

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 3249 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE A.J. SHASTRI**

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

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PEASS INDUSTRIAL ENGINEERS PVT LTD....Petitioner(s)

Versus

DEPUTY COMMISSIONER OF INCOME TAX....Respondent(s)

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Appearance:

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

MR SUDHIR M MEHTA, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**and****HONOURABLE MR.JUSTICE A.J. SHASTRI****Date : 05/08/2016**

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE A.J. SHASTRI)

1. By way of present petition, the petitioner has challenged the legality and validity of the impugned notice issued under Section 148 of the Income Tax Act, 1961 dated 31.3.2015 as well as the order disposing of the objections raised against the said notice.

2. Brief facts are as under :

2.1 The petitioner is a limited Company dealing with the business of manufacturing of winding machines including cone winders, precision winders and versa winders and related parts thereto. The petitioner Company is a income tax assessee and return of income for the Assessment Year 2009-10 came to be filed by the petitioner declaring the total income of Rs.83,21,390/- and filled in the return along with Tax Audit Report and Form No.3CA & 3CD. The petitioner thereafter, also filed revised return. Subsequently, the petitioner Company received notice on 25.8.2010 issued under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") asking the petitioner to produce certain details and in response thereto on 6.9.2010, the petitioner supplied all the relevant details as sought for. The petitioner Company had again filed the return revising earlier one on 27.10.2010 and subsequently, on 28.10.2010, the petitioner had received a notice under Section 142(1) of the Act again asking for certain details spelt out in the notice. By way of letter dated 2.11.2012, the petitioner also supplied all the relevant details as sought for under Section 142(1) of the Act, but then again one more notice came to be served upon the petitioner on

27.6.2011 under Section 142(1) of the Act. Along with the said notice, the questioners running into 22 questions called upon from the petitioner and further notice also came to be received by the petitioner on 24.8.2011 under Section 143(2) of the Act, which again replied by the petitioner on 6.9.2011. The petitioner under letter dated 4.10.2011 again clarified the questioners and the details, which have been sought for from the petitioner. It is the case of the petitioner that further details also came to be supplied by the petitioner on 14.10.2011 and subsequently, as scrutiny assessment have been undertaken by the respondent authority on 24.10.2011 under Section 143(3) of the Act.

2.2 The petitioner has challenged the said assessment order by way of appeal before the CIT(A), which has passed an order, but since the same is not relevant to the issue in question, the petitioner has chosen not to attach the same.

2.3 The petitioner has further stated that despite the aforesaid scrutiny assessment having been undertaken on 31.3.2015, notice came to be issued under Section 148 of the Act, on the premise that the Authority has reason to believe that the income chargeable to tax on escape assessment and thereby, the petitioner Company is asked to submit the return within a period of 30 days. The petitioner in response to the same, submitted a letter dated 25.4.2015 undertaking that the return of the petitioner has been thoroughly scrutinized and after scrutiny assessment, specific order came to be passed and therefore, the petitioner has requested the Authority to seek the reasons for issuance of notice so that it can comply with and simultaneously the petitioner filed its return on 28.4.2015 in response to the notice of reassessment. Under

the letter dated 10.8.2015, the respondent Authority supplied the reasons, which have been recorded and the petitioner against the said reasons, filed objections on 24.8.2015, pointing out inter alia that the petitioner had disclosed fully and truly all material facts and therefore, reopening is not permissible. The said objections, which have been submitted came to be disposed of by the Authority by an order dated 21.1.2016 and resultantly, the petitioner is constrained to approach this Court by way of present petition. This Court in an order dated 29.2.2016 was pleased to issue notice calling upon the Authority and in the meantime, ad interim relief is granted staying the further proceedings pursuant to the impugned notice dated 31.3.2015.

3. The learned advocate Mr. J.P. Shah appearing on behalf of the petitioner submitted that the impugned notice issued under Section 148 of the Act, is beyond the period of 4 years from the end of relevant assessment year. It has also been submitted that the scrutiny assessment under Section 143(3) of the Act has been undertaken and therefore, since the notice is issued beyond the period of 4 years, it is not open to reopen the assessment. It was also submitted by the learned advocate for the petitioner that the issue pertaining to TDS deductions has already been examined at length even in the scrutiny assessment as well and there is no additional material available, which may permit the reassessment in response to the impugned notice. It was also pointed out by the learned advocate for the petitioner that the reasons, which are recorded are not based upon an independent application of mind, but it seems that the same are based on borrowed satisfaction. It was also submitted that the reopening is impermissible to make a fishing inquiry or just to re-assure

whether earlier assessment is proper or not. Any attempt on the part of the respondent authority to reopen the assessment would be nothing but based upon a mere change of opinion, more particularly, when the scrutiny assessment has already been undertaken. Learned advocate for the petitioner relied upon the decision delivered by the Apex Court in the case of **GKN Driveshafts Vs. ITO** reported in **(2003) 259 ITR 19** and thereby submitted that the details have not been provided so as to enable the petitioner to take care while submitting the objections. It was submitted by the learned advocate for the petitioner that in absence of any new material or information, the reopening of the assessment is not permissible. It was submitted by the learned advocate for the petitioner that each and every detail has been submitted before the Authority as and when demanded and there is full disclosure on the part of the petitioner and therefore, by citing the decision of the Hon'ble Apex Court in the case of **Calcutta Discount Co. Ltd. Vs. ITO** reported in **41 ITR 191**, learned advocate submitted that even if there is an alternate remedy available to the assessee, this Court can examine whether the Authority has acted within bounds of its jurisdiction. On the premise aforesaid, learned advocate submitted that the relief as prayed for deserves to be granted in the interest of justice.

4. As against this, learned advocate appearing on behalf of the respondent Authority Mr. Sudhir M. Mehta has submitted that the Authority has specific reason to believe that the income of the petitioner has escaped assessment within the meaning of Section 147 of the Act. The reasons which are assigned in details, are sufficient enough to permit the Authority to reopen the assessment and therefore, learned advocate submitted that even if it is beyond the period of 4

years in a given case, the Authority can reopen the assessment moment a reasonable cause to open the assessment. Learned advocate for the respondent further submitted that specific approval has already been obtained from the competent Authority before taking steps of issuance of notice for reassessment and therefore, after following proper procedure and after considering the material, a reasonable belief has been formulated by the Authority to reopen the assessment. Learned advocate for the respondent submitted that extraordinary jurisdiction may not be allowed to be invoked at the instance of the petitioner to intercept the proceedings of reopening of the assessment. Learned advocate further submitted that this is merely notice for reopening of assessment and while issuing the final conclusion on the issue is not to be accepted to be arrived at by the Assessing Authority and therefore, the Authority has acted well within the bounds of its authority and have been satisfied that there is justifiable reasons for reopening of the assessment. Learned advocate for the respondent has filed detailed affidavit-in-reply, which is from Page No.222 onwards and submitted that the transaction in question is a doubtful transaction and there is reasonable belief of Assessing Authority, which led him to issue notice for reassessment. Learned advocate for the respondent relied upon the decision in the case of **Phool Chand Bajrang Lal Vs. ITO** reported in **(1993) 230 ITR 456** and contended that mere disclosure of transaction is not sufficient enough to say that there was a true and full disclosure of the facts. Learned advocate further submitted that reopening is neither based of any change of opinion nor for any review of assessment, which are being undertaken and therefore, submitted that the petition being

devoid of merits, deserves to be dismissed. Learned advocate further submitted that there is no violation of principle of natural justice nor any circumstance, which warrants this Court to intercept the process of reopening of assessment and therefore, requested to dismiss the petition.

5. Before dealing with the petition at length, one of contentions raised by the learned advocate for the petitioner is that the Assessing Officer, while issuing the notice, that Authority has not obtained any approval from the competent Authority as required under Section 151 of the Act and therefore, to ensure whether the approval came to be obtained by the Assessing Officer or not, we have called for original file for perusal and ensuring whether proper process has been undertaken by the Authority. In response to the said order dated 13.7.2016, the file initially came to be presented by the respondent authority but file was containing mere xerox copy of format for granting of such approval and therefore, to re-ensure, we have directed the respondent Authority to place the original file containing the original papers. Pursuant to that instruction, on 27.7.2016, the learned advocate for the respondent has submitted original file to deal with the said subject matter on the issue of approval under Section 151 of the Act. Before advertizing ourselves to the contention raised by the respondent Authority, we have gone through the original file and upon perusal, we are satisfied that the proper approval has already been taken by the Assessing Officer in this regard and therefore, we are left with no doubt that before issuance of the impugned notice, the competent Authority has granted approval in consonance with the provisions contained under Section 151 of the Act and therefore, that aspect is appearing to be not in controversy and the papers contained in file are

substantiating the stand of the respondent Authority for the issuance of the impugned notice, which is only after getting proper approval from the competent Authority and therefore, this aspect is now being clear from the original file. We are examining the other issues raised by the respective parties hereinafter.

6. While dealing with the stand of the respective sides and the contentions raised by the learned advocates for the respective parties, we feel it necessary to first of all examine and taking note of the reasons, which are recorded, while initiating the steps of reopening of the assessment. Hence, the same are reproduced hereinafter:

"1. The assessee is engaged in the business of manufacturing of textile machinery and spare parts. The assessee has filed his return of income on 30/09/2009 declaring total income at Rs.83,21,390/-. Thereafter, the assessee has filed revised e-return of income on 26/02/2010 declaring total income of Rs.59,09,837/-. The case was selected for scrutiny and assessment was completed u/s. 143(3) dated 24/10/2011 assessing income at Rs.65,60,070/-.

2. In this case, information has been received by DGIT (Investigation), Ahmedabad vide No.DGIT (Inv.)/AHD/VAT/Bogus Purchase/2014-15 dated 26.03.2015. It is stated in letter that two surveys were carried out by the Pr. DIT (Inv.), Kolkata on Vikrant Kayan and Arvind Kayan respectively. The Kayans are known entry operators of Kolkata and have been giving entries of bogus share capital,

bogus bills of expenses and bogus long terms capital gains to various beneficiaries throughout the country. The above mentioned assessee is also a beneficiary of Rs.39.94 lacs (accommodating co. Agnes Bruno Ltd.) pertaining to A.Y. 2009-10.

3. Considering the facts stated above, I have reason to believe that the income of the assessee to the tune of Rs.39.94 lacs for the accounting period relevant to A.Y.2009-10, has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

7. From the reasons, which are recorded, it has come to the notice of this Court that a specific information has been received by the DGIT (Investigation), Ahmedabad, with regard to the bogus purchase vide communication dated 26.3.2015 wherein it has been specifically found that two surveys operation which were carried out by T.R.D.I.T. (Investigation) Kolkata of Mr. Vikrant Kayan and one Mr. Arvind Kayan and the said Kayan, as per the information received by Assessing Officer, are well known entry operators of Kolkata and are used to give bogus entry with respect to the share capital, bogus deals pertaining to expenses and are also engaged in the activities of giving long term capital gains to various beneficiaries across the country and it has been found and revealed by the Authority that the present petitioner assessee is one of beneficiaries to the extent of Rs.39.94 Lacs pertaining to Assessment Year 2009-10. This information is received as stated vide communication dated 26.3.2015 and therefore, on the basis of such materials, the Authority has reason to believe that the income of the petitioner has escaped assessment

within the meaning of Section 147 of the Act. It is emerged from the records that on the basis of this new material information having been received, the Authority appears to have issued notice for re-assessment. In the background of aforesaid facts, prima facie it appears that it is not a simple case of change of opinion and there appears to be a concrete tangible material in the form of information as stated the Authority has taken a decision to reopen the assessment. This information material was not forming part of scrutiny assessment. In the background of this fact, we may recall the proposition of law on the issue as laid by the series of decisions, more particularly, the decision delivered by the Hon'ble Apex Court in the case of **Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Sotck Brokers Pvt. Ltd.** reported in **2007 (291) ITR 500**. The Hon'ble Apex Court, dealing with the said case, has dealt with statutory provisions prior to the amendment as well as post amendment and after analyzing the provisions of Sections 147 and 148 of the Act, the Apex Court has opined that Section 147 authorizes and permits the Assessing Officer to assess or re-assess the income chargeable to tax if he has reason to believe that income for any assessment year has escaped the assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification and after considering and analyzing the provision, it has been propounded that the expression cannot be read to mean that Assessing Officer should have finally ascertained the fact of legal evidence or conclusion. At the initial stage what is required is reason to believe but, not established fact of escapement of income and therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen and

in the background of present facts, there is a specific information received about the Kayans brothers during investigation by the authority and it has been prima facie found that present petitioner – assessee is also the beneficiary of the said Kayan brothers. At this stage of the proceeding, the factum of said aspect whether the petitioner is beneficiary or not, is not to be finally adjudicated upon by the Assessing Officer and therefore, this Court is not in a position to dwell into it at this stage as not required, but only has to examine whether there is a reasonable belief arrived at or not and from the basis of aforesaid circumstance prevailing on record, it appears that the Assessing Officer is justified prima facie in arriving at conclusion to reopen the assessment. A liberty is always available to the petitioner to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted. The relevant extract contained in the said decision of the Apex Court is reproduced hereinafter :

“16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in Central Provinces Manganese Ore Co. Ltd. [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 Co. Pvt. Ltd. [1996 (217) ITR 597 (SC)] ; Raymond Wollen Mills Ltd. v. ITO [1999 (236) ITR 34 (SC)]).

17. 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 (i) 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. The case at hand is covered by the main provision and not the proviso."

8. In another case recently being dealt with by this Court in

a group of tax appeals being Tax Appeal Nos.542 of 2015 and allied matters wherein, very issue whether at the instance of same material of another wing, whether reopening is permissible or not. While dealing with said issue this Court has examined the said aspect and has come to the conclusion that reopening is permissible. In the said group of appeals, the substantial question of law posed before the Court, whether the ITAT was justified in setting aside the reassessment orders on the ground that reopening of assessment under Section 147 of the Act was bad in law. In that particular group of matters, the reopening was initiated by the authority based upon the show cause notice along with accompanied material forwarded by the Excise Department to the Income-Tax Department and on the basis of said material provided by the Excise Department, the Assessing Officer has reopened the assessment of the assessee by issuing notice under Section 148 of the Act. The assessee of that case in the similar manner in this case has contended that the information provided by a different Investigating Team may not be *ipso facto* utilized to re open the assessment which has become final by the Income-tax authority. It was also contended by the assessee of that case that there was no independent application of mind on the part of Assessing Officer and just based upon said information provided by the Excise Department, the authority resorted to Section 148 of the Act to reopen the assessment. This issue in *extenso* dealt with by the Division Bench of this Court and by a detailed judgment, came to conclusion that the Assessing Officer has merely relied upon the show cause notice issued by the Excise Department and has not concluded finally and therefore, there is no illegality or irregularity in arriving at a belief that assessment deserves to be reopen.

Relying upon the decision delivered by the Apex Court, it is held that action of reopening of assessment was found to be justified. Relevant Paragraph Nos.9, 10, 11, 12, 13 and 16 of the said decision worth to be taken note of and therefore, reproduced hereinbelow :

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

10. In case of Central Provinces Manganese Ore Co. Ltd. vs. Income Tax Officer, Nagpur (supra) the Supreme Court noted that in case of the assessee which had an office in London, this Customs authority had come to know that the assessee had declared very low price in respect of the consignment of Manganese exported by them out of India. After due inquiries and investigations, the Customs authorities found that the assessee was systematically under-voicing the value of Manganese as compared with the prevailing market price. The Income Tax Officer on coming to know about the proceedings before the Customs Collector in this respect issued notice for reopening of the assessment. In the reasons

that the Assessing Officer relied on the facts as found by the Customs Authorities that the assessee had under-voiced goods during export. Under such circumstances, upholding the validity of the notice for reopening, the Supreme Court held and observed as under:

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

11. In case of Income Tax Officer vs Purushottam Das Bangur (supra) after completion of assessment in case of the assessee, the Assessing Officer received letter from Directorate of Investigation giving detailed particulars collected from Bombay Stock Exchange which revealed earning of share and price of share increased during period in question and quotation appearing at Calcutta Stock Exchange was as a result of manipulated transaction. On the basis of such information, the Assessing Officer issued notice for reopening of the assessment. The question, therefore, arose whether the information contained in the letter of Directorate of Investigation could be said to be definite information and the Assessing Officer could act upon such information for taking action under Section 147(b) of the Act. In such background, the Supreme Court observed as under:

‘12. Ms. Gauri Rastogi, the learned appearing for the respondents, has urged that the letter of Shri Bagai was received by the Income tax Officer on March 26, 1974 and on the very next day, that is,

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

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

'After hearing the learned counsel for the parties at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income Tax Officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January 9, 1967, by the officers of the Mining Department in the presence of the representatives of the assessee and according to

the opinion of the officers of the Mining Department, there was under reporting of the raising figure to the extent indicated in the said letter. The report is made by a Government Department and that too after conducting a joint inspection. It gives a reasonably specific estimate of the excessive coal mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may be well be that the assessee may be able to establish that the facts stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our order, the reassessment proceedings have not to go on we don not and we ought not to express any opinion on the merits.'

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

'23 The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the assessing officer treated them as objections and made a communication. However, on a scrutiny of the order, it is

perceivable that the authority has passed the order dealing with the objections in a very careful and studied manner. He has taken note of the fact that transactions involving Rs.27 lakhs mentioned in the table in Annexure P-2 constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The assessing officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the DIT (INV-V) as regards the transactions entered into by the assessee company with number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceeding under Section 147 of the Act. The reason to believe has been appropriately understood by the assessing officer and there is material on the basis of which the notice was issued. As has been held in *Phool Chand Bajrang Lal* (supra), *Bombay Pharma Products* (supra) and *Anant Kumar Saharia* (supra), the Court, in exercise of jurisdiction under Article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In *SFIL Stock Broking Ltd.* (supra), the bench has interfered as it was not discernible whether the assessing officer had applied his mind to the information and independently arrived at a belief on the basis of material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the factual matrix in the case at hand. In the case of *Sarthak Securities Co. Pvt. Ltd.* (supra), the Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into transactions and the assessing officer

was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee company through the banking channel. Regard being had to the aforesaid fact situation, this Court had interfered. Thus, the said decision is also distinguishable on the factual score.'

16. Thus, the decision in case of Futura Ceramics Pvt. Ltd. And anr vs. State of Gujarat through Secretary and ors(supra) was rendered in an entirely different background and had no direct application to the question whether on the basis of information supplied by the Excise Department to the Assessing Officer of suppression of valuation of goods or clandestine removal of goods for evading excise duty, notice for re-opening of the assessment could have been issued."

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.

10. In the background of the aforesaid facts and circumstances, keeping in view the proposition of the law laid down on the issues of reopening of assessment and keeping in view the scope of jurisdiction of this Court, we are of the opinion that the petition deserves to be dismissed and accordingly, it is dismissed. Notice is discharged. Interim relief, if any, granted earlier stands vacated.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

YNVYAS