IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20501 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE BELA M. TRIVEDI
and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
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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SANJAY BAULAL SURANA
Versus
THE ASSITANT COMMISSIONER OF INCOME TAX

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Appearance:
MR TUSHAR HEMANI, SR. ADVOCATE for MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MR NIKUNT RAVAL for MRS KALPANAK RAVAL(1046) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE BELA M. TRIVEDI**
and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

Date : 11/08/2021

CAV JUDGMENT
(PER : HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI)

1. This petition, under Article 226 of the Constitution of India,

is filed by the petitioner – assessee seeking to quash and set aside the Notice dated 27.03.2019 issued by the respondent authority under section 148 of the Income Tax Act, 1961 (*herein after referred to as "the Act"*) for the Assessment Year 2013-14, as it has reason to believe that the income chargeable to tax for the assessment year under consideration has escaped assessment within the meaning of section 147 of the Act.

2. The facts of the case of the petitioner are that the petitioner, who is an individual, had, during the Financial Year 2012-13, relevant to Assessment Year 2013-14 (*i.e.* the year under consideration), derived income from the house property, business income and income from other sources. During the year under consideration, the petitioner entered into Agreements to Sell in respect of the Offices owned by him being Office Nos. HG-12 and HG-13, situated in International Trade Center, Majura Gate Crossing, Ring Road, Surat, with Babylon Trading and Investment Pvt. Ltd., dated 23.08.2012 for Rs.70 lakh, and received part consideration of Rs.35 lakh through RTGS and with Gyaneshwar Vyapar Pvt. Ltd. dated 25.09.2012 for Rs.70 lakh and received part consideration of Rs.50 lakh through RTGS. Since, the said offices were occupied by the tenant and the petitioner could not get the same vacated, the aforesaid agreements to sell came to be cancelled *vide* agreements dated 10.11.2012 and 01.12.2012 respectively. Accordingly, amounts of Rs.36,40,384/- and Rs.51,61,096/- (principal + interest) were returned to the Babylon Trading and Investment Pvt. Ltd. and Gyaneshwar Vyapar Pvt. Ltd. respectively, by cheque No. 401374, debited to the petitioner's account on 21.12.2012 and No. 401381, debited to the petitioner's account on 29.12.2012, during the year under consideration. Thereafter, the petitioner filed his Return of

Income (RoI) for the year under consideration on 31.10.2013 declaring the total income at Rs.31,52,550/-. The case of the petitioner for the year under consideration was selected for scrutiny assessment and various details were called by the then Assessing Officer, which were furnished by the petitioner. That, while framing assessment under section 143(3) of the Act *vide* order dated 25.01.2016, no addition came to be made. However, after a period of almost six years, the respondent authority issued notice dated 27.03.2019 under section 148 of the Act seeking to reopen the case of the petitioner for the year under consideration. In response to the said notice, the petitioner filed its RoI on 12.04.2019 and also requested to supply the reasons for reopening, which were supplied *vide* letter dated 07.05.2019. A perusal of the same revealed that the case of the petitioner was reopened on the count that the amounts received from the aforesaid companies during the year under consideration were nothing but an outcome of the accommodation entries. The case of the respondent was that, as per the information received from the DDIT (Inv.), Unit 1(3), Kolkata, a search and seizure action was carried out in the case of one Banka Group (a third party) on 21.05.2018 and it was found that the Banka Group is involved in the activity of providing accommodation entries through the various companies controlled and managed by it. The petitioner had received a sum of Rs.50,00,112/- from M/s. Gyaneshwar Vyapar Pvt. Ltd., which was alleged to be a company controlled and managed by the Banka Group and hence, the respondent was of the view that the said amount was the outcome of an accommodation entry. Further, as per the second information received from the DDIT (Inv.), Unit 4(2), Kolkata in respect of M/s. Babylon Trading and Investment Pvt. Ltd., the name of the said company appeared in the database of various shell companies

controlled and managed by Gopal Banka and Manoharlal Nanglia (alleged entry operator). Since, the petitioner had received a sum of Rs.35,00,056/- from the said company, the respondent was of the view that the said amount was the outcome of an accommodation entry. Accordingly, the respondent had reason to believe that the income of Rs.85,00,168/- (Rs.50,00,112+35,00,056) had escaped assessment. Hence, the case of the petitioner for the year under consideration was reopened. Against the reasons accorded, the petitioner, *vide* letter dated 19.09.2019, raised objections against reopening on factual as well as the legal grounds, however, the respondent authority disposed of the said objections raised by the petitioner *vide* order dated 11.10.2019 *inter alia* holding that the reopening is justified and valid in the eyes of law. Being aggrieved, the petitioner is before this Court by way of this petition.

3. We have heard, learned senior advocate Mr. Tushar Hemani for learned advocate Ms. Vaibhavi Parikh for the petitioner and learned advocate Mr. Nikunt Raval for learned advocate Mrs. Kalpana Raval for the respondent.

3.1 The learned senior advocate for the petitioner has vehemently submitted that the basis for reopening the assessment by the Assessing Officer is receipt of money by the petitioner from the aforesaid companies, however, in fact, the said money, received towards part consideration in respect of two agreements to sell of the offices owned by the petitioner, was returned, with interest, to the said companies by cheques as the agreements to sell came to be cancelled as the tenant did not vacate the same and the said fact, was also brought to the notice of the respondent authority while raising objections against

reopening. However, the respondent, while passing the order disposing of the objections, had stated that had the said amount been the advance towards agreements to sell, the same would have been shown in the balance-sheet or sale proceeds in the profit and loss accounts, but it was not the case and on the contrary, the petitioner had shown the same as unsecured loan. The learned senior advocate for the petitioner submitted that the said observation of the respondent is misconceived for the reason that the advance was returned to the concerned, during the year under consideration itself and hence, there was no question of reflecting the same in the balance-sheet. Further, the agreements to sell were cancelled and hence, there was no question of reflecting the sale proceeds in the profit and loss account. He submitted that merely, the petitioner had shown unsecured loans of Rs.15,25,68,165/-, would not mean that the petitioner had received the same from the above two parties.

3.2 The learned senior advocate for the petitioner further submitted that had it been a case of accommodation entry, the amounts in question would have remained with the petitioner, but it is not the case here. The said amounts had been duly returned to the concerned with interest. He further submitted that thus, the department is not justified in proposing to reopen the case of the petitioner on such false pretext and that the reasons for reopening lacked validity.

3.3 The learned senior advocate for the petitioner submitted that the statement of a tainted party cannot be considered as tangible material so as to have reason to believe that the income chargeable to tax has escaped assessment. He submitted that the reopening is based on mere change of opinion of the

Assessing Officer inasmuch as notice under section 148 of the Act can be issued only if an Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment and for such formation of belief, there should be some tangible material and act, which is lacking in the case on hand. He submitted that the case of the petitioner was selected for scrutiny assessment and the issue on hand was examined threadbare at the original assessment and accordingly, merely because the Assessing Officer happens to change his opinion, action under section 147 of the Act cannot be taken. It is contended and argued by the learned senior advocate for the petitioner that the assessment for the year under consideration was found to be proper and the same was admitted by the Assessing Officer and therefore, if creditworthiness was found in the transactions, the impugned reopening, merely relying upon the information received from the DDIT (Inv.), Unit 1(3), Kolkata and DDIT (Inv.), Unit 4(2), Kolkata, *sans* any independent satisfaction of the Assessing Officer, only on borrowed satisfaction, is illegal and bad in law and it cannot be said that the petitioner has failed to disclose fully and truly all material facts relevant for the assessment.

3.4 The learned senior advocate for the petitioner further submitted that the petitioner has no connection, either with Mukesh Banka or Gopal Banka or Manoharlal Nanglia and the petitioner has never carried out any transaction with them. Further, there is no statement on record to show that the accommodation entry has been provided to the petitioner and only on the basis of generalize information, the case of the petitioner cannot be reopened. Further, both the companies in question, are genuine companies and are still active in the RoC

and they are nowhere covered in the list of shell companies.

3.5 Making above submissions, it is urged by the learned senior advocate for the petitioner to allow the present petition and to quash and set aside the impugned notice.

4. *Per contra*, learned advocate Mr. Nikunt Raval for the respondent authority, while opposing the present petition, drew our attention to the reasons recorded for reopening of assessment dated 07.05.2019, and submitted that the amounts credited in the bank accounts of the petitioner – assessee were in the nature of accommodation entries only and the transactions clearly represent the income escaped assessment in the year under consideration. The learned advocate for the respondent submitted that two information, one from the DDIT (Inv.), Unit 1(3), Kolkata and another, from the DDIT (Inv.), Unit 4(2), Kolkata had been received. So far as the first information is concerned, it is revealed that the amount of Rs.50,00,112/- received by the assessee, petitioner herein, from M/s. Gyaneshwar Vyappar Pvt. Ltd. is a company belonging to Banka Group of companies, in the form of accommodation entry. Further, it was found from the detailed investigation report, based on documentary evidence and statement under section 132(4) of the Act of the entry provider Shri Mukesh Banka, recorded during the course of search/ survey/ enquiry action on 19.07.2018, that various companies controlled and managed by Shri Mukesh Banka, was involved in large scale to provide accommodation entries in the nature of unsecured loans/ other forms to various beneficiaries. The assessee *i.e.* the petitioner herein was found to be one of the beneficiaries.

4.1 The learned advocate for the respondent further submitted that so far as the second information is concerned, on investigation, it was found that the name of Babylon Trading and Investment Pvt. Ltd. appeared in the department's database of shell entity, which was controlled by entry operators Gopal Banka and Manoharlal Nanglia. Amit Kumar Chaudhary, who was one of the dummy Directors of that company, had admitted in his statement recorded under section 131 of the Act on 14.11.2014 that he had acted as only dummy Director for the company controlled by Shri Manoharlal Nanglia and used for facilitating accommodation entries to the beneficiary companies. It was eventually found that the assessee *i.e.* the petitioner herein had received Rs.35,00,056/- in the form of accommodation entry in the nature of unsecured loan or other forms, which clearly shows that the income chargeable to tax has escaped assessment.

4.2 It is further submitted by the learned advocate for the respondent that the petitioner had shown unsecured loan of Rs.15,25,68,165/- under the head "Unsecured Loan from Others", which shows that the petitioner had received unsecured loan from the above two parties and hence, the contention of the petitioner that the petitioner had received advance against the agreements to sell, is nothing but an afterthought. It is submitted that the financial analysis of such paper/shell companies of Banka Group from which the petitioner had received unsecured loan, had been carried out by the Investigation Wing, Kolkata which revealed that, i) no profit accumulation in the company/ies across various financial year; ii) no actual business is done being "0" turnover; iii) most of the companies have shown income under the head of "other income", which shows that the companies have no actual

business activity; iv) Shri Mukesh Banka, in his statements under sections 131 and 132(4) of the Act, respectively recorded on 30.05.2018 and 19.07.2018, has admitted that these companies are paper/shell companies, controlled and managed by him; v) the Directors of these companies are dummy Directors as per the statements of Shri Mukesh Banka, recorded under section 132(4) of the Act; and vi) these companies were found to be non-existent as per the inquiry made by the Inspector of the Income-Tax of Investigation Wing, Kolkata.

4.3 It is further submitted that on examination of the bank account, it was observed that the bank account was credited with transfers or RTGS, which were directly credited to the account of the beneficiary concerns or layered through the bank accounts of shell/paper companies and finally transferred to the bank accounts of the beneficiary concerns. The intermediary companies are mentioned in the database of shell/paper companies held with the department. It is submitted that thorough inquiry was carried out by the Investigation Wing, Kolkata and after verifying all the aspects regarding the incriminating documents unearthed during the course of search action, it declared the transactions were accommodation entries provided by the bogus companies, managed and controlled by Shri Mukesh Banka and Shri Manoharlal Nanglia and thus, there is tangible material on record. In support, the learned advocate for the respondent has relied upon a decision in ***Pushpak Bullion (P) Ltd. v. DCIT, [2017] 85 Taxmann.com 84 (Guj.)***.

4.4 It is further submitted that there is no procedural lapse and/ or deviation from procedure prescribed in reopening and the reasons recorded do not lack validity as all the procedures, laid

down under the Act, have been duly followed and necessary approvals from the competent authority are received.

4.5 So far as the contention of the learned senior advocate for the petitioner to the effect that merely on the basis of change of opinion, assessment for the year under consideration is sought to be reopened, the learned advocate for the respondent submitted that the case of the petitioner is sought to be reopened on the basis of some tangible material available and on the established fact the transactions were bogus in nature, and all the relevant information available with the department at the time of recording the reasons for reopening have been duly discussed in the reasons.

4.6 So far as the contention of the petitioner that the case is reopened beyond a period of four years from the end of the relevant assessment year is concerned, the learned advocate for the respondent submitted that all the requirements under section 147 of the Act to initiate the proceedings are fulfilled. Further, the case of the petitioner was reopened on account of information received from the Investigation Wing, Kolkata, as referred to herein above and from the information disseminated by the Investigation Wing, Kolkata, it is evident that the assessee has failed to furnish fully and truly, all material facts before the Assessing Officer.

4.7 Making above submissions, it is urged that the Court may not interfere in the impugned notice and requested to dismiss the petition.

5. Having regard to the submissions advanced by the learned

advocates for the respective parties and having perused the material placed on record, it appears to us that the learned senior advocate for the petitioner has challenged the impugned notice mainly on the ground that when jurisdictional facts are not established, the department cannot assume the jurisdiction and reopen the assessment. The basis for such submission is that, according to the learned senior advocate for the petitioner, the amounts were received by the petitioner towards part consideration in pursuance to the agreements to sell in respect of the two offices owned by the petitioner and since, the offices, which were occupied by the tenant, could not be vacated, the said amounts, together with interest, were returned to the concerned during the year under consideration, which is evident from the record. Further, he has submitted that the case of the petitioner was selected for scrutiny assessment and at the relevant time, the petitioner had disclosed fully and truly, all material facts, relevant for the assessment and hence, merely, on the basis of change of opinion, the impugned notice is issued.

5.1 At this juncture, it would be apt to refer to the observations made by us with regard to the scope and ambit of section 147 of the Act in paragraphs 7, 8, 9 and 10 of CAV Judgement dated 05.07.2021 rendered in Special Civil Application No. 19821 of 2019, which are as under:

> *"7. At the outset, it may be noted that as per the settled legal position, two conditions have to be satisfied before the Assessing Officer invokes his jurisdiction to reopen the assessment under section 147 of the said Act after the expiry of four years from the end of the relevant assessment year – firstly, that the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment for the concerned assessment year, and secondly, such escapement of assessment was by reason of failure on the part of the assessee to make the*

return under section 139, or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all the material facts necessary for his assessment for that assessment year. So far as the case of the present petitioner is concerned, the assessment for the A.Y. 2012-13 is sought to be reopened by the Assessing Officer under section 147/148 of the said Act, on his having arrived at a satisfaction that the income for the said assessment year had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

8. It is pertinent to note that as held by the Supreme Court in catena of decisions, the formation of belief by the Assessing Officer at the stage of initiation of action under section 147 of the Act is within the realm of subjective satisfaction. The Supreme Court in the case of ***Assistant Commissioner of Income Tax versus Rajesh Jhaveri Stock Brokers P. Ltd.*** *reported in* ***(2007) 291 ITR 500(SC)****, had an occasion to deal with the scope and effect of section 147 as substituted w.e.f. April 1st, 1989, in which the Court has observed as under :* ***-***

> *"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 Supreme 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 P. Ltd. [1996] 217 ITR 597 (SC)]****;* ***Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).***

The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147."

9. In the case of ***Raymond Woollen Mills Ltd. Versus Income-Tax Officer and others*** reported in ***1999 236 ITR 34(SC),*** *the Supreme Court observed that the Court has 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.

*10. It is very pertinent to note that in the case of **Phool Chand Bajrang Lal versus Income-Tax Officer** reported in **203 ITR 456 (SC),** it was observed that the acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment, which went to expose the falsity of the statement made by the assessee at the time of original assessment was different from drawing fresh inference from the same facts and material which was available with the Income-Tax Officer at the time of the original assessment proceedings. Where the transaction itself on the basis of the subsequent information was found to be a bogus transaction, the mere disclosure of that transaction at the time of original proceedings could not be said to be disclosure of the true and full facts, and the Officer would have the jurisdiction to reopen the concluded assessment in such a case. The precise observation made by the Supreme Court in the said case may be reproduced as under : -*

"In the present case as already noticed, the Income-Tax Officer, Azamgarh, subsequent to the completion of the original assessment proceedings, on making an enquiry from the jurisdictional Income-Tax Officer at Calcutta, learnt that the Calcutta company from whom the assessee claimed to have borrowed the loan of Rs. 50,000/- in cash had not really lent any money but only its name to cover up a bogus transaction and, after recording his satisfaction as required by the provisions of section 147 of the Act, proposed to reopen the assessment proceedings. The present is thus not a case where the Income-Tax Officer sought to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company and which he failed to draw at that time. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment, which goes to expose the falsity of the statement made by the assessee at the time of the original assessment is different from drawing fresh inference from the same facts and material which were available with the Income-Tax Officer at the time of the original assessment

> *proceedings. The two situations are distinct and different. Thus, where the transaction itself, on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be a disclosure of the "true" and "full" facts in the case and the Income-Tax Officer would have the jurisdiction to reopen the concluded assessment in such a case."*

5.2 Further, the term "*reason to believe*", however, is not defined in the Act but it can be gathered and available from the information, leading the Assessing Officer to reopen the assessment. The term itself is suggestive of its *prima facie* characteristics and not established or conclusive facts or information. Meaning thereby, it is the Assessing Officer's *prima facie* belief, of course, derived from the some material / information, etc. leading him to reopen the assessment.

5.3 The ambit and import of the term "*reason to believe*" has been examined in numerous cases, notably in ***ITO v. Lakhmani Mewal Das [(1976) 103 ITR 437: 1976 (3) SCC 757]***. The Apex Court held that, "*the reason must be held in good faith. It cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in*

the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment".

5.4 It would also be worthwhile to refer to the observations made by us in the CAV Judgment dated 06.08.2021 Special Civil Application No. 22613 of 2019, which read as under:

> *"7. As stated hereinabove, the often posed question as to whether the Assessing Officer could have assumed the jurisdiction under Section 147/148 of the said Act on the basis of the information / material received from the investigating wings unearthing the bogus transactions or accommodation entries involving the assessee, has been again posed before this Court. Before adverting the submissions made by the learned advocates for the parties, it may be noted that the words "accommodation entries" have not been defined anywhere in the Act, however, in catena of decisions, the Courts have dealt with the issue of "accommodation entries". It cannot be gainsaid that the tax-evaders in order to bring back their unaccounted income to their books of accounts without paying any tax thereon, use numerous methods and techniques. For routing the unaccounted income, the taxevaders under the guise of loan entries or share capital entries or other camouflage entries create an appearance of legitimate transactions in their books of accounts. Such well recognized rackets are controlled and conducted by the persons known as "accommodation entry providers", and the "accommodation entries" are provided by them to the persons who are the taxevaders. The entries on paper apparently may appear to be of routine nature, but the trail of money transited through the layers would be*

subsequently unearthed during the search and seizure operations conducted either at the assessee's premises or his associate's premises or at the premises of some third party, who may be an accommodation entry provider. Under the circumstances, when the material is brought to the notice of the Assessing Officer, which would prima facie discredit or impeach the genuineness of the particulars furnished by the assessee at the time of original assessment, and when it prima facie establishes the link between the assessee and the third party who is an accommodation entry provider, the Assessing Officer is empowered rather duty bound to make further inquiry / investigation to unearth such camouflage or wrong or illegal dealings of the assessee. As observed by the Supreme Court in the case of Sumati Dayal vs Commissioner Of Income-Tax reported in AIR 1995 SC 2109, apparent must be considered as real until it is shown that there are reasons to believe that apparent is not real, and that the Taxing Officers are entitled to look into the surrounding circumstances to find out the reality, and the matter has to be considered by applying the test of human probabilities."

6. In the aforesaid prelude, if the facts of the case are adverted to, as referred to herein above, it is the case of the petitioner that the petitioner had returned the amounts in pursuance to the agreements to sell, as aforesaid during the year under consideration and that, there is no tangible material, even otherwise in the hands of the respondent to substantiate that the income chargeable to tax has escaped assessment *qua* the assessee. The department, in the reasons recorded for reopening as well as in the affidavit-in-reply filed by it, however, has replied to the said queries which go to the root of the matter. It is averred that two information, one from the DDIT (Inv.), Unit 1(3), Kolkata and another, from the DDIT (Inv.), Unit 4(2), Kolkata had been received. So far as the first information is concerned, it was revealed that the amount of Rs.50,00,112/- received by the assessee, petitioner herein, from M/s. Gyaneshwar Vyappar Pvt. Ltd. was a company belonging to Banka Group of companies, in

the form of accommodation entry. Further, it was found from the detailed investigation report, based on documentary evidence and statement under section 132(4) of the Act of the entry provider Shri Mukesh Banka, recorded during the course of search/ survey/ enquiry action on 19.07.2018, that various companies controlled and managed by Shri Mukesh Banka, were involved in large scale to provide accommodation entries in the nature of unsecured loans/ other forms to various beneficiaries. The assessee *i.e.* the petitioner herein was found to be one of the beneficiaries.

6.1 So far as the second information is concerned, on investigation, it was found that the name of Babylon Trading and Investment Pvt. Ltd. appeared in the department's database of shell entity, which was controlled by entry operator Gopal Banka and Manoharlal Nanglia. Amit Kumar Chaudhary, who was one of the dummy Directors of that company, had admitted in his statement recorded under section 131 of the Act on 14.11.2014 that he had acted as only dummy Director for the company controlled by Shri Manoharlal Nanglia and used for facilitating accommodation entries to the beneficiary companies. It was eventually found that the assessee *i.e.* the petitioner herein had received Rs.35,00,056/- in the form of accommodation entry in the nature of unsecured loan or other forms, which clearly showed that the income chargeable to tax had escaped assessment.

6.2 Further it is averred that the petitioner had shown unsecured loan of Rs.15,25,68,165/- under the head of "Unsecured Loan from Others", which showed that the petitioner had received unsecured loan from the above two parties and hence, the contention of the petitioner that the petitioner had

received advance against the agreements to sell was found to be an afterthought. Further, the financial analysis of such paper/shell companies of Banka Group from which the petitioner had received unsecured loan, was carried out by the Investigation Wing, Kolkata which revealed that, i) no profit accumulation in the company/ies across various financial year; ii) no actual business is done being “0” turnover; iii) most of the companies have shown income under the head of “other income”, which shows that the companies have no actual business activity; iv) Shri Mukesh Banka, in his statements under sections 131 and 132(4) of the Act, respectively recorded on 30.05.2018 and 19.07.2018, has admitted that these companies are paper/shell companies, controlled and managed by him; v) the Directors of these companies are dummy Directors as per the statements of Shri Mukesh Banka, recorded under section 132(4) of the Act; and vi) these companies were found to be non-existent as per the inquiry made by the Inspector of the Income-Tax of Investigation Wing, Kolkata.

6.3 Moreover, on examination of the bank account, it was observed that the bank account was credited with transfers or RTGS, which were directly credited to the account of the beneficiary concerns or layered through the bank accounts of shell/paper companies and finally transferred to the bank accounts of the beneficiary concerns. The intermediary companies are mentioned in the database of shell/paper companies held with the department. Thorough inquiry was carried out by the Investigation Wing, Kolkata and after being verifying all the aspects regarding the incriminating documents unearthed during the course of search action, it was declared that the transactions were accommodation entries provided by the bogus companies managed and controlled by Shri Mukesh

Banka and Shri Manoharlal Nanglia and tangible material appears to have been there on record. Thus, the contention of the learned senior advocate for the petitioner that merely on the basis of change of opinion, reopening is sought, stands nugatory.

6.4 The learned senior advocate for the petitioner has submitted that in the scrutiny assessment proceeding carried out under section 143(3) of the Act, the petitioner had submitted all the details relevant for the assessment and thus, discharged the onus under section 68 of the Act, however, it appears that the Assessing Officer has found that the petitioner has not fully and truly disclosed all material facts necessary for assessment for the reason that the petitioner was found to be the beneficiary of the accommodation entry. Therefore, there is clear failure on the part of the assessee to fully and truly disclose all the facts necessary for assessment proceeding under section 143(3) of the Act.

6.5 Thus, considering the aforesaid facts and circumstances of the case, we are of the considered view that it cannot be said that there is no reason to believe that the income chargeable to tax has escaped assessment because such exercise of reopening has been made only after due inquiries and recording of statements of concerned persons, as referred to herein above, and on having found *prima facie* material, impugned notice is issued to the petitioner.

6.6 In ***Peass Industrial Engineers (P.) Ltd. v. Deputy Commissioner of Income Tax, [2016] 76 Taxmann.com 106 (Gujarat)***, this Court has observed as under:

> *"9. On the basis of aforesaid proposition laid by series of*

decisions, we are of the opinion that when the Authority is armed with the tangible material in the form of specific information received by the Investigation Wing, Ahmedabad is thoroughly justified in issuing a notice for reassessment. It is revealed from the said additional material available on hand a reasonable belief is formed by the Assessing Authority that income of the petitioner has escaped assessment and therefore, once the reasonable belief is formulated by the Authority on the basis of cogent tangible material, the Authority is not expected to conclude at this stage the issue finally or to ascertain the fact by evidence or conclusion, ***we are of the opinion that function of the assessing authority at this stage is to administer the statute and what is required at this stage is a reason to believe and not establish fact of escapement of income and therefore, looking to the scope of Section 147 as also Sections 148 to 152 of the Act, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the petitioner has escaped assessment, it is always open for the assessing authority to reopen assessment****. From the reasons which are recorded, it clearly emerges that the petitioner is the beneficiary of those entries by Kayan brothers, who are well known entry operators across the country and this fact has been unearthed on account of the information received by DGIT Investigation Branch and therefore, it cannot be said in any way that even if four years have been passed, it is not open for the Authority to reopen the assessment. In the present case, there was independent application of mind on behalf of the assessing authority in arriving at the conclusion that income had escaped assessment and therefore, the contentions raised by the petitioner are devoid of merits. Dealing with the contentions of the petitioner that the information received from DGIT, Investigation Branch, Ahmedabad, can never be said to be additional information. We are of the opinion that the information which has been received is on 26.3.2015 from the DGIT, Investigation Branch, Ahmedabad, whereby it has been revealed that present petitioner is also the beneficiaries of those Kayan brothers, who are in the activity of entry operation throughout the country and therefore, it cannot be said that this is not justifiable material to form a reason to belief by the Authority and therefore, this being a case, the Authority is justified in issuing notice under Section 148*

of the Act to reopen the assessment and therefore, the challenge contained in the petition being devoid of merits, same deserves to be dismissed. As we found that for the exercise of power of reopening of assessment after a period of 4 years, a proper procedure is observed by the Authority, specific approval has been obtained from the competent Authority and upon perusal of original file, we have satisfied ourselves that the approval has been accorded in a proper manner by the competent Authority and since the notice is issued based upon substantial compliance of statutory provision, the Authority has acted well within the bounds of his powers and the Authority has issued notice. We found that the order which has been passed of rejecting the objections raised by the petitioner is also a well reasoned order passed after due exercise of jurisdiction and therefore, same is not, therefore, required to be interfered with."

6.7 Thus, the function of the assessing authority at this stage is to administer the statute and what is required is a reason to believe and not to establish fact of escapement of income and therefore, looking to the scope of Section 147 as also sections 148 to 152 of the Act, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the petitioner has escaped assessment, it is always open for the assessing authority to reopen the assessment.

6.8 Further, in the decision in ***Aaspas Multimedia Ltd. v. Deputy Commissioner of Income Tax, Circle 1(1), [2017] 83 Taxmann.com 82 (Gujarat)***, it is observed as under:

"…In the present case the reassessment proceedings have been initiated by the Assessing Officer on the basis of material provided by the Principal Director (Investigation). It is also required to be noted that the genuineness of the various companies who made share applications are doubted. The assessee is alleged to have been engaged in

bogus share applications from various bogus concerns operated by PKJ. The assessee is the beneficiary of the said transactions of share application by those bogus concerns. In the wake of information received by the Assessing Officer, when the Assessing Officer formed a belief that the investment made from the funding of such companies which are bogus, the Assessing Officer has rightly assumed jurisdiction of initiating the reassessment proceedings. The Assessing Officer, on the basis of information subsequently having come to his knowledge, recognized untruthfulness of the facts furnished earlier. In the present case, since both the necessary conditions to reopen the assessment have been duly fulfilled, sufficiency of the reasons is not to be gone into by this Court. Information furnished at the time of original assessment, when by subsequent information received from the Principal Director (Investigation), itself found to be controverted, the objection to the notice of reassessment under section 147 must fail."

6.9 In the case on hand also, the Assessing Officer has reason to believe that the petitioner is a beneficiary of accommodation entry and basis for formation of such belief is several inquiries and the investigation by the Investigation Wing, Kolkata and report thereof. The reasons for the formation of the belief by the Assessing Officer in the instant case, appear to have a rational connection with or relevant bearing on the formation of belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. Accordingly, no interference is called for at the hands of this Court in this petition under Article 226 of the Constitution of India.

6.10 We may reiterate the observation made by the Apex Court in ***Raymond Woollen Mills Ltd. (supra)*** that, "*at the time of recording the reason for satisfaction of AO, there should be 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. It will be open to the assessee to prove that the assumption of fact made in the notice was erroneous at the time of assessment proceedings".

6.11 Further, in the case ***of Ess Kay Engineering Co. (P) Ltd. v. Commissioner of Income Tax, 247 ITR 818 (SC)***, also it has been observed that the Assessing Officer is not precluded from reopening the assessment of an earlier year on the basis of fresh material discovered subsequently during the course of assessment of next assessment year.

7. In the backdrop as aforesaid, present petition fails and is dismissed accordingly. Notice is discharged. Ad-interim relief is vacated forthwith. No order as to costs.

[Bela M. Trivedi, J.]

[A. C. Joshi, J.]

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