

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH “A”, CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA No. 543/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Future Tech IT Systems Pvt. Ltd. 276, Maya Nagar Ludhiana-Punjab	बनाम	The ITO W-7(1), Aayakar Bhawan Ludhiana-Punjab
स्थायी लेखा सं./PAN NO: AABCF0775F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 548 /Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Abacus Edutech Pvt. Ltd. 276, Maya Nagar Ludhiana-Punjab	बनाम	The ITO Ward 7(1) Ludhiana-Punjab
स्थायी लेखा सं./PAN NO: AAACQ0843N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 549 /Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Axis Education Technologies(P) Ltd. 276, Maya Nagar, Ludhiana Punjab	बनाम	The ITO Ward 7(1), Ludhiana Punjab
स्थायी लेखा सं./PAN NO: AAECA2568G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, C.A
Shri Aditya Kumar, C.A
Shri Bhavesh Jindal, C.A
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 27/01/2021
उद्घोषणा की तारीख/Date of Pronouncement : 22/04/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These appeals by different assessee's are directed against the separate orders each dt. 28/03/2019 of Ld. CIT(A)-3, Ludhiana. Since the issues involved in all the above

appeals are common and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

2. At the first instance we will deal with the appeal in ITA No. 543/Chd/2019 in case of M/s Fortune Tech IT Systems Pvt. Ltd. Vs. ITO for the A.Y. 2010-11.

3. Following grounds have been raised in this appeal:

1. *That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana is against law and facts on the file in as much as she was not justified to uphold the action of the Ld. Assessing Officer in initiating proceedings u/s 148 of the Income Tax Act, 1961 merely on the basis of suspicion.*

2. *That the Learned CIT(A) was further not justified to arbitrarily uphold the action of the Ld. Assessing Officer in making an addition of Rs. 1,17,00,000/- on account of share premium received from various parties by resort to provisions of Section 56(vii)(b) of the Act.*

3. *That the Learned CIT(A) was not justified to arbitrarily hold that the addition made by the Ld. Assessing Officer by resort to provisions of Section 56(vii)(b) is to be upheld u/s 68 of the Income Tax Act, 1961.*

4. *That she was further not justified to arbitrarily enhance the income of the appellant by Rs. 13,00,000/- on account of share capital received from various parties by invoking the provisions of Section 251(2) of the Income Tax Act, 1961.*

5. *That she gravely erred in invoking the provisions of Section 251(2) of enhancement of income whereas in the facts and circumstances of the case no such enhancement was warranted.*

4. Vide Ground No. 1 the assessee raised a legal issue challenging the action of the A.O. in initiating the proceedings under section 148 of the Income Tax Act, 1961 (for short the 'Act').

5. Facts of the case in brief are that the assessee derived its income from IT services and filed its return of income on 20/09/2010 declaring income of Rs. 2,55,860/-. Later on the A.O. received the information from Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh that the assessee had received share premium at Rs. 1,17,00,000/- during the year under consideration and there was nothing in return to justify the receipt of share premium at such higher rate. The A.O. observed that the book value of share the assessee company was just Rs. 10 i.e; Face Value because prior to the receipt of premium, the assessee company had nothing in its balance sheet and that the assessee had shown NIL income during the year under consideration which could not justify such a large premium received.

5.1 The A.O. asked the assessee about the basis of charging the high premium, to file documentary evidence in support of working of premium thereof, to furnish the utilization of share premium alongwith documentary evidence including bank statement & cash flow statement and to furnish the details of dividend declared and distributed by the assessee company during the financial year 2008-09 to 2011-12.

5.2 The A.O. observed that in response to the above, the assessee declined to furnish the informations with the plea that there was no cause for furnishing the required information which were apparent from the documents already on record. The A.O. pointed out that those information were not available on the record. He was of the view that the assessee had no explanation to the receipt of share premium at such higher rate, he, therefore, issued the notice under section 148 of the Act after recording the reasons under section 147 of the Act.

5.3 In response the assessee submitted that the return originally filed be treated as filed in response to the notice under section 148 of the Act and also made the request for supply of the reasons recorded under section 147 of the Act which were supplied to the assessee on 08/05/2015. The assessee raised some objections against those reasons vide letter dt. 22/07/2015 which were disposed off by the A.O. vide letter dt. 24/07/2015 by mentioning that the A.O. had sufficient reasons to form the belief that the income of the assessee had escaped assessment by reasons of omission of failure on part of the assessee to disclose fully and truly all material facts necessary for this assessment. The reliance was placed on the following judgments of the Hon'ble Apex Court :

- Phool Chand Bajrang Lal Vs. I.T.O. (1993) 203 ITR 456
- M/s Raymond Woolen Mills Ltd. Vs. I.T.O (1999) 236 ITR 34

The reliance was also placed on the judgment of the Hon'ble Delhi High Court in the case of Mahangar Telephone Nigam Ltd. (2000) 246 ITR 173 (Del).

5.4 The A.O. held that since no assessment was completed in the case of the assessee, the notice issued under section 148 of the Act was very much within the provisions of the Act, and that in the case of the assessee there were sufficient reasons

to form the belief that the income had escaped the assessment within the meaning of Section 147/148 of the Act.

5.5 The A.O. also observed that to confer the jurisdiction under section 147(a) of the Act two conditions are required to be satisfied, firstly, the A.O. 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 have occurred by reason of either omission or failure on 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 A.O. could have jurisdiction to issue notice under section 148 of the Act read with Section 147(a) of the Act. But under the substituted Section 147, existence of only the first condition suffices i.e; if the Assessing Officer for whatever reason has reason to believe that income had escaped the assessment, it confers the jurisdiction to reopen the assessment and that in the assessee's case the A.O. has formed his own belief for the issue of notice under section 148 of the Act after applying his mind independently which was evident from the reasons recorded for issuance of notice, therefore, the notice issued under section 148 of the Act, in the case of the assessee was neither illegal, arbitrary or bad in law, rather the jurisdiction had rightly been conferred by the A.O. within the provisions of the Act.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

This is with reference to an appeal filed by M/s Future Tech IT Systems (P.) Limited (herein after referred to as "the appellant") against the order U/s 143(3) read with Section 147 of the Income-Tax Act, 1961 for the above captioned assessment year.

Brief Facts

The appellant, a private limited company, is engaged in the business of providing IT services. For the previous year relevant to assessment year 2010-11, the year under consideration, the appellant filed its return of income on 20.09.2010 declaring total income of Rs. 2,55,860/-.

The case of the appellant was opened for assessment by way of issue of notice U/s 148 of the Income-Tax Act, 1961, and, an order was passed vide order dated 11.03.2016 U/s 147/143(3) of the Income-Tax Act, 1961 after effecting an addition of Rs. 1,17,00,000/- received on account of share premium by treating the same as "Income from other Sources" U/s 56(2) (viib) of the Income-Tax Act, 1961.

Aggrieved by the order dated 11.03.2016, the appellant filed an appeal before Your Honor. The appellant seeks to place on record, its preliminary legal assertions, challenging the legitimacy of the addition effected in the assessment order, as under:

A. That the Ld. Assessing Officer has erred both in law and on the facts of the case by initiating proceedings U/s 148 of the Act

- on the basis of Suspicion;
- in spite of the fact that there is no new, fresh, reliable and tangible material before the Ld. Assessing Officer while forming the belief that the assessee has escaped income.
- on acting upon the directions of the other authorities and also on the borrowed satisfaction and there is no independent satisfaction recording reasons.
- in spite of the fact that there is no information before the Ld. Assessing Officer while forming the belief that the assessee has escaped income.

B. That the Ld. Assessing Officer has erred both in law and on the facts of the case by interpreting the various judgements wrongly and hence the initiation of proceedings U/s 147/148 of the Act are illegal, arbitrary and unreasonable.

The reassessment proceedings U/s 147 of the Income-Tax Act, 1961 have been initiated based on information received from the Director of Income Tax (Intelligence & Criminal Investigation) that the appellant had received Share Premium of Rs. 1,17,00,000/- during the relevant assessment year under consideration.

For the sake of convenience, the extract of the provisions contained in Section 147 are reproduced below:

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) ".

In the instant case, the Ld. Assessing Officer did not mount a valid base for the reasons to come at a rational belief that, the income of the appellant has escaped assessment. In fact, there was no material either direct, or, indirect, on record, which could have corroborated that, the transactions between M/s Axis Technologies (P.) Limited (the appellant) and the persons, from, whom the share application money was received during the relevant assessment year under consideration, were not genuine.

The Ld. Assessing Officer did not put forth, any material evidence and information, in order to substantiate his belief. The Ld. Assessing Officer's belief was purely based on guess work, surmises and conjectures. The Ld Assessing Officer must form an objective and prima facie belief himself on the basis of expressed statement, or, definite/relevant material in his possession.

There was no independent satisfaction of the Ld. Assessing Officer, rather, the Ld. Assessing Officer acted on the borrowed satisfaction. The Ld Assessing Officer, should, ascertain the actuality of the fact, and, make an endeavor to get into the depth, while making any evaluation, and, before an assessment order, in the case of the appellant.

Attention is invited to various judicial pronouncements by different courts of law, wherein, it has been held that, without having any satisfaction on record, and, without any application of mind, the Ld Assessing Officer could not draw a presumption on the basis of information received from the investigation wing that the income chargeable to tax has

escaped assessment, and, accordingly a notice issued U/s 148 of the Income-Tax Act, 1961 would be an invalid notice, as under: -

I. The Hon 'ble High Court o f Punjab and Harvna in the case of Commissioner of Income-Tax Vs. Anupam Kapoor reported at [2008] 299ITR 179 has held as under:

"The assessee had made investment in a company in which he was neither a director nor was he in control of the company. The assessee had taken shares from the market, the shares were listed and the transaction took place through a registered broker of the stock exchange. There was no material before the Assessing Officer, which could have led to a conclusion that the transaction was simplicitor a device to camouflage activities, to defraud the revenue. No such presumption could be drawn by the Assessing Officer, merely on surmises and conjectures. It was for the Assessing Officer, who had reopened the assessment to have sought some evidence on record, to substantiate his formulation of consideration that the assessee has not filed a return bona fide. In the absence o f any cogent material in this regard, having been placed on record, the Assessing Officer could not have reopened the assessment. The assessee had made an investment in a company, evidence whereof was with the Assessing Officer. Therefore, the Assessing Officer could not have added income, which was rightly deleted by the Commissioner (Appeals) as well as the Tribunal."

II. The Hon 'ble High Court o f Punjab and Harvna in the case of Commissioner of Income-Tax Vs. Smt. Paramjit Kaur reported at (2009) 311 ITR 38 has laid down as under:

"It was undisputed that the Assessing Officer had initiated reassessment proceedings on the basis of information received from the survey circle that the assessee had got prepared a demand draft which was not accounted for in the books of account of the assessee. But the Assessing Officer had not examined and corroborated the information received from the survey circle before recording his own satisfaction of escaped income and initiating reassessment proceedings. The Assessing Officer had, thus, acted only on the basis o f suspicion and it could not be said that the same was based on belief that the income chargeable to tax had escaped assessment. The Assessing Officer has to act on the basis o f 'reasons to believe' and not on 'reasons to suspect'. The Tribunal had, thus, rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and, therefore, the issuance of notice under section 148 for reassessment proceedings was not valid. "

III. The Hon 'ble Hig Court o f Delhi in the case of Commissioner of Income-Tax Vs. Sfil Stock Broking Ltd. reported at [2010] 325ITR 285 has upheld as under:

"Where on basis of information given by Dy. Director of Income-tax (Inv.), Assessing Officer reopened assessment and from so-called reasons, it was not at all discernible as to whether Assessing Officer had applied his mind to information and independently arrived at a belief that, on basis of material which he had before him, income had escaped assessment, reopening of assessment was not justified".

IV. The Hon 'ble High Court o f Delhi in the case of Income-Tax Officer Vs. Sarthak Securities (P.) Ltd reported at [2010] 329 ITR 110 (Delhi) has laid down as under:

"In the instant case, the Assessing Officer was aware of the existence of four companies with whom the assessee had entered transactions. Both the orders clearly exposted that the Assessing Officer was made aware of the situation by the investigation wing and there was no mention that those companies were fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicated independent application of mind. True it is, at that stage, it was not necessary to have the fact of escapement of income established but what was necessary was that there was material on record on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof was not germane at that stage but the formation of

belief had to be on the basis or foundation or platform of prudence, which a reasonable person was required to apply. As was manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence was not disputed. What was mentioned was that those companies were used as conduits. In that view of the matter, the principle laid down in CITv. Lovely Exports (P.) Ltd. 2008 216 CTR (SC 195) got squarely attracted. The same had not been referred to while passing the order of rejection. The assessee, in its objections, had clearly stated that the said four companies had bank accounts and payments were made to the assessee-company through banking channels. The identities of the companies were not disputed. Under those circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It was totally unwarranted."

The Ld. Assessing Office took a recourse to Section 147 of the Income-Tax Act, 1961, however, such recourse could not be taken in lieu of the above.

Thus, the initiation of proceedings U/s 148 is bad in law."

6.1 The Ld. CIT(A) after considering the submissions of the assessee observed that it was apparent from the reasons recorded by the A.O. that information received from the Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh that the assessee had received share premium of Rs. 1,17,00,000/- during the relevant assessment year under consideration, was specific information, the A.O. referred to the facts of information of receipt of share premium of Rs. 1,17,00,000/- which was abnormal and of suspicious nature as he noticed from the record filed by the assessee that there was nothing to justify the receipt of huge share premium at such higher rate.

6.2 The Ld. CIT(A) further observed that the A.O. noticed that the book value of the share of the company was Rs. 10/- and the company had nothing in its balance sheet to attract such huge share premium and that the Income Tax Return of the assessee company revealed that the assessee had declared Rs. 2,55,860/- as income, during the year under consideration which could not justify such huge premium and that the A.O. in order to verify the information received from the Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh issued notice under section 133(6) of the Act to the assessee requiring it to explain the basis of charging such high premium and file documentary evidence in support of working of premium alongwith the details of utilization of share premium with documentary evidence including bank statement and cash flow statement. He also observed that the A.O. called for, result of assessee company for previous year and subsequent three years, however, the assessee declined to furnish such information claiming that the information was also available on

record but the A.O. had mentioned that the details claimed by the assessee were not part of the return filed by the assessee, therefore, notice under section 148 of the Act was issued. He also observed that the A.O. disposed off all the objections raised by the assessee.

6.3 Ld. CIT(A) was of the view that the informations received in the assessee's case were specific and clear which were correlated by the A.O. with Income Tax Return filed by the assessee before issuing the notice under section 148 of the Act and that the A.O. after having preliminary satisfaction with respect to information received, issued letter under section 133(6) of the Act to the assessee for detailed explanation in order to verify the veracity of the information received and the assessee's explanation with regard to the same. After having satisfaction over the basis of information and verifying the assessee's Income Tax Return wherein the income returned was Rs. 2,55,860/- which could not justify such large premium received. The A.O. issued notice under section 148 of the Act and the initiation of reopening proceedings under section 148 of the Act had been based on solid information which was specific and that after due verification the A.O. initiated reopening proceedings under section 148 of the Act. Accordingly it was held that the reopening proceedings under section 148 of the Act had been validly initiated in the case of the assessee. The reliance was placed on the following case laws:

- *ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd.* 291 ITR 500 (SC)
- *A.L.A Firm Vs. CIT* (1991) 189 ITR 285 (SC)
- *Raymond Woolen Mills Limited Vs. ITO* 236 ITR 34 (SC)
- *Phool Chand Bajrang Lal And Another Vs. ITO* 203 ITR 456 (SC)
- *Gurera Gas Cylinders Pvt. Ltd. Vs. CIT* 258 ITR 170 (P&H)
- *Rajat Export Import India Pvt. Ltd. Vs. ITO* (2012) 341 ITR 135 (Del)
- *ACIT vs. Kisco Casting P. Ltd.* (2013) 152 TTJ 629(Chd). (Trib)
- *Srinivasa Khandasari Udyog Vs. ITO* 56 ITD 146 (ITAT, Bang)
- *ITO Vs. Purushotam Das Bangur & Anr.* 224 ITR 362 (SC)
- *Elphinstone Picture Palace Vs. Union of India & Anr* 74 ITR 115 (Pat)
- *H.A. Nanji & Co. Vs. ITO* 120 ITR 593 (Cal)
- *Sohan Singh Vs. CIT* 158 ITR 174 (Del)
- *Rattan Gupta Vs. CIT* 234 ITR 220 (P&H)
- *CGT Vs. Susheela Shanmugasundaram* 242 ITR 176 (Mad)
- *ITO Vs. Gurinder Kuar* 102 ITD 189 (ITAT Del)

- *Sterlite Industries (India) Ltd. Vs. ACIT 302 ITR 275 (Mad)*
- *Rattan Gupta Vs. CIT 234 ITR 220 (Del)*

6.4 The Ld. CIT(A) also observed that after initiation of proceedings, the A.O. could conclude on the basis of other information and explanation of the assessee that no income had escaped assessment, yet for acquiring the jurisdiction the A.O. could still have valid basis on the basis of information available at the time of initiating action under section 147/148 of the Act to have *prima facie* reason to believe that such income escaped assessment and that the information received by the A.O. could very well make him *prima facie* have such reasons to believe that income escaped assessment. He further observed that the A.O. initiated the proceedings on the basis of specific information, so it could not be said that the action of the A.O. was on the basis of certain surmises and conjectures only and it could also not be said that the material in possession of the A.O. could just make him reason to suspect and not reason to believe that the income had escaped assessment. The reliance was placed on the following case laws:

- *Gurera Gas Cylinders Pvt. Ltd. Vs. CIT 258 ITR 170 (P&H)*
- *Swaraj Engine Ltd. Vs. ACIT 260 ITR 202 (P&H)*
- *Phool Chand Bajrang Lal Vs. ITO 203 ITR 456 (SC)*

6.5 The Ld. CIT(A) further observed that the reasons recorded by the A.O. revealed that the A.O. applied his mind to the information by verifying the assessment record wherein he found that the assessee had no income as per the Income Tax Return filed for the assessment year under consideration and that the assessee had received huge share premium without any obvious reasons therefore the A.O. had reason for forming the belief and the application of mind and opportunity to the assessee, the AO had initiated proceedings under section 147 of the Act, therefore, the AO was fully justified in initiating the proceedings under section 147 r.w.s 148 of the Act.

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO acted on the information received from the Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh

therefore the reopening of the assessment was bad in law. Reliance was placed on the decision of the ITAT Delhi Bench in the case of M/s Rajshikha Enterprises Pvt. Ltd. Vs. ITO in ITA No. 6113/Del/2018 vide order dt. 13/06/2016, copy of the said order was furnished which is placed on record.

8.1 It was further stated that the AO in the notice issued under section 148 of the Act clearly mentioned that the information had been received from Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh that the assessee had received share premium to the extent of Rs. 1,17,00,000/- and also had received share application money to the extent of Rs. 13,00,000/- and accordingly initiated the proceedings under section 147 of the Act.

8.2 The Ld. Counsel for the assessee submitted that the AO while issuing the notice under section 148 of the Act doubted the share premium only and accepted the share capital received by the assessee, therefore, the initiation of the proceedings u/s 147 of the Act were based on suspicion only as such were bad in law.

8.3 It was further submitted that the assessee also filed all the documents before the A.O. vide letter dt. 26/08/2015 copies of which are placed at page no. 24 to 68 of the assessee's compilation. It was also submitted that the investor company explained the source and the assessee furnished relevant documents to the AO copies of which are placed at page no. 152 to 190 of the assessee's compilation, those documents furnished by the assessee proved the source of credit for share application money. It was stated the assessee furnished all the details before the A.O. in the form of following documents:

- a. certificate of incorporation of the company.*
- b. Copy of memorandum and articles of association of the company.*
- c. Address of the company.*
- d. PAN no and ITR of the company.*
- e. Balance sheet of the company for the year 2009-2010.*
- f. Copy of share certificate with distinctive nos.*
- g. Share application form.*

Therefore the assessee proved the identity, genuineness and the credit worthiness of the share holder, all those documents were available on the record.

8.4 It was further submitted that the Director of the investor companies also furnished their affidavit in support of the contention that the investor companies made the payments for purchasing the shares from the assessee company @ Rs. 100/- share which included premium of Rs. 90/- per share, copies of those affidavits are placed at page no. 183 to 190 of the assessee's compilation. It was accordingly submitted that all the documents were available to the A.O. who acted only on the basis of the report of the investigating wing, therefore reopening under section 148 of the Act was not justified.

8.5 It was further stated that the case of the assessee was reopened on the basis of share premium by invoking the provisions of Section 56 of the Act which were not applicable in assessee's case for the year under consideration. It was contended that all the companies who applied for the shares were in existence, their Director furnished the affidavits, therefore on merits also the addition made by the AO and sustained by the Ld. CIT(A) was not justified and that the Ld. CIT(A) wrongly enhanced the addition made by the AO.

8.6 It was further submitted that an identical issue having similar facts had already been adjudicated by this Bench of the ITAT in ITA No. 1616/Chd/2018 for the A.Y. under consideration i.e; A.Y. 2010-11 in the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1 (5), Ludhiana vide order dt. 15/06/2020 wherein the reasons recorded were the same as were in the assessee's case. He drew our attention towards page no. 12 to 19 of the assessee's paper book which are the reproduction of the reasons recorded for issuance of the notice under section 148 of the Act in the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1 (5), Ludhiana (supra) for the A.Y. 2010-11 in ITA No. 1616/Chd/2018, Ludhiana (supra) and submitted that verbatim reasons were recorded in the case of the assessee therefore the facts of the present case as far as reopening of assessment u/s 148 of the Act, is concerned are identical to the facts involved in the aforesaid referred to the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1 (5), Ludhiana (supra) which has already been adjudicated by this Bench of the ITAT in favour of the assessee. Accordingly it was submitted that the present case is squarely covered vide aforesaid referred to order dt. 15/06/2020 in ITA No. 1616/Chd/2018 for

the A.Y. 2010-11 in the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1(5), Ludhiana(supra).

9. In her rival submissions the Ld. DR strongly supported the orders of the authorities below and reiterated the observations made in their respective orders. However she could not controvert this contention of the Ld. Counsel for the Assessee that the reasons for reopening the assessment in the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1(5), Ludhiana (supra) and in assessee's case were similar and that the similar issue was decided in favour of the assessee in the said case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1(5), Ludhiana (supra).

10. We have considered the submissions of both the parties and perused the materials available on the record. It is noticed that an identical issue having the similar facts has been decided by the ITAT in ITA No. 1616/Chd/2018 for the A.Y. 2010-11 vide order dt. 15/06/2020 in the case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1(5), Ludhiana (supra) wherein the relevant findings have been given in para 9 to 11 which read as under:

"9. A perusal of the above reproduced 'reasons to believe' for reopening of the assessment reveal that the Assessing Officer had received details of companies which had received share premium at a high rate. The name of the assessee also figures in that list. The Assessing Officer on the basis of the said information formed the belief that the assessee had introduced its unaccounted income in the form of share application / share premium. The Assessing Officer thereafter proceeded to discuss / mention various case laws running into 4 -5 pages, wherein, in the facts and circumstances of those case it was held that the share premium shown to be received in those cases was result of bogus transactions. However, how those decisions were applicable to the facts and circumstances of the present case has not been pointed out by the Assessing Officer in the reasons recorded. The Assessing Officer in this case had received the only information that the assessee had received a high premium along with share application money. However, this information alone, in our view, does not constitute any tangible material or to say any incriminating material to form a belief by the Assessing Officer that the income of the assessee had escaped assessment or to say in other words that the share application money received by the assessee was an unaccounted money of the assessee. The Assessing Officer has not recorded that he had received any information that the assessee had received share application money from some bogus / paper companies. No information has been pointed out in the reasons recorded or receipt of any bogus transactions undertaken by the assessee. Even the name of the companies from whom the share premium received has not been mentioned nor there is any allegation that those share applicants were not traceable or they were bogus / paper companies indulged in sham transactions. Mere information that the assessee had received a high premium, in our view, cannot be said to be a reason to form the belief that the income of the assessee had escaped assessment. The Ld. Assessing Officer raised a suspicion, as mentioned in the reasons itself, regarding the source of the capital being not genuine or that it may be a modus operandi by the assessee to introduce its undisclosed income by way of share premium, however, this was a mere suspicion of the Assessing Officer without even an iota of any incriminating tangible material against the assessee or even otherwise,

the information received by the Assessing Officer was general and vague information, that of course, can be used to some extent by an Assessing Officer to make further enquiries to ascertain the true facts in a case of an ongoing assessment proceedings; however, in a concluded case of assessment, this general information without pointing out any incriminating information against the assessee, cannot be said to be a tangible information sufficient to form belief that the income of the assessee has escaped assessment. The suspicion of the Assessing Officer, thus, was not based on any reliable information or tangible material coming to his possession in this respect. There is no dispute to the well settled proposition that reason to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority, such reason should be held in good faith and cannot merely be a pretense.

Furthermore, the reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court. The entire law as to what would constitute "reason to believe" had summed up by Supreme Court in *Income Tax Officer v Lakhmani Mewaldas* (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of '*CIT vs Paramjit Kaur*' (2008) 311 ITR 38 (P&H), wherein, making identical observations the Hon'ble High Court held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices u/s 148 of the Act was not valid.

10. The Ld. Counsel for the assessee at this stage has also invited our attention to the decision of the Coordinate Chandigarh Bench of the Tribunal in the case of '*D.D. Agro Industries Ltd v ACIT*', ITA Nos. 349 & 350/Chd/2017 order dated 7.9.2017, wherein, on identical facts and circumstances, the Assessing Officer has recorded identical reasons to form belief for reopening of the assessment. The Coordinate Chandigarh Bench of the Tribunal has held that the Assessing Officer assumed jurisdiction relying upon the non-specific routine information blindly without caring to first independently consider the specific facts and circumstances of the case and that the assumption of jurisdiction by the Assessing Officer under the circumstances was wrong. The relevant part of the observations made by the Tribunal (*supra*) in the identical facts and circumstances of the case or to say in identical set of reasons recorded is reproduced as under:-

"In our considered view, considering the facts of the present case, we hold that the AO has assumed jurisdiction relying upon non specific routine information blindly without caring to first independently consider the specific facts of the assessee's case. The AO in his wisdom, instead of caring to refer to the facts of the case at hand which he ought to have first considered, has instead considering the facts as considered by the ITAT in the case of *Som Nath Maini* and that too without first caring to establish that the facts are identical which we note infact are entirely distinguishable has further compounded the mistake by meandering through the case laws and decisions in entirely different set of facts and circumstances and instead attempted to write a thesis on what would constitute "information". Instead of referring in the reasons recorded to the specific facts of assessee's case for justifying the assumption of jurisdiction, the A.O. addresses the legal position on what would constitute information."

11. In view of the above discussion, in our view, the Assessing Officer has wrongly and illegally assumed jurisdiction in this case to reopen the assessment . The reasons pointed out by the Assessing Officer cannot be said to be the reasons "to form the belief" that income of the assessee had escaped assessment . In view of this, since the assessment order framed by the Assessing Officer is not sustainable in the eyes of law, the same is accordingly quashed.

10.1 Since the facts of the present case are similar to the facts involved in the aforesaid referred to case of M/s Indo Global Techno Trade Limited Vs. ITO, Ward-1(5), Ludhiana (supra) so respectfully following the aforesaid referred to order dt. 15/06/2020, we are of the view that reopening by the AO in the present case was not justified. Moreover the AO himself admitted that the reopening in this case was based on the information received from Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh which is evident from the observation of the Ld. CIT(A) in para 3 of the impugned order which read as under:

" Facts of the case in a nutshell are that the appellant company has filed its return of income for the year under consideration on 20.09.2010 declaring therein an income of Rs. 2,55,000/-. Subsequently, the Assessing Officer received an information from DIT(I&CI), Chandigarh as per which the appellant company has received share premium amounting to Rs. 1,17,00,000/-. On the basis of the information the Assessing Officer, after recording reasons for escapement of Income to the extent of Rs. 1,17,00,000/- and after obtaining the necessary approval from the competent authorities, reopened the case of the appellant u/s 147 of the Act by way of issuing notice u/s 148 of the Act.

10.2 In the present case, the AO initiated the proceedings under section 147 r.w.s 148 of the Act on the basis of the information received from Director of Income Tax (Intelligence & Criminal Investigation) Chandigarh. On a similar issue, the ITAT Delhi Bench, SMC in the case of M/s Rajshikha Enterprises Pvt. Ltd. Vs. ITO for the A.Y 2005-06 vide order dt. 23/02/2018 held as under:

"11. From the aforesaid reasons recorded, it is noticed that the AO categorically stated that in view of the report received from DIT(Inv.) Unit-VI(2), New Delhi, it was clear that the assessee had not disclosed fully and truly all material facts necessary for its assessment and he had reasons to believe that a sum of Rs.25,00,000/- chargeable to tax had escaped assessment. In the body of the assessment order also, the AO mentioned as under:

"Information in this case was received from the office of DIT(Inv.), New Delhi that the assessee has received accommodation entries .-.mounting to Rs.25,00,000/- from following parties as detailed below:

AMOUNT	DATE	NAME OF ENTRY PROVIDER	NAME OF BANK	Through	Cheque No.
500000	02.02.2005	Hillridge Investment Ltd.	BOI	Rohitji	48005
500000	02.02.2005	Avail Financial Service P Ltd.	BOI	Rohitji	63208
500000	02.02.2005	Krishma Inds. Ltd.	BOI	Rohitji	63409

500000	02.02.2005	Woridlink Telecom Ltd.	BOI	Rohitji	48454
500000	16.02.2005	Finage Leasing & Finance India Ltd.	BOI	Rohitji	49855

3. In view of the mentioned facts, there was a reason to believe that income of the assessee company had escaped assessment. Approval of the Addl. Commissioner of Income Tax Range-15, New Delhi obtained. Subsequently notice u/s 148 of the IT Act, 1961, was issued on 29.03.2012 for reopening the assessment proceedings of the assessment year 2005-06 which was served upon the assessee. The assessee was provided with the reasons for reopening the assessment. The assessee raised objection for issue of notice u/s 148 on 7.12.2012 which were disposed off vide this office letter dated 19.12.2012. the assessee also submitted that the return filed u/s 139(1) may be treated as filed in response to notice u/s 148. "

12. From the aforesaid noting, of the AO in the assessment order dated 21.03.2013, reasons recorded on 28.03.2012 for issuing the notice u/s 148 of the Act and observations of the Id. CIT(A) in para 7 of the impugned order, it is crystal clear that the reopening was done only on the basis of the report of the Investigation Wing of the department and the AO did not apply his independent mind.

13. On a similar issue, the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs G & G Pharma India Ltd. (2016) 384 ITR 147 (supra) held as under:

"That once the date on which the so-called accommodation entries were provided was known, it would not have been difficult for the Assessing Officer, 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 November 14, 2004 and was processed under section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment. The order of the Tribunal was proper. "

14. A similar view has been taken by the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (supra) held as under:

"That while the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation. In the assessee's case, the crucial link between the information made available to the Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the conclusion in the investigation report received from the Director (Investigation). It was a "borrowed satisfaction". The expression "accommodation entry" was used to describe the information set out without explaining the basis for arriving at such a conclusion. The basis for the statement that the entry was given to the assessee on his paying "unaccounted cash" was not disclosed. Who was the accommodation entry giver and how he could be said to be a "known entry operator" were not mentioned. The source for all the conclusions was the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to

believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment. No error had been committed by the Appellate Tribunal in concluding that the initiation of the reassessment proceedings under section 147/148 to reopen the assessments for the assessment year 2004-05, was not legal. "

15. Similarly, the Hon'ble Jurisdictional High Court in the case of *Pr. CIT Vs Laxman Industrial Resources Ltd.* (2017) 397 ITR 106 (*supra*) held as under:

"That the assessee had provided severed documents that could have thrown light on whether truly the transactions were genuine. It was not a case where the share applicants merely provided confirmation letters. They had provided their particulars, permanent account number details, assessment particulars, mode of payment for share application money, i.e., through banks, bank statements, cheque numbers, copies of minutes of resolutions authorizing the applications, copies of balance-sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee and their master debt with the Registrar of Companies particulars. The Assessing Officer failed to conduct any scrutiny of documents and was content to place reliance merely on a report of the Investigation Wing. This revealed disregard of an Assessing Officer's duties in the remand proceedings which the Department sought to inflict upon the assessee in this case. No substantial question of law arose. "

16. A similar view has been taken by the Hon'ble Jurisdictional High Court in the case of *Signature Hotels P. Ltd. Vs ITO & Another* (2011) 338 ITR 51 (*supra*) held as under:

"That 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 financial year 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. Further, the Assessing Officer did not apply his own mind to the information aficl, 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, 200L. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed. "

17. In the present case also, the AO acted upon the report of the Investigation Wing only and on that basis initiated the proceedings for reopening the assessment by issuing the notice u/s 148 of the Act. Therefore, the reassessment proceeding was not valid. Accordingly, the subsequent reassessment framed is quashed.

10.3 In the present case also since the AO acted upon the report of the investigation wing and on that basis initiated the proceedings for reopening the assessment by issuing the notice under section 148 of the Act therefore reassessment proceedings were not valid. In that view of the matter also the reassessment framed by the AO deserves to be quashed.

11. In view of the aforesaid discussions legal issue raised by the assessee relating to the jurisdiction of A.O for reopening of the assessment is decided in favour of the assessee. Since we have decided the legal issue relating to the validity of the assumption of jurisdiction by the AO to reopening the assessment in favour of the assessee no finding is given on the other issue raised by the assessee on the merit of the case.

12. Since the facts involved in all other case are identical to the facts involved in ITA No. 543/Chd/2019 for the A.Y. 2010-11, therefore our findings given in the former part of this order shall apply mutatis mutandis to the other appeals in ITA No. 548/Chd/2019 and ITA No. 549/Chd/2019 for the A.Y. 2010-11.

13. In the result, appeals of the assessee are allowed.

(Order pronounced in the open Court on 22/04/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member
AG
Date: 22/04/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File