IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17786 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA **Sd/-**
and
HONOURABLE MR. JUSTICE ILESH J. VORA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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NAVNIDHI DYEING AND PRINTIING MILLS PVT. LTD. THRU. DIRECTOR MAYANK MAHESHKUMAR MALPANI
Versus
ASST. COMMISSIONER OF INCOME TAX, CIRCLE 1(1)(2)

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Appearance:
MR DARSHAN R PATEL(8486) for the Petitioner(s) No. 1
MRS KALPANAK RAVAL(1046) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 16/03/2021

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-application has prayed for the following reliefs :

"(A) Issue a writ of certiorari and/or a writ of mandamus and/or any other writ, direction or order to quash and set aside the impugned notice dated 30.3.2018 under section 148 of the Income-tax Act, 1961 annexed hereto at Annexure-B along with preliminary order dated 23.10.2018 annexed hereto at Annexure-F for proceeding and completing reassessment proceedings.

(B) Pending admission, hearing and disposal of this petition, ad-interim relief be granted and the respondent be ordered to restrain from enforcing compliance of the impugned notice dated 30.3.2018 at Annexure-B and/or taking any other steps in this regard including reassessment order or implementation of preliminary order dated 23.10.2018 at Annexure-F and further notices issued for purpose of reassessment.

(B1) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing and setting aside the impugned assessment order dated 24.12.2018 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 at Annexure-G collectively.

(B2) Pending admission, hearing and final disposal of the present petition, be pleased to stay the implementation, operation and execution of the impugned assessment order dated 24.12.2018 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 at Annexure-G collectively.

(C) Award the cost of this petition.

(D) Grant such other and further reliefs as this Hon'ble Court deems fit."

2. The subject matter of challenge in the present litigation is to the notice of re-opening issued under Section 148 of the Income Tax Act, 1961 (for short, 'the Act') for the Assessment Year 2011-12 in a case where the return of income was processed for the relevant year under Section 143(1) of the Act. Otherwise, the re-opening is beyond the period of four years. The reasons assigned by the Assessing Officer for re-opening are as under :

"The assessee company filed its return of income for A.Y. 2011-12 on 26.09.2011 declaring total income of Rs.19,38,960/-. In this case, there is no assessment as stipulated u/s.2(40) of the Act was made and the return of income was only processed u/s.143(1) of the Act.

2. In this case, during the year under consideration, there was a huge increase in share capital & premium of the assessee company. As per the details available, the assessee has received share capital and share premium from the following Kolkata based companies which were proved shell companies by income tax department during the various survey/search proceedings.

Thus, the assessee company has received total share capital money of Rs.40,00,000/- from Kolkata based shell companies during the year under consideration.

Sr. No.	*Name of the Investor Company*	*Number of Equity Share*	*Share Capital (In Rs.)*	*Share Premium (In Rs.)*	*Total Share Capital Money (In Rs.)*
1	*Prima Vyapaar Pvt. Ltd.*	*20000*	*2,00,000*	*18,00,000*	*20,00,000*
2	*Asha Apartments Pvt. Ltd.*	*20000*	*2,00,000*	*18,00,000*	*20,00,000*
				Total	*40,00,000*

3. In the recent past, it is noticed that many companies all over India has introduced share capital and share premium in their books of accounts from the various entities, which proven to be bogus and was engaged in the providing of accommodation entries. In such connection, in recent year, through various search & seizure operations/ survey operations/ investigations/ inquiries/ other related action on shell companies operated throughout India by the Income-tax department as well as other Government agencies (via Enforcement Directorate/ CBI/ SFIO etc.) based on which data base of such shell companies are prepared from time to time. Further in course of such action statement of many shell company operators/ dummy directors/ either related person have been recorded which admitted, confirmed the modus operandi implied in all these shell companies for rotation of funds for providing of accommodation entries of share capital/ loan/ purchased & sale bill etc. to the various beneficiaries as per their requirement.

4. The above mentioned company has invested amount as per above – table towards the share capital and premium thereupon in the assessee company during the year under consideration. It has been noticed that the aforesaid company is managed and controlled by one Kolkata based accommodation entry provider namely Shri Manoharlal Nangalia. A statement on oath of Shri Manoharlal Nangalia has been recorded on oath by the DDIT (Inv.), Kolkata in which he has categorically accepted the fact that his main business is providing accommodation entries through "Jama-Khaarchi/Shell" companies to various beneficiaries in lieu of commission and also describe/ accepted the modus operandi implied in providing of entry of funds.

5. On such observation & facts and looking to considerable increase in the shareholders fund in the hand of the assessee in the year under consideration in this case, necessary permission has been taken from the Pr. CIT-1, Surat to issue letter u/s.133(6) of the I.T. Act. After receiving of permission, to provide an opportunity to the assessee to explain the above transactions, a letter u/s.133(6) of the I.T. Act was issued to the assessee on 12.03.2018 with a request to furnish the reply/ details in respect of shareholders fund received during the year. In response to the said letter, the assessee has not filed any reply/ explanation in the above matter. The above information/ details as well as details of list of shell companies from the available database prepared from time to time available in this office have been perused. From the details, it is seen that the assessee has received shareholders funds from above mentioned Kolkata based shell companies.

6. In view of the above findings, the credentials of investor companies is also got cross verified from the available details/records. As per database of such shell companies prepared from time to time through various search & seizures operations/ survey operations/ investigations/ inquiries/ other related action on shell companies operated throughout India by the Income-tax department as well as other Government agencies (via Enforcement Directorate/ CBI/ SFIO etc.), in which name of investore company M/s Prime Vyapaar Pvt. Ltd. And M/s Asha Apartments Pvt. Ltd. Have been found, which has been investigated by the Income-tax department and proved to be one of the bogus concerns of Kolkata based entry operator Shri Manoharlal Nangalia. The said entry provider has categorically accepted the fact that his main business is providing accommodation entries through "Jama-Khaarchi/ Shell" companies to various beneficiaries in lieu of commission. In view of these facts, the investment made from the said concern in the assessee company cannot be held as genuine as being routed through shell companies of the entry provider.

From above discussed facts of the case, it can concluded that the fund received in the nature of shareholders funds by the assessee company in the year under consideration are nothing but in the nature of accommodation entries being layered through various shell companies operated by entry operators based in Kolkata, though these investor company have no financial credentials on its own. Mere money routed through banking channel and filing of return

may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work of documentation but genuineness, creditworthiness, identity are deeper and obtrusive and such basic ingredients could not found explained in this case in connection with receiving of shareholders fund by the assessee company.

7. In view of above facts/ material available on record and further analyzing the same, I have reasons to believe that income of the assessee to the extent of Rs.40,00,000/- has escaped assessment for A.Y. 2011-12 within the meaning of section 147 of the I.T. Act.

8. In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s.143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s.147 is reason to believe which has been recorded above refer paragraphs 2 to 7)

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s.2(40) of the Act was made and the return of income was only processed u/s.143(1) of the Act. In view of the above, 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 chargeable to tax has escaped assessment."

3. To the aforesaid reasons, the writ-applicant lodged his objections in details. The objections are as under :

"(1) Our case has been re-opened by recording the reasons that we have received share capital and share premium from 1) Prime Vyapaar Pvt. Ltd. (Rs.20,00,000/-), and 2) Asha Apartments Pvt. Ltd. (Rs.20,00,000/-) [total Rs.40,00,000/-] during the year under consideration, which, as per the reasons recorded, are Kolkata based shell companies and the sums received from them are accommodation entries, which has escaped assessment for A.Y. 2011-12. In this regard, we humbly beg to submit that we have not received any amount from above mentioned companies during the year under consideration. Thus, the very basis/reason for re-opening of our case is factually incorrect. We have not received any amount from above mentioned companies during the year under consideration i.e. F.Y. 2010-11 (A.Y. 2011-12).

We have received share application money from above named companies in last year i.e. F.Y. 2009-10 (A.Y. 2010-11) as under :

i)	*PRIME VYAPAAR PVT. LTD.*	*Rs.10,00,000/-*
ii)	*ASHA APARTMENTS PVT. LTD.*	*Rs.10,00,000/-*

Thus, we have not received any amount from above companies during the year under consideration (i.e. A.Y. 2011-12). Further, amount of share application money received from them in the last year i.e. F.Y. 2009-10 was

Rs.10,00,000/- each (total Rs.20,00,000/- from both companies) and not Rs.20,00,000/- each (total Rs.40,00,000/- from both) as mentioned in the reasons recorded. We enclose herewith copies of the share applications and A/c confirmations received from them for both years proving the above fact. We also enclose herewith copy of relevant extract of our Bank statement evidencing that the sums were received from them in last year and not in the year under consideration. Thus, the sums were received from them in last year against which allotment was made in this year. But no amount was received from them in the year under consideration. Thus, the very basic reason and consequent belief of escapement of income arrived at is factually incorrect.

Further, we may also mention that our last year's (A.Y. 2010-11) case was scrutiny assessment u/s 143(3) and the share application money received from above companies has been accepted as genuine after due verification in scrutiny assessment of last year (i.e. A.Y. 2010-11), in which these amounts were received. We enclose herewith copy of scrutiny assessment order of A.Y. 2010-11.

2. Further, Your Honour has not provided us copies of the material relied in the reasons recorded such as basis/reasons for inclusion of above companies in database of shell companies, report of the DDIT (Inv), Kolkata, and statement of so-called entry provider namely Manoharlal Nangalia. It is simply mentioned that the names of above mentioned companies are there in the database of shell companies. However, in the absence of relevant material for

terming them as shell companies, we are unable to know as to for what reasons/basis and when their names were included in this database, as they are very old companies. We, therefore, request Your Honour to kindly provide us copies of all such material on the basis of which reasons have been recorded and our case has been re-opened including copy of the report of DDIT (Inv), Kolkata, and statement of so-called entry provider Manoharlal Nangalia. We also request Your Honour to kindly provide us opportunity of his cross examination. We may mention that as per our information he was neither director nor shareholder of above companies. It is, therefore, not clear as to how his statement is relevant in our case. We reserve our right to make further objections after receipt of above material and opportunity.

3. Further and without prejudice to above, we humbly beg to point out that both these companies are 'very old companies' 'regularly assessed under the income tax since their incorporation' and having 'active' status as per R.O.C. Both of them are registered as NBFC with the RBI and are subject to constant monitoring and supervision by RBI. This is evident from following chart :

Name	*Date of Incorporation*	*PAN*	*NBFC Regn. No. with RBI*
Prime Vyapaar Pvt. Ltd.	*10.12.1993*	*AABCP5505F*	*B.05.04669 Dt.28.11.2001*
Asha Apartment Pvt. Ltd.	*22.12.1995*	*AACCA2027J*	*B.05.04309 Dt.27.08.2001*

We enclose herewith copies of their R.O.C. Master Data. Both are very old companies, having 'active status' as per ROC. Both have been regularly assessed under the income tax since their incorporation. There is no mention of any adverse finding by their AOs about their genuineness or genuineness of their business/activities. In such a situation, to say them as shell companies is not correct. On what basis, they have been termed as shell company is not mentioned in the reasons. On above facts, the reasons recorded and consequent belief of escapement of income arrived at are not only incorrect but are also invalid and contrary to the law laid down by Hon'ble jurisdictional High Court in the case of RANCHHOD JIVABHAI NAKHWA, 208 Taxmann 35 (Guj).

4. Further and without prejudice to above, our case has been re-opened just on the basis of generalized database and statement of a third person (who is not relevant person) without independent verification, inquiries and satisfaction by our Ld. AO himself. Thus, this is a case of 'borrowed satisfaction' and not satisfaction of our Ld. AO. The very fact that we have not received any amount from above mentioned companies during the year proves this fact. Further, the reasons recorded by Ld. AO are not 'reasons to believe' but are mere 'reasons to suspect' and whole of the proceeding is merely based on suspicion."

4. The aforesaid objections came to be disposed of by the Assessing Officer vide communication dated 23rd October 2018 as under :

"8. The contention raised by the assessee that there is no issue of share on premium to above mentioned companies and has not received any share premium amount of Rs.20,00,000/- from each Prime Vyapaar Pvt. Ltd. and Asha Apartment Pvt. Ltd. Company. The data submitted by the assessee in support of his contention does not substantiate. Here it should be noted that the assessee has accepted to have received amount of Rs.10,00,000/- each from Prime Vyapaar Pvt. Ltd. and Asha Apartment Pvt. Ltd. in F.Y. 2009-10 the companies which have been seem as bogus Kolkata based companies. This has been further verified by this office from report of Kolkata I.T.O. (Inv.) office. This has clearly indicated that the said company is not performing any genuine business and is shell company. Thus, the transaction done by issuing share to any such company required to be verified in depth. Here it should be noted that provision of section 147 clearly indicated that when there is reason to believe that there is escapement of income by the assessee the AO can very well reopen the case.

9. Further the other contention of the assessee that the amount has been received during F.Y. 2009-10 and not during F.Y. 2010-11 does not stand valid as it has been found from the website of MCA that the allotment of share has been done during the F.Y. 2010-11 to companies Prime Vyapaar Pvt. Ltd. and Asha Apartment Pvt. Ltd. which are seem as shell companies. The amount could have been received during F.Y. 2009-10 but the actual purpose of transaction is revealed in A.Y. 2010-11 when amount was transferred for allotment of share. However, here it is necessary to be mentioned that merely reopening the case

should not be considered as the final outcome, here it should be noted that the sufficient opportunity under the law will be available to the assessee to prove themselves. Keeping in view of the above the objection of the assessee are disposed off.

10. Hence, in view of the above facts involved for re-opening, it is clear that this is a matter to be examined with reference to the books of accounts and banking transactions of the assessee and therefore as per provisions of the Act and in the nature of justice, an opportunity of being heard is necessary in your case. So it is necessary to pass an order in this year after you being heard. Till then, it is not open to challenge the re-opening merely on the ground that the assessee has shown all full and true details in his ITR of respective year and there is no escapement of income."

5. Being dissatisfied with the aforesaid, the writ-applicant is here before this Court with the present writ-application.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT :

6. Mr.Darshan Patel, the learned counsel appearing for the assessee, vehemently submitted that there is no material to come to the conclusion that the income in the case of the assessee has escaped assessment. He would further submit that the Assessing Officer has proceeded entirely on the basis of the various search and seizure operations undertaken by the department with respect to the shell companies alleged to be operating across the country. Based on the same, the Assessing

Officer has come to the conclusion that the assessee herein has received shareholders' funds from the Kolkata based shell companies. According to Mr.Patel, the Assessing Officer has just proceeded on the borrowed satisfaction. Mr.Patel would submit that the Assessing Officer wishes to make a fishing inquiry.

7. In the last, Mr.Patel submitted that while according sanction under Section 151 of the Act for the purpose of issue of notice under Section 148 of the Act, the sanctioning authority has, without any proper application of mind, recorded a mechanical satisfaction for the purpose of permitting the Assessing Officer to proceed with the re-opening of the assessment.

8. In such circumstances referred to above, Mr.Patel prays that there being merit in his writ-application, the same be allowed and the impugned notice along with the final order of assessment passed under Section 143(3) of the Act be quashed and set-aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT :

9. On the other hand, this writ-application has been vehemently opposed by Mrs.Kalpana K.Raval, the learned senior standing counsel appearing for the Revenue. Mrs.Raval would submit that the return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by the assessee. Mrs.Raval would submit that the concept of change of opinion would, therefore, have no application in the present case. It is

also submitted that at the stage of re-opening of the assessment, the Court may not minutely examine the possible additions which the Assessing Officer wishes to make. It is also argued that the scrutiny at that stage would be limited to examine whether the Assessing Officer had formed a valid belief on the basis of the materials available with him that the income chargeable to tax had escaped assessment.

10. In such circumstances referred to above, the learned standing counsel prays that there being no merit in this writ-application, the same be rejected.

ANALYSIS :

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the notice of re-opening issued under Section 148 of the Act should be quashed and set-aside.

12. At the time of issuing the notice, a Coordinate Bench of this Court passed the following order dated 27th November 2018 :

> *"1. Mr. Darshan Patel, learned advocate for the petitioner invited attention to the reasons recorded for reopening the assessment to submit that the assessment for the year 2011-12 is sought to be reopened on the ground that the assessee has received total share capital of Rs.40,00,000/- from two Kolkata based shell companies viz. Prime Vyapar Private Limited and Asha Apartment Private Limited. It was pointed out that, in the objections against the reasons*

recorded, the petitioner has specifically stated that it has not received any amount from the aforesaid two companies in the year under consideration and that they had received share capital money from the said companies in the last year, that is, financial year 2009-10 corresponding to assessment year 2010-11. It is further pointed out that the amounts received from both the companies was Rs.10,00,000/- each and not Rs.20,00,000/-. It was also pointed out that in assessment year 2010-11 there was scrutiny assessment under section 143 (3) of the Income Tax Act, 1961 and the share application money received from the said companies has been accepted as genuine after due verification in scrutiny assessment of the year in which these amounts were received. It was submitted that therefore the assessing officer has proceeded on a factually incorrect premise and that on the basis of the reasons recorded, the assessing officer could not have formed the requisite belief that income chargeable to the tax has escaped assessment for the year under consideration. It was submitted that therefore, in the absence of the assessing officer having formed a requisite belief, the assumption of jurisdiction under section 147 of the Act is without authority of law.

2. Having regard to the submissions advanced by the learned advocate for the petitioner, issue NOTICE returnable on 7.1.2019. By way of ad-interim relief, the respondent is permitted to proceed further pursuant to the impugned notice; he, however, shall not pass the final order without the permission of this Court."

13. It appears that after the aforesaid order came to be passed, the final order of assessment under Section 143(3) of the Act came to be passed by the Assessing Officer. In such circumstances, the writ-applicant brought a draft amendment which was allowed vide order dated 9th January 2019. By way of a draft amendment, the writ-applicant also seeks to challenge the legality and validity of the final assessment order passed by the Assessing Officer pursuant to the impugned notice.

14. In such circumstances referred to above, vide order dated 17th January 2019, a Coordinate Bench of this Court, by way of an ad-interim relief, restrained the Revenue from making any coercive recovery pursuant to the impugned assessment order.

15. We shall confine our adjudication only so far as the legality and validity of the notice of re-opening is concerned.

16. The return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by assessee. The concept of change of opinion would, therefore, have no application. It is equally well settled that at the stage of reopening of the assessment, the court would not minutely examine the possible additions which the Assessing Officer wishes to make. The scrutiny at that stage would be limited to examine whether the Assessing Officer had formed a valid belief, on the basis of the materials available with him, that the income chargeable to tax had escaped assessment. Both these aspects have been examined by the Supreme Court in ***Assistant Commissioner of Income Tax vs. Rajesh Jhaveri***

Stock Brokers P. Ltd. [(2007) 291 ITR 500 (SC)] of which following observations may be noted:

> *"13. One thing further to be noticed is that intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from April 1, 1989 to March 31, 1998, the second proviso to section 143(1)(a), required that where adjustments were made under the first proviso to section 143(1)(a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till June 1, 1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between April 1, 1998 and May 31, 1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word intimation as substituted for assessment that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)*

(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to section 143 by the Finance (No. 2) Act of 1991 with effect from October 1, 1991, and subsequently with effect from June 1, 1994, by the Finance Act, 1994, and ultimately omitted with effect from June 1, 1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under section 143(1) (a) was deemed to be an order for the purposes of section 246 between June 1, 1994, to May 31, 1999, and under section 264 between October 1, 1991, and May 31, 1999. It is to be noted that the expressions intimation and assessment order have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time.

Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J) in Apogee International Limited v. Union of India [(1996) 220 ITR 248]. It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any assessment is done by them? The reply is an emphatic no. The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.

16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the 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. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991 (191) ITR 662], for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Pvt. Ltd. [1996 (217) ITR 597 (SC)]; Raymond Woolen Mills Ltd. v. ITO [1999 (236) ITR 34 (SC)].”

17. The aforesaid aspects have also been reiterated by the Supreme Court in the later judgment in the case of ***Deputy Commissioner of Income Tax and another vs. Zuari Estate Development and Investment Company Limited*** [(2015) 373 ITR 661 (SC)].

18. In the present case, the Assessing Officer has considered the materials on record which would, *prima facie*, suggest that during the year under consideration there was a huge hike in the amount of the share capital and share premium of the assessee company. The assessee received the amount of share capital and share premium from the Kolkata based shell companies, namely, Prime Vyapaar Pvt. Ltd. and Asha Apartments Pvt. Ltd. respectively. The Assessing Officer, *prima facie* found, based on the materials on record and the information received, that total share capital of Rs.40 lakh was received during the year under consideration. On verification of the details of the investors companies, it was found, *prima facie*, that the same was controlled by one Kolkata based accommodation entry provider, namely Manoharlal Nangalia. In a statement recorded by the department, Manoharlal Nangalia is said to have admitted to the fact that his main business is to provide accommodation entries through shell companies to various beneficiaries in lieu of commission.

19. In the judgment in the case of ***Principal Commissioner of Income Tax, Rajkot-3 vs. Gokul Ceramics*** [Taxman Vol. 241 (2016) 241], the Division Bench of this Court had examined the contention of the Assessing Officer proceeded on the basis of the

information supplied by the department, and after referring to the several judgments, made the following observations in para 9 which read thus:

> *"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 along with 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 reopening 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."*

20. The case on hand is not a case where the Income Tax Officer seeks to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the materials placed before him by the assessee as regards the

receipt of the share capital and share premium from the two Kolkata based shell companies referred to above. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment, which goes to accept the falsity of the statement made by the assessee at the time of original assessment, is different from drawing a fresh inference from the same facts and materials which were available with the Income Tax Officer at the time of original assessment proceedings. Thus, where the transaction itself, on the basis of the subsequent information, is found to be bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be disclosure of the 'true' and 'full' facts in the case and the Income Tax Officer would have the jurisdiction to re-open the concluded assessment in such a case. It is correct that the Assessing Officer could have deferred the completion of the original assessment proceedings for further inquiry and investigation into the genuineness to the transaction, but, in our opinion, his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under Section 147 of the Act, on receipt of the information subsequently. The subsequent information, on the basis of which the Income Tax Officer acquired reasons to believe that the income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts, was relevant, reliable and specific. It was not at all vague or non-specific.

21. We are conscious of the fact that it is well-settled through series of judgments of this Court that re-assessment, even in a case where the return was not scrutinized before acceptance

originally cannot be resorted to unless the Assessing Officer has a reason to believe that the income chargeable to tax had escaped assessment. In other words, for mere verification or for a fishing inquiry re-opening of the assessment is not permissible. However, such is not the case on hand. It cannot be said to be a fishing inquiry. There is some tangible material as on date in the hands of the Assessing Officer, and the Assessing Officer, after due application of mind, has recorded a satisfaction of his own that the income has escaped the assessment.

22. From the various judicial pronouncement on the subject, over a period of time, the following principles can be culled out:

> To confer jurisdiction to the Assessing Officer to reopen the assessment under Section 147 of the Income Tax Act beyond four years from the end of an Assessment Year, the following two conditions must be satisfied:
>
> > [a] that the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment; and that
> >
> > [b] the same occasioned, on account of either failure on the part of the assessee to make a return of his income for that Assessment Year, or to disclose fully and truly all material facts necessary for the assessment of that year.

23. As held by the Supreme Court in ***Phool Chand Bajrang Lal vs. Income-tax Officer***, reported in 203 ITR 456 (SC), where

transaction itself, on the basis of subsequent information, is found to be a bogus transaction, the Court held that mere disclosure of such transaction at the time of original assessment proceedings cannot be said to be a disclosure of 'full' and 'true' facts and the Assessing Officer surely would have the jurisdiction to re-open a concluded assessment in such a case. The Supreme Court had also observed in the said case that the Assessing Officer may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed, or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief is not for the Court to judge but it is open to an assessee to establish that there, in fact, existed no belief or that the belief was not at all a *bona fide* one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by him and further whether that material had any rational connection or a live link with the formation of the requisite belief.

24. The issue of sanction under Section 151 of the Act raised by the writ-applicant is without any foundation. This aspect has been dealt with by the Revenue in the affidavit-in-reply, more particularly, in paragraph-11.

25. In the overall view of the matter, we are convinced that we should not interfere with the impugned notice.

26. In the result, this writ-application fails and is hereby rejected. However, so far as the final order of assessment is concerned, it shall be open for the writ-applicant to challenge the same by filing an appeal before the CIT(A), in accordance with law.

27. We have not gone into the merits of the impugned assessment order. If any appeal is preferred by the writ-applicant, then the appellate authority shall decide the same on its own merits without being influenced in any manner by any of the observations made by this Court.

28. Notice stands discharged. Ad-interim relief earlier granted stands vacated.

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

/MOINUDDIN