

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)**

**I.T.A. No. 117/Kol/2018  
Assessment Year: 2008-09**

***M/s. Cygnus Investments & Finance Pvt.Ltd.....Appellant  
(Earlier M/s. Suniyojit Finance Ltd)  
36, Sir HariramGoenka Street  
Kolkata - 700 039  
[PAN : AAACN 8468 L]***

***Assistant Commissioner of Income Tax, Central Circle 3(3), Kolkata.....Respondent***

**Appearances by:**

*Shri S.M. Surana, AR, appeared on behalf of the assessee.*

*Shri G. Mallikarjuna, CIT, D/R. appearing on behalf of the Revenue.*

Date of concluding the hearing :May 3<sup>rd</sup>, 2018

Date of pronouncing the order :May 18<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This is an appeal filed by the assessee directed against the order of the Id. Commissioner of Income Tax (Appeals)-21, Kolkata, dt. 26/12/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2008-09.

2. Though the assessee has raised grounds both on the issue of re-opening of the assessment as well as on merits of the addition, the Id. Counsel for the assessee Shri S.M. Surana, advanced arguments only on the issue of re-opening of the assessment. No arguments, whatsoever were advanced on the merits of the addition. Hence we restrict ourselves to the issue of the validity of the re-opening of the assessment.

2.1. The Id. Counsel for the assessee referred to the reasons of re-opening and challenged the validity of the same on the following grounds:-

- a) Notice was issued in the name of M/s. Navalco Commodities Pvt. Ltd., which had merged into the assessee company *w.e.f.* 01/04/2010 and hence notice was issued to a non-existing company, which is bad in law and hence the re-assessment framed in pursuance of such notice is also bad in law.
- b) Notice was issue by the ITO Ward 7(3), who had no jurisdiction over the assessee, as is evident from the remand report submitted by him, wherein at para 5.2.2., the Assessing Officer admitted that the assessee was assessed by the ITO Ward 2(4). Hence, there was no application of mind and a notice issue by a non-jurisdictional Assessing Officer is bad in law.

- c) The reassessment was based on the direction of the DDIT and suffers from non-application of mind by the Assessing Officer. The reasons recorded that income subject to tax has escaped assessment, should be that of the Assessing Officer and not of some other authority.
- d) The reopening was beyond a period of four years and there was no approval by the authority prescribed u/s 151(1) of the Act. As the original assessment was completed u/s 143(3) of the Act, the approval should have been granted by the Commissioner of Income Tax and whereas in the case on hand, the approval was granted by the Additional/Joint Commissioner of Income Tax. Hence the reopening is bad in law.
- e) That the reopening was beyond a period of 4 years from the end of the assessment year and the proviso to section 147 of the Act is not complied with and hence bad in law.

2.2. The ld. Counsel for the assessee relied on a number of decisions for each of the above arguments.

3. The ld. D/R, on the other hand opposed the contentions of the assessee and submitted a copy of the comprehensive report submitted by the Assessing Officer on the issue of reopening. He also relied on the order of the ld. CIT(A) and argued that the reassessment is valid in law. He took this bench through the reasons recorded for reopening and submitted that the assessee company has allotted shares at a premium of Rs.240/- to certain companies commonly known as *jamakharchhi* companies and that the information was received from DDIT (Inv.) Unit-2(1), Kolkata, and based on these specific information the reopening was made. He argued that at the time of recording reasons for reopening, the Assessing Officer need not look for proof and if there is material to suggest the escapement of income, it is sufficient. He relied on certain case-law in support of his contentions.

3.1. The case-law relied upon by both the parties will be discussed by us and when necessary.

4. After hearing rival contentions, perusing the papers on record and orders of the authorities below as well as the case-law cited, we hold as follows:-

The reasons recorded for reopening of the assessment by the Assessing Officer are as follows:-

M/S. SUNIOJIT FINANCE PVT LTD  
P.A.N. : AAJCS8647K :: Assessment Year : 2008-09

**REASONS FOR REOPENING:**

17.03.2015

In this case information was received from DDIT(INV), UNIT-2(1), Kolkata vide No. DDIT/4-2(1)/Cygnus/2014-15/655 date 16.03.2015 in respect of M/s. Suniojit Finance Pvt. Ltd., from the Deputy Director of Income Tax (Inv), Unit-2(1), Kolkata, office of the Directorate of Income Tax (Investigation), Aayakar Bhawan (Annex Building), P-13, Chowringhee Square, 5<sup>th</sup> floor, Kolkata - 700 069 that

"A search and seizure operation under section 132 of Income Tax Act, 1961 was conducted on Kolkata based Cygnus group of companies on 23.12.2014. During the course of post search investigation, it has been found that some of the group companies has raised bogus share capital during the financial year 2007-08.

On 31.03.2008, Suniojit Finance Ltd., a group of company of Cygnus group has allotted 5,20,000 share at a premium of Rs.240/- to the following companies/jamkherachi companies :-

Name	Address	No. of shares	Amount/Rs.)
Gallone Traders Pvt Ltd	3, C.R. Avenue, Kol-72	40000	1,00,00,000
Balised Dealers Pvt Ltd.	127A, Sarai Bose Road, Kolkata-700026	40000	1,00,00,000
Callidore Traders Pvt Ltd	-Do-	40000	1,00,00,000
Cristiane Treup Pvt Ltd	-Do-	40000	1,00,00,000
Esmari Merchandise Pvt Ltd	-Do-	40000	1,00,00,000
ISIS Merchandises Pvt Ltd	-Do-	40000	1,00,00,000
Kirsten Distributors Pvt Ltd.	-Do-	40000	1,00,00,000
Lairy Distributors Pvt Ltd	-Do-	40000	1,00,00,000
Lyska Agencies Pvt Ltd.	-Do-	40000	1,00,00,000
Maytris Traders Pvt Ltd	-Do-	40000	1,00,00,000
Nendej The Up Pvt Ltd.	3, C.R. Avenue, Kol-72	40000	1,00,00,000
Rhonwyn Trading Co Pvt Ltd	127A, Sarai Bose Road, Kolkata-700026	40000	1,00,00,000
Shoshane Merchandises Pvt Ltd	-Do-	40000	1,00,00,000
	<b>TOTAL</b>	<b>520000</b>	<b>13,00,00,000</b>

Summons were issued under section 131 of the IT Act'61 to all the Principal Officers of the allottee companies which returned unserved. Therefore, on examination of the departmental data base of dummy directors/paper companies, it has been found that all the allottee companies are owned and managed by Uday Shankar Mahawar. Consequently summons u/s. 131 of the IT Act to Sri Uday Shankar Mahawar was served and statement under section 131 has been recorded. In the statement, Sri Uday Shankar Mahawar has accepted that all these companies are paper companies having no real business and these have been floated for providing accommodation entries in form of bogus share capital in lieu of commission. The statement of two dummy directors namely Sri Sachin Kumar Sharma and Sri Rupesh Kumar Pandey has also been recorded and they have also confirmed that they are just dummy directors in the companies and these companies are controlled and managed by Sri Uday Shankar Mahawar. The copy of statement recorded u/s. 131 of the IT Act'61 of Sri Uday Shankar Mahawar, Sri Sachin Kumar Sharma and Sri Rupesh Kumar Pandey are enclosed herewith for your ready reference.

In the context of acceptance of Sri Uday Shankar Mahawar and the dummy directors of the companies, it has been ascertained that the capital raised by the Suniojit Finance Limited in the form of unaccounted income which have been enrolled in the form of share capital through Kolkata based jamkherachi/Sheet/Paper companies. Since the jurisdiction of M/s. Suniojit Finance Pvt Ltd lies with your jurisdiction and the required remedial action protect the interest of revenue is getting barred on 31.03.2015. Hence, it is requested to take appropriate remedial action as per Income Tax Act, 1961.

In view of the above facts, it is requested to:

- I. Take necessary action u/s.147 of the I.T. Act, 1961 for the respective years in the case of M/s. Suniojit Finance Pvt. Ltd.
- II. To initiate penalty proceedings u/s.271 (1)(c) of the I.T. Act, 1961 and relevant sections as applicable.

I have reason to believe that M/s. Suniojit Finance Pvt Ltd, during the A.Y.2008-09 had raised share capital @ Rs. 1 crore each from 13(thirteen) companies totaling to Rs.13(thirteen) crores as all these entries were admittedly accommodated by Sri Uday Shankar Mahawar who were examined on oath u/s.131 of the IT Act. Since he has testified that none of these 13 companies had any real business and were only floated to provide accommodation entries there goes beyond doubt that M/s. Suniojit Finance Pvt Ltd had deployed its undisclosed income through a chain of companies who had only acted as entry accommodates.

Accordingly undisclosed income of the company had escaped assessment u/s.147 read with explanation 2(b) of the I.T. Act and lawful revenue has not been yielded to the State. Notice u/s.148 is therefore issued today the 20<sup>th</sup> March 2015.

Put up for your kind perusal and approval thereof.

Issuance of notice is getting barred by limitation on 31.03.2015.

Certified to be True Copy

**SUSANITA SAHA**  
Asst. Commissioner of Income Tax  
Central Circle-1, Kolkata

**SCHITTA RANJAN SAMAL**  
Asst. Commissioner of Income Tax  
Central Circle-1, Kolkata



5. It can be seen that the reasons for reopening were recorded by the ITO Ward 7(3), Kolkata. The assessee had filed its return of income for the impugned Assessment Year 2008-09 on 27/09/2008. A notice u/s 148 of the Act, was issued to the assessee on 02/11/2009 by the Income Tax Officer, Ward 2(4), Kolkata. Further a notice u/s 143(2) of the Act was issued by the ITO Ward2(4), Kolkata, to the assessee on 02/12/2009. Thereafter, assessee was completed u/s 147 r.w.s. 143(3) of the Act, on 31/12/2009. This is a second reopening of the assessment. Admittedly, the reopening is beyond the period of four years from the end of the Assessment Year and the original assessment was completed u/s 143(3) of the Act. Under these circumstances, the proviso to Section 147 of the Act, comes into play. A perusal of the reasons recorded demonstrate that the Assessing Officer has not alleged that the assessee has failed to disclose fully and truly the material facts necessary for completion of the assessment. There is no whisper of such a violation by the assessee in the reasons.

We find that the 'A' Bench of this Tribunal in the case of *M/s. Beekay Steel Industries Ltd. vs. DCIT CC-XXX, Kolkata, in I.T.A. No. 105/Kol/2015, order dt. 31/05/2017*, held as follows:

4.4. *The Hon'ble Bombay High Court in the case of Tao Publishing (P) Ltd. v. Dy.CIT reported in (2015) 370 ITR 135 (Bom.), has held as follows:-*

*"10. As stated above, the reasons supplied to the Petitioner do not disclose that there was any failure on the part of the Petitioner to provide all the material facts. That being the position, this ground could not have been taken up against the Petitioner at the time of disposing of the objections. Once this was not the basis for issuance of notice for Reassessment, it cannot be held against the Petitioner that the Petitioner had failed to make a true and full disclosure. It will have to be held that the Petitioner did not fail to make full and true disclosure of all material facts. The jurisdictional requirement for carrying out the reassessment, after the expiry of period of four years, is not fulfilled in the present case."*

4.5. *The Hon'ble Bombay High Court in the case of Sound Casting (P) Ltd. v. Dy. CIT reported in 250 CTR 119 (Bom.) (HC), has held that there is no allegation in the reasons which have been disclosed to the assessee that there was any failure on his part to fully and truly disclose material facts necessary for assessment and therefore reopening beyond four years was not valid. (A.Y. 2005-06).*

4.6. *The Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd. reported in [2013] 354 ITR 356 (Del.)(HC) has held as follows:*

*"The reasons recorded by the Assessing Officer in the present case do confirm our apprehension about the harm that a less strict interpretation of the words "reason to believe" vis-à-vis an intimation issued under section 143(1) can cause to the tax regime. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147."*

4.7. The Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. v. Commissioner of Income-Tax and Anor. reported in [2009] 308 ITR 38 (Delhi) has held as follows:

*“26 Viewed in this light, the proviso to section 147 of the said Act, carves out an exception from the main provisions of section 147. If a case were to fall within the proviso, whether or not it was covered under the main provisions of section 147 of the said Act would not be material. Once the exception carved out by the proviso came into play, the case would fall outside the ambit of section 147.*

*27 Examining the proviso [set out above], we find that no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year if the following conditions are satisfied:*

*(a) an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year; and (b) unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee: (i) 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 (ii) to disclose fully and truly all material facts necessary for his assessment for that assessment year.*

*Condition (a) is admittedly satisfied inasmuch as the original assessment was completed under section 143(3) of the said Act. Condition (b) deals with a special kind of escapement of income chargeable to tax. The escapement must arise out 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. This is clearly not the case here because the petitioner did file the return. Since there was no failure to make the return, the escapement of income cannot be attributed to such failure. This leaves us with the escapement of income chargeable to tax which arises out of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. If it is also found that the petitioner had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 could have been taken after the four year period indicated above. So, the key question is whether or not the petitioner had made a full and true disclosure of all material facts ?*

*29 In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in WellIntertrade Private Ltd (supra) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania (supra) that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the*

*assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our viewpoint, we hold that the notice dated 29.03.2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 02.03.2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.*

*4.8. Applying the propositions laid down in the above case law to the facts to this case, we have to necessarily hold that the re-opening of the assessment proceedings is not valid that there is not even a whisper in the reasons recorded for the reopening of the assessment that there is a failure on the part of the assessee to disclose fully and truly all the necessary material facts required for assessment in view of the 1<sup>st</sup> proviso to Section 147 of the Act. In this case no tangible materials have come to the possession of the Assessing Officer subsequent to the Assessment Order u/s 143(3). Re-opening is done based on the same material and record and hence it is bad in law. As far as the contention, that there is a change in opinion is concerned, we are unable to agree with the ld. Counsel for the assessee as there was neither a query on this issue by the Assessing Officer during the original assessment proceedings, nor there was a reply by the assessee. Hence there was no opinion formed. Thus, the question of change of opinion does not arise.*

*4.9. In any event, as we have held that the re-opening is bad in law as it does not fulfill the requirement of the Proviso to Section 147 of the Act, and as no tangible material has come to the possession of the Assessing Officer, we quash the assessment and allow the appeal of the assessee.*

*5. In the result, the appeal of the assessee is allowed.*

5.1. Hence for this reason, we have to necessarily hold that the reopening of the assessment is bad in law.

6. Section 151 of the Act, reads as follows:-

*"151. Sanction for issue of notice.—(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice."*

6.1. Admittedly, the approval u/s 151(1) of the Act, in the case on hand has been granted by the Additional Commissioner of Income Tax Range - 7 vide order dated 31.03.2015 vide No. Addl. CIT/Range-7/Kol/148/2014-15/3916 and not by the Commissioner of Income Tax as mandated under the Act. Hence the reopening in question is bad in law as held by the Hon'ble Bombay High Court in the case of *Ghanshyamdas Khabrani vs. ACIT 346 ITR 443*, wherein it has been held as follows:-

*"The second ground upon which the reopening is sought to be challenged is that the mandatory requirement of section 151(2) has not been fulfilled. Section 151 requires a sanction to be taken for the issuance of a notice under section 148 in certain cases. In the instant case, an assessment had not been made under section 143(3) or section 147 for*

assessment year 2004-05. Hence, under sub-section (2) of section 151, no notice can be issued under section 148 by an Assessing Officer who is below the rank of Joint Commissioner after the expiry of 4 years from the end of the relevant assessment year unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. The expression 'Joint Commissioner' is defined in section 2(28C) to mean a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under section 117(1). In the instant case, the record before the Court indicates that the Assessing Officer submitted a proposal on 28-3-2011 to the Commissioner (Appeals) through the Additional Commissioner. On 28-3-2011, the Additional Commissioner forwarded the proposal to the Commissioner.

On this, a communication was issued on 29-3-2011 from the office of the Commissioner (1) conveying approval to the proposal submitted by the Assessing Officer. There is merit in the contention raised on behalf of the assessee that the requirement of section 151(2) could have only been fulfilled by the satisfaction of the Joint Commissioner that this is a fit case for the issuance of a notice under section 148. Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. That expression has a distinct meaning by virtue of the definition in section 2(28C). The Commissioner is not a Joint Commissioner within the meaning of section 2(28C). In the instant case, the Additional Commissioner forwarded the proposal submitted by the Assessing Officer to the Commissioner. The approval which has been granted is not by the Additional Commissioner but by the Commissioner. There is no statutory provision under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner. [Para 6]

Once the Court has come to the conclusion that there was no compliance of the mandatory requirements of sections 147 and 151(2), the notice reopening the assessment cannot be sustained in law. [Para 7]

Under similar circumstances, the Lucknow Bench of the ITAT in the case of *Balbir Singh, being ITA No. 880/K/2014, dt. 13/03/2015*, wherein the judgement of the Delhi High Court in the case of *CIT vs. SPL's Siddhartha Ltd. [2012] 345 ITR 223 (Delhi)* wherein it has been held as follows:-

*It was apparent from records that the Assessing Officer had specifically sought the approval of the Commissioner only. Therefore, it could not be said that the Joint Commissioner/Additional Commissioner had granted the approval. Further, no doubt, the file was routed through Additional Commissioner. However, he also, in turn forwarded the same to the Commissioner. [Para 4]*

*It is clear that the Additional CIT did not apply his mind or gave any sanction. Instead, he requested Commissioner to accord the approval. It, thus, cannot be said that it is an irregularity curable under section 292B. [Para 5]*

*Section 116 also defines the Income-tax authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in the specified circumstances. If powers conferred on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. [Para 7]*

*Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is*

that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now well-settled. [Para 8]

The Apex Court in the case of Anirudh Sinhji Karan Sinhji Jadeja v. State of Gujarat [1995] 5 SCC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether. [Para 9]

Therefore, the Tribunal has rightly decided the legal aspect, keeping in view well-established principles of law laid down in catena of judgments including that of the Supreme Court. [Para 10]

No question of law arises. This appeal is accordingly dismissed. [Para 11]

The Hon'ble Delhi High Court in the case of Pr. CIT vs N.C. Cables in ITA No. 335/2015 judgement dated 11.01.2017 held that approval under section 151 is to be made after application of mind. It is not so in this case as mechanical approval is given by an officer who is not authorised to do so in law.

6.2. Thus on this count also we hold that the reopening is bad in law.

7. Further a perusal of the reasons recorded shows non-application of mind by the Assessing Officer. Directions have been given by the DDIT (Inv.) Unit-2(1), Kolkata, vide communication cited. The reasons recorded are only based on such directions. The reopening was done in compliance in such directions.

7.1. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax, IV v. Insecticides (India) Ltd* [2013] 357 ITR 330 (Delhi) upheld the order of the ITAT Delhi Bench in ITA Nos. 2332-2333/Del/2010, holding as follows:-

*"7. We may point out at this juncture itself that the Tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, in essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any material. As such, on the available material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid.*

*8. The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. Instead of adding anything to the said reasons, we think it would be appropriate if the same are reproduced:—*

*"In the case at hand, as is seen from the reasons recorded by the AO, we find that the AO has merely stated that it has been informed by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 that the above named company was involved in giving and taking bogus entries/transactions during the relevant year, which is actually unexplained income of the assessee company. The AO has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons recorded, it is nowhere mentioned as to who*

had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions. It is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The AO has vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the AO did not mention the facts mentioned in the said communication except that from the informations gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment. In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO were with reference to those amounts mentioned in the assessment order. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place. In this respect, we may rely upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT v. Atul Jain [\[2000\] 299 ITR 383](#), in which case the information relied upon by the AO for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the AO was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P.) Ltd. (supra) also supports the view we have taken above."

9. We do not see any reason to differ with the view expressed by the Tribunal. No substantial question of law arises for our consideration. The appeals are dismissed. There shall be no order as to costs.

7.2. The Jurisdictional High Court in the case of Principal CIT vs G&G Pharma India Ltd. in ITA 545/2015 vide order dt. 08.10.2015 at paras 12 and 13 was held as follows:

"12. In the present case, after setting out four entries, stated to have been received by the assessee on a single date i.e. 10<sup>th</sup> Feb. 2003, from four entries which were received by the assessee on a single date i.e. 10<sup>th</sup> Feb. 2003, from four entries which were termed as accommodation entries, which information was given to him by the Director Investigation, the A.O. stated: 'I have also perused various materials and report from Investigation Wing

and on that basis it is evident that the assessee company has, introduced its own unaccounted money in its bank account by way of above accommodation entries'. The above conclusion is unhelpful in understanding whether the A.O. applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the A.O., if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the assessee, which must have been tendered along with the return, which was filed on 14<sup>th</sup> November, 2004 and was processed u/s 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the A.O. to have simply concluded: 'it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries'. In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decision discussed, the basic requirement that the A.O. must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment is missing in the present case.

13. A perusal of the reasons recorded demonstrate total non application of mind by the A.O. Thus applying the proposition laid down by the Jurisdictional High Court in G&G Pharma India (supra) we hold that the reopening of assessment is bad in law"

7.3. The Hon'ble Delhi High Court in the case of Signature Hotels (P) Ltd. vs ITO and another, reported in 338 ITR 51 (Delhi) has under similar circumstances held as follows:

*"For the A.Y. 2003-04, the return of income of the assessee company was accepted u/s 143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently, the Assessing Officer issued notice u/s 148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.*

*The Delhi High Court allowed the writ petition and held as under: '(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The assessing Officer must have 'reasons to believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.*

*(ii) A notice u/s 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 reasons. There should be a link between the reasons and the evidence material available with the Assessing Officer.*

*(iii) The reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during F.Y.2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income.*

*(iv) Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed.*

7.4. In the case of CIT vs Atul Jain reported in 299 ITR 383 it has been held as follows:

*“Held dismissing the appeals, that the only information was that the assessee had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque for that amount. The information did not indicate the source of the capital gains which in this case were shares. There was no information which shares had been transferred and with whom the transaction had taken place. The A.O. did not verify the correctness of information received by him but merely accepted the truth of the vague information in a mechanical manner. The A.O. had not even recorded his satisfaction about the correctness or otherwise of the information for issuing a notice u/s 148. What had been recorded by the A.O. as his ‘reasons to believe’ was nothing more than a report given by him to the Commissioner. The submission of the report was not the same as recording of reasons to believe for issuing a notice. The A.O. had clearly substituted form for substance and therefore the action of the A.O. was not sustainable”*

8. Respectfully applying the propositions of law laid down in the judgments cited above to the facts of the case, we have no other alternative but to hold that the reopening of the assessments is bad in law. Hence we quash the re-opening of amount.

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

***Kolkata, the 18<sup>th</sup> day of May, 2018.***

Sd/-  
**[S.S. Viswanethra Ravi]**  
 Judicial Member

Sd/-  
**[J. Sudhakar Reddy]**  
 Accountant Member

Dated 18.05.2018  
 {SC SPS}

*Copy of the order forwarded to:*

**1. M/s. Cygnus Investments & Finance Pvt. Ltd  
 (Earlier M/s. Suniyojit Finance Ltd)  
 36, Sir Hariram Goenka Street  
 Kolkata – 700 039**

**2. Assistant Commissioner of Income Tax, Central Circle 3(3), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
 By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches