proceedings warrant no interference.”

12. In case of **Jayant Security and Finance Ltd. v. Assistant Commissioner of Income-Tax Circle1(1)** [Special Civil Application No.18921/2017, order dated 12.2.2018], this Court observed as under :

“8. The question of change of opinion and failure on the part of the assessee to disclose truly and fully all material facts, in the present case are closely connected. Undoubtedly, as noted earlier, the Assessing Officer during the original assessment had examined the transactions. However, such examination would necessarily be on the basis of disclosures made by the assessee in the return filed and during the scrutiny assessment. If the Assessing Officer has information to form a reasonable opinion that *prima facie* the entire transaction itself was sham and bogus, as reference to such transaction during the original assessment and raising certain queries in this respect would not prevent him from reopening the assessment on the principle of change of opinion. As noted, the opinion would be formed on the basis of disclosures. When disclosures are found to be *prima facie* untrue, the opinion formed earlier would not prevent Assessing Officer from examining the issue. In the present case, as noted, Assessing Officer received additional information after the original assessment was over, on the basis of which he formed a belief that the entire transaction was a sham transaction. At this stage, where the Court is examining the validity of notice of reopening, it is not necessary that the Assessing Officer must have conclusive evidence to hold that invariably additions would be made in the income of the assessee. What is required is the reason to believe that income chargeable to tax as escaped assessment. Sufficiency of the materials in the hand of the Assessing Officer which enabled him to form such a belief would not be examined. A reference in this respect is made to a decision of the Supreme Court in the case of **Asstt. Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers P. Limited**, reported in [2007] 291 ITR 500.”

13. The next contention that the Assessing Officer did not

demonstrate any material enabling him to form a belief that income chargeable to tax has escaped assessment is fallacious. The Assessing Officer recorded detailed reasons pointing out the material available which had a live link with formation of belief that the income chargeable to tax had escaped assessment. At this stage, as is often repeated, we would not go into sufficiency of such reasons. In this context, reference can be made to decision of Supreme Court in case of **Raymond Woolen Mills Ltd.** (supra). In case of **Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd.** reported in (2007) 291 ITR 500(SC), it was observed as under :

“The expression reason to believe in section 147 would mean cause or justification. If the Assessing Officer has cause or If the Assessing Officer 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 Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. 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 is within the realm of subjective satisfaction of the Assessing Officer.”

14. Section 68 of the Act, as is well known, provides that where any sum is found credited in the books of an

assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited maybe charged to income-tax as the income of the assessee of that previous year. That the share application money received by the assessee from above-noted companies was only by nature of accommodation entries and in reality, it was the funds of the assessee which was being re-routed. Undoubtedly, Section 68 of the Act would have applicability. Proviso added by the Finance Act 2012 with effect from 1.4.2013, does not change this position. Proviso reads as under :

“68....

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless -

- (a) the person being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory;.....

15. As per this proviso, where the assessee is a company

and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, explanation offered by the assessee company shall be deemed to be not satisfactory, unless the person in whose name such credit is recorded in the books of the company also offers an explanation about the nature and source of sum so credited and such explanation in the opinion of the Assessing Officer has been found to be satisfactory. Essentially, this proviso eases the burden of proof on the Revenue while making addition under section 168 with respect to non genuine share application money of the companies. Even in absence of such proviso as was the case governing the periods with which we are concerned in the present case, if facts noted by the Assessing Officer and recorded in reasons are ultimately established, invocation of section 68 of the Act would be called for.

16. The contention that the Assessing Officer had merely and mechanically acted on the report of the investigation wing also cannot be accepted. We have reproduced the reasons recorded by the Assessing Officer and noted the gist of his reasons for resorting to reopening of the assessment. We have recorded that the Assessing Officer had perused the materials placed for his consideration and thereupon, upon examination of such materials formed a

belief that income chargeable to tax had escaped assessment. In case of **Principal Commissioner of Income-tax, Rajkot-3 v. Gokul Ceramics** reported in (2016) 241 Taxman 1 (Gujarat), similar contention was raised by the counsel for the assessee contending that the Assessing Officer had acted mechanically on the investigation carried out by the Excise department and not formed his independent belief. Such a contention was rejected making the following observations :

“9. It can thus be seen that the entire material collected by the DGCEI during the search, which included incriminating documents and other such relevant materials, was alongwith report and show-cause notice placed at the disposal of the Assessing Officer. These materials prima facie suggested suppression of sale consideration of the tiles manufactured by the assessee to evade excise duty. On the basis of such material, the Assessing Officer also formed a belief that income chargeable to tax had also escaped assessment. When thus the Assessing officer had such material available with him which he perused, considered, applied his mind and recorded the finding of belief that income chargeable to tax had escaped assessment, the re-opening could not and should not have been declared as invalid, on the ground that he proceeded on the show-cause notice issued by the Excise Department which had yet not culminated into final order. At this stage the Assessing Officer was not required to hold conclusively that additions invariably be made. He truly had to form a bona fide belief that income had escaped assessment. In this context, we may refer to various decisions cited by the counsel for the Revenue.

10. In case of Central Provinces Manganese Ore Co. Ltd.

vs. Income Tax Officer, Nagpur (supra) the Supreme Court noted that in case of the assessee which had an office in London, this Customs authority had come to know that the assessee had declared very low price in respect of the consignment of Manganese exported by them out of India. After due inquiries and investigations, the Customs authorities found that the assessee was systematically under-voicing the value of Manganese as compared with the prevailing market price. The Income Tax Officer on coming to know about the proceedings before the Customs Collector in this respect issued notice for reopening of the assessment. In the reasons that the Assessing Officer relied on the facts as found by the Customs Authorities that the assessee had under-voiced goods during export. Under such circumstances, upholding the validity of the notice for reopening, the Supreme Court held and observed as under:

“So far as the first condition is concerned, the Income Tax Officer, in his recorded reasons, has relied upon the fact as found by the Customs Authorities that the appellant had under invoiced the goods it exported. It is not doubt correct that the said finding may not be binding upon the income tax authorities but it can be a valid reason to believe that the chargeable income has been under assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to make the Income Tax Officer believe that there has been under assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the Income Tax Officer under Section 147(a) of the Act was satisfied.”

11. In case of Income Tax Officer vs Purushottam Das Bangur (supra) after completion of assessment in case of the assessee, the Assessing Officer received letter from Directorate of Investigation giving detailed particulars collected from Bombay Stock Exchange which revealed

earning of share and price of share increased during period in question and quotation appearing at Calcutta Stock Exchange was as a result of manipulated transaction. On the basis of such information, the Assessing Officer issued notice for reopening of the assessment. The question, therefore, arose whether the information contained in the letter of Directorate of Investigation could be said to be definite information and the Assessing Officer could act upon such information for taking action under Section 147(b) of the Act. In such background, the Supreme Court observed as under:

“12. Ms. Gauri Rastogi, the learned counsel appearing for the respondents, has urged that the letter of Shri Bagai was received by the Income tax Officer on March 26, 1974 and on the very next day, that is, on March 27, 1974, he issued the impugned notice under Section 147(b) of the Act and that he did not have conducted any inquiry or investigation into the information sent by Shri Bagai. Merely because the impugned notice was sent on the next day after receipt of the letter of Shri Bagai does not mean that the Income Tax Officer did not apply his mind to the information contained in the said letter of Shri Bagai. On the basis of the said facts and information contained in the said letter, the Income Tax officer, without any further investigation, could have formed the opinion that there was reason to believe that the income of the assessee chargeable to tax had escaped assessment. The High Court, in our opinion, was in error in proceeding on the basis that it could not be said that the Income Tax Officer had in his possession information on the basis of which he could have reasons to believe that income of the assessee chargeable to tax had escaped assessment for the relevant assessment years. For the reasons aforementioned, we are unable to uphold the impugned judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the Writ Petitions filed by the respondents are dismissed. No order

as to costs.”

12. In case of Income Tax Officer vs Selected Dalurband Coal Co. Pvt. Ltd.(supra), the assessment was reopened on the basis of the information contained in letter from Chief Mining Officer that the colliery of the assessee had been inspected and there had been under reporting of coal raised. Upholding the validity of re-opening of assessment, the Supreme Court held and observed as under:

“After hearing the learned counsel for the parties at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income Tax Officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January 9, 1967, by the officers of the Mining Department in the presence of the representatives of the assessee and according to the opinion of the officers of the Mining Department, there was under reporting of the raising figure to the extent indicated in the said letter. The report is made by a Government Department and that too after conducting a joint inspection. It gives a reasonably specific estimate of the excessive coal mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may be well be that the assessee may be able to establish that the facts stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our order, the reassessment proceedings have not to go on

we don not and we ought not to express any opinion on the merits.”

13. In case of AGR Investment Ltd. vs. Additional Commissioner of Income Tax and anr (supra), a Division Bench of Delhi High Court considered the validity of reopening of assessment where the notice was based on information received from Directorate of investigation that the assessee was beneficiary of bogus accommodation entries. The Court while upholding the validity of reopening observed that sufficiency of reason cannot be considered in a writ petition. It was observed as under:

“23 The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the assessing officer treated them as objections and made a communication. However, on a scrutiny of the order, it is perceivable that the authority has passed the order dealing with the objections in a very careful and studied manner. He has taken note of the fact that transactions involving Rs.27 lakhs mentioned in the table in Annexure P-2 constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The assessing officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the DIT (INV-V) as regards the transactions entered into by the assessee company with number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a

different manner in the proceeding under Section 147 of the Act. The reason to believe has been appropriately understood by the assessing officer and there is material on the basis of which the notice was issued. As has been held in Phool Chand Bajrang Lal (supra), Bombay Pharma Products (supra) and Anant Kumar Saharia (supra), the Court, in exercise of jurisdiction under Article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In SFIL Stock Broking Ltd. (supra), 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. Pvt. Ltd. (supra), 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 transactions 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.”

14. Learned Single Judge of Madras High Court in case of Sterlite Industries (India) Ltd. vs. Assistant Commissioner of Income Tax reported in [2008] 302 ITR 275 (Mad) upheld the notice for reopening which was based on information from enforcement directorate showing possible inflation of purchases made by the assessee.”

17. In the result, petition is dismissed.

18. All the above observations are only for the purpose of dealing with the petitioner's challenge to the notice of reopening and would not limit any of the contentions of the assessee with respect to the reassessment.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

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