

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 3072 of 2016 alongwith
CWP No. 3078 of 2016 and
CWP No. 3080 of 2016

Reserved on: 22.12.2016

Date of Decision: December 26, 2016

1. CWP No. 3072 of 2016

Sh. Virbhadra Singh ... Petitioner.

Versus

Deputy Commissioner, Circle Shimla, Income Tax Office &
others. ..Respondents.

2. CWP No. 3078 of 2016

Smt. Pratibha Singh ... Petitioner.

Versus

Deputy Commissioner, Circle Shimla, Income Tax Office &
others. ..Respondents.

3. CWP No. 3080 of 2016

Sh. Vikramaditya Singh ... Petitioner.

Versus

Deputy Commissioner, Circle Shimla, Income Tax Office &
others. ..Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner: M/s Vishal Mohan, Pranay Pratap Singh, Sushant Keprate, Aditiya Sood and Jai Vardhan Khurana, Advocates, for the petitioner(s).

For the Respondents: Mr. Vinay Kuthiala, Sr. Advocate with Ms Vandana Kuthiala, Advocate and Mr. Diwan Singh Negi, Advocate, for the respondents.

Sanjay Karol, J.

Invoking Extra Ordinary Writ jurisdiction of this Court, petitioner Sh. Virbhadra Singh lays challenge to the impugned notice dated 29.3.2016 (Annexure P-2) and order dated 24.11.2016 (Annexure P-5), whereby proceedings for assessment stands initiated by the Revenue under the provisions of Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Petitioners Smt. Pratibha Singh (CWP No. 3078 of 2016) and Sh. Vikramaditya Singh (CWP No. 3080 of 2016) by way of separate petitions also lay challenge to similar notice/order. As prayed for, by the learned

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes.

counsel, these petitions were heard together and in principle, only facts of petitioner Sh. Virbhadra Singh (CWP No. 3072 of 2016), were argued before us, for the difference pertained to the amount of income declared and the dates of filing of returns under Section 139 of the Act. Hence we proceed to discuss the facts of CWP No. 3072 of 2016.

3. The issues, which this Court is called upon to consider, are: (a) whether an order passed by an authority under the Act, in view of availability of equally efficacious remedy, is amenable to interference by way of writ jurisdiction, (b) whether exercise of power by the jurisdictional authority, in initiating action for assessment of escaped income, is justiciable by a Writ Court, (c) whether the jurisdictional authority had sufficient material to form reasons of belief, (d) whether such reasons do exist and if so, can this Court go into sufficiency thereof, (e) whether sanction accorded by the appropriate authority is in accordance with law, (f) whether the order passed by the authority is in conformity with the settled procedure of law, and (g)

whether action of the authorities below can be said to be arbitrary, whimsical or capricious.

4. Petitioner, a permanent resident of Himachal Pradesh, is regularly assessed to income tax. On 02.08.2012, he filed a return, declaring his net taxable income for the assessment year 2012-13 (hereinafter referred to as the relevant year), to be ₹17,60,090/- (Annexure P-1, page 11), and the source mainly being salary and income from house property. *Prima facie*, finding certain income to have escaped assessment, on 29.03.2016 he received a notice, under Section 148 of the Act, so issued by the Deputy Commissioner of Income Tax, Shimla (Annexure P-2, page 15).

5. Pursuant thereto, on 20.04.2016, petitioner filed a fresh return declaring the very same income. Also a request for supply of "reasons" for re-opening the case was made, which was duly complied with vide communication dated 09.05.2016 (Annexure P-3, page 16). Objections thereto, so filed by the petitioner on 29.06.2016 (Annexure P-4, page 59), stand rejected by the Assessing Officer in terms of order dated 24.11.2016 (Annexure P-5, page 70).

6. Perusal of aforesaid communications reveals that on 29.03.2016, the Assessing Officer, forwarded his reasons of belief to the superior officer i.e. Joint Commissioner of Income Tax, Shimla, and the very same day, the said officer, after expressing his satisfaction thereupon, on finding the case fit for issuance of notice under Section 148 of the Act, returned the file and same day, notice issued by the Assessing Officer, was served upon the petitioner.

7. It was the information received from the Deputy Director of Income Tax (Investigation), Faridabad, vide communication dated 15.12.2015, which led the Assessing Officer initiate action against the petitioner under Section 147 of the Act.

8. Survey conducted with respect to the affairs of one Vakamulla Chandrashekhar (hereinafter referred to as the loaner) revealed that in the relevant year, following payments were made: (i) ₹2.4 Crores to Sh. Virbhadra Singh; (ii) ₹1.5 Crore to Smt. Pratibha Singh; and (iii) ₹ 2 Crores to Sh. Vikramaditya Singh. The loaner stated such payments to be interest free loans, made out of his "agricultural income" and "unsecured loans" so

received by him from third parties. *Prima facie*, such plea was found to be not true, hence on careful appreciation of material before him, the Assessing Officer, formed reasons of belief, relevant portion whereof, is extracted herein under:-

“4. Summary of findings

I have carefully perused the return of income of Sh. Virbhadr Singh (Assessment Year 2012-13) and information received from and copies of the statements recorded by the Investigation Wing and the following facts emerge:-

4.1 Sh. Virbhadr Singh is showing his return with gross total income of Rs.18,66,089/- from salary and income from other sources.

4.2 Sh. Virbhadr Singh has received interest free unsecured loans of Rs. 2.4 Crores from Sh. Vakamulla Chandrashekhar in Financial Year 2011-12.

4.3 Sh. Vakamulla Chandrashekhar submitted that he advanced the above mentioned loans to Sh. Virbhadr Singh out of his agricultural income of Rs. 3.4 Crores in Financial Year 2011-12 and out of unsecured loans taken by him from Sh.Gurusharan Singh (Rs. 0.49 Crores), Jai Bharat Foods (Rs. 0.73 Crores) etc.

4.4 However, it was proved that Sh. Vakamulla Chandrashekhar was not having

sufficient agricultural land to substantiate his claim.

4.5 Sh. Ram Parakash Bhatia, who was controlling various paper entities including Jai Bharat Foods, admitted on oath that he had provided accommodation entries to Sh. Vakamulla Chandrashekhar in lieu of unaccounted cash. He also stated on oath that no actual agriculture produce were purchased by him from Sh. Vakamulla Chandrashekhar.

4.6 Sh. Gurusharan Singh denied giving any loan to Sh. Vakamulla Chandrashekhar.

4.7 Thus, the creditworthiness of Sh. Vakamulla Chandrashekhar remain unproved to advance such huge amount of Rs. 2.4 Crores as interest free unsecured loan to Sh. Virbhadra Singh in Assessment Year 2012-13.

4.8 From the discussion made above, it is clear that Rs. 2.4 Crores received by Sh. Virbhadra Singh in Assessment Year 2012-13 from Sh. Vakamulla Chandrashekhar was unexplained credit in the hand of Sh. Virbhadra Singh and needs to be assessed in the hands of Sh. Virbhadra Singh u/s 68 of the Income Tax Act, 1961.

5. Reasons forming belief

In view of the above, I have reasons to believe that an amount of Rs. 2.4 Crores which was received by Sh. Virbhadra Singh from Sh. Vakamulla Chandrashekhar in Assessment Year 2012-13 as interest free unsecured loan is actually unexplained credit in the hand of Sh. Virbhadra Singh, which has escaped assessment in the case of Sh. Virbhadra Singh for Assessment Year 2012-13 within the meaning of section 147/148 of the Income Tax Act, 1961.”

(Emphasis supplied)

9. Though factum of receipt of such payments came to be admitted by the petitioner, only in the objections filed in response to a notice issued under Section 148 of the Act, but he justified the same by raising a plea that: (i) In the year 2014, the amount stood repaid alongwith interest @ 10%; (ii) There was no dispute about (a) identity of the person, (b) genuineness of the transaction, (c) creditworthiness of the loaner; (iii) In the relevant year, the loaner had himself disclosed an income of ₹65,59,020/-, which was in addition to “huge agricultural income”. (iv) The relevant jurisdictional authority, vide order dated 27.03.2015 had already assessed the amount in question, in the hands of the loaner (v) As assessee was not obliged to maintain books

of accounts, provisions of Section 68 of the Act were not applicable. (vi) Impugned action was a result of total non-application of mind.

10. In the writ petition no additional ground stands pleaded.

11. *Prima facie* finding the explanation not to be satisfactory, such objections came to be rejected by the Assessing Officer by *inter alia* observing that: (i) Parties contradicted with regard to the nature of loan; (ii) in the absence of any proof or evidence, justifying income from agricultural source or unsecured loans, creditworthiness of the creditor remained to be examined; (iii) Though in the hands of the loaner, a sum of ₹3,40,85,000/-, so claimed as income from agriculture was assessed as an income from undisclosed source, under Section 68 of the Act, yet genuineness of the transaction required examination. More so, when such assessment was subject matter of challenge in an appeal before the appropriate jurisdictional authority; (iv) Even though assessee was not maintaining books of accounts, but however, information to which only he had access, in the nature of bank accounts etc. required submission and

examination, in deciding a jurisdictional issue of fact; (v) In the absence of any prior assessment, there is no jurisdictional error in the Assessing Officer, calling upon the assessee to place all material in its power and possession, enabling the officer to decide the fact in issue; (vi) There was proper application of mind by the sanctioning authority; and (vii) Assessee's participation in the assessment proceedings would also help proper adjudication of the case on merits.

12. In response to the petition, Revenue justifies its action by (i) expressing doubts about the creditworthiness of the loaner; (ii) the nature of transaction; (iii) Revelation of a fact that in the relevant year, certain investments for purchase of a Farm House at Delhi, were made by the children of the petitioner in the name of M/s Maple Destination and Dreambuilt Pvt. Ltd. Company; (iv) Non-cooperative attitude of the assessee in: (a) not furnishing information and placing on record material within his power and possession of which only he had access; (b) not responding to a detailed questionnaire dated 23.05.2016; (c) placing on record only unauthenticated photocopies of few bank accounts;

(v) Uncertainty with regard to the order of assessment made in the case of the loaner by the jurisdictional authority; (vi) Reasons of belief being only *prima facie* in nature; and (vii) The assessee having ample opportunity of placing all material and substantiating his case.

13. During the course of hearing, learned counsel cited following decisions which we have considered. The need to clarify such fact arises only for the reason that in the pleadings and/or proceedings conducted so far by the Assessing Officer, parties have referred to several decisions.

Mr. Vishal Mohan, learned counsel cited:-

- (i) *GKN Driveshafts (India) Ltd. V. Income-Tax Officer and others*, (2003) 259 ITR 19 : (2003) 1 SCC 72; (ii) *Ajanta Pharma Ltd. v. Assistant Commissioner of Income-Tax and others*, (2004) 267 ITR 200 (Bombay); (iii) *Income-Tax Officer, I Ward, Distt. VI, Calcutta, and others v. Lakhmani Mewal Das*, (1976) 103 ITR 437 : (1976) 3 SCC 757; (iv) *Sagar Enterprises v. Assistant Commissioner*, (2002) 257 ITR 335 (Guj); (v) *M/s Chhugamal Rajpal v. S.P. Chaliha and others*, (1971) 1 SCC 453; (vi) *S.P. Agarwalla alias Sukhdeo Prasad Agarwalla v. Income-Tax Officer, E-Ward, Dist. III(2)*,

Calcutta and others, (1983) 140 ITR 1010 (Calcutta); (vii) *Arjun Singh, Ajay Singh v. Assistant Director of Income-Tax (Investigation)*, (2000) 246 ITR 363 (Madhya Pradesh); (viii) *Central India Electric Supply Co. Ltd. v. Income-Tax Officer*, (2011) 333 ITR 237 (Delhi); and ITA No.45 of 2007, decided on 14.3.2012, titled as *Commissioner of Income Tax, Shimla v. M/s Sahil Knit Fab.*

Mr. Vinay Kuthiala, learned Senior Counsel cited:-

- (i) CWP No.347 of 2014, decided on 4.7.2014, titled as *Joint Commissioner of Income Tax v. Kalanithi Maran*; (ii) *Commissioner of Income Tax, Gujarat v. Vijaybhai N. Chandrani*, (2013) 14 SCC 661; (iii) *Commissioner of Income Tax and others v. Chhabil Dass Agarwal*, (2014) 1 SCC 603; (iv) *Lalji Haridas v. Income-Tax Officer and another*, (1961) 43 ITR 387; (v) *Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Private Limited*, (2008) 14 SCC 208 = (2007) 291 ITR 500; (vi) *Raymond Woolen Mills Ltd. vs. ITO* (1999) 236 ITR 34 (SC) : 2008 (14) SCC 218; (vii) *Phool Chand Bajrang Lal and another v. Income-Tax Officer and another*, (1993) 203 ITR 456 : (1993) 4 SCC 77; (viii) *Ess Ess Kay Engineering Co. P. Ltd. v. Commissioner of*

Income Tax, 247 ITR 818; (ix) Decision dated 04.03.2016, rendered by the Calcutta High Court in ITA No.297 of 2006, titled as *Prem Chand Shaw (Jaiswal) V. Assistant Commissioner, Circle-38, Kolkata & Anr*; (x) *Sunil Kumar Jain v. CIT*, 284 ITR 626 (Allahabad); (xi) *Mangilal Jain V/S Income Tax Officer*, (2009) 315 ITR 105 (Mad); (xii) *Shankar Industries v. Commissioner of Income Tax, Central*, 114 ITR 689 (Cal); (xiii) Civil Misc. Writ Petition No. 181 (Tax) of 2004, decided on 16.09.2006, by Allahabad High Court, titled as *M/s Ema India Ltd. Versus Asstt. Commissioner of Income Tax Central Circle-I*; (xiv) *Sasi Enterprises v. Assistant Commissioner of Income Tax*, (2014) 5 SCC 139; and (xv) *Commissioner of Income tax v. Sophia Finance Ltd.*, (1994) 205 ITR 98.

14. The relevant provisions, to which our attention is invited are Sections 68, 147 to 153 of the Act.

15. Section 147 is evidently clear. Insofar as its application to the instant facts is concerned, what is required, is fulfillment of essential ingredient(s) that: (i) The Assessing Officer (ii) must have reason(s) to believe, (iii) that any income chargeable to tax has escaped assessment (iv) for any assessment year, (v) which he is

empowered to (vi) may assess, and (vii) if the income is understated by the assessee, it shall be deemed to be an income chargeable to tax having escaped assessment.

16. However, for initiating such action, in compliance of Section 148, the Assessing Officer has to (i) record his reasons (ii) forward the same to an authorized officer, as the case may be, so mentioned in Section 151, (iii) who, shall record his satisfaction on the reasons recorded by the Assessing Officer that it is a fit case for issuance of such notice, and only thereafter, (iv) The Assessing Officer shall issue a notice to the assessee, requiring him/her to furnish within a specified period, return of his/her income, in a prescribed form.

17. In view of the statutory mandate, so contained in Section 153, in the given facts and circumstances, assessment proceedings are necessarily required to be completed before 31.12.2016.

18. Section 68, which deals with the concept of deemed income, provides that where any sum is found credited in the books of an assessee maintained for any previous year, and he offers no explanation about the nature and source thereof or the explanation offered by

him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee.

19. As a matter of abandoned caution, in a tabulated form, we reproduce facts, relevant to each one of the petitioners:

Assessment Year 2012-13	CWP 3072 of 2016 Shri Virbhadra Singh (Karta of HUF)	CWP 3078 of 2016 Smt. Pratibha Singh (Wife)	CWP 3080 of 2016 Shri Vikramaditya Singh. (Son)
Net income disclosed in original return	₹17,60,090/-	₹12,97,055/-	₹1,97,150/-
Date of filing Return	2.8.2012 (P-1)	28.7.2012 (P-1)	7.8.2013 (P-1)
Date of Notice u/s 148 of the Act	29.3.2016 (P-2)	29.3.2016 (P-2)	29.3.2016 (P-2)
E. Return refiled	20.4.2016 after receipt of notice u/s 148 of the Act.	28.3.2013 for amount of ₹14,33,200/-	28.4.2016 for amount of ₹1,97,150/-
Date on which request for supply of reasons was made	27.4.2016	25.4.2016	28.4.2016
Reasons supplied on	9.5.2016	9.5.2016	9.5.2016
Objections filed on	29.6.2016 (P-4)	16.6.2016 (P-4)	29.6.2016 (P-5).
Rejection of Objections is same in all petitions except CWP 3080, Page 70	24.11.2016 (P-5)	24.11.2016 (P-5)	24.11.2016 (P-6)
Loan Advanced by Vakamulla Chandershekhar	2.4 crores	1.5 crore	2 crores

20. It is a common case of parties that original return dated 02.08.2012 filed by the petitioner, in

compliance of Section 139 was not subjected to assessment under sub-section (3) of Section 143. Return dated 02.08.2012, came to be processed only under sub-section (1) of Section 143, in which there is no reference of these transactions. Thereafter, the first communication *inter se* the parties, is the notice dated 29.03.2016, issued by the Assessing Officer under Section 148 of the Act.

SCOPE OF JURISDICTION

21. Scope of interference with an order passed by an authority under a Statute, providing an equally alternate and efficacious remedy, is now well settled. The issue is no longer *res integra*, hence we restrict the discussion only to the decisions pertaining to the Statute in issue.

22. A Constitution Bench of the apex Court in *Thansingh Nathmal v. The Superintendent of Taxes, Dhubri and others*, AIR 1964 SC 1419, observed that:

“7.....The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands

that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

(Emphasis supplied)

23. A three-Judge Bench of the apex Court in *The Commissioner of Income-tax, Gujarat v. M/s A. Raman and Co.*, AIR 1968 SC 49, held that:

“6. The High Court exercising jurisdiction under Article 226 of the Constitution has power to set aside a notice issued under Section 147 of the Income-tax Act, 1961, if the condition precedent to the exercise of the jurisdiction does not exist. The Court may, in exercise of its powers, ascertain whether the Income-tax Officer had in his possession any information: the Court may also determine whether from that information the Income-tax Officer may have reason to believe that income chargeable to tax had escaped assessment. But the jurisdiction of the Court

extends no further. Whether on the information in his possession he should commence a proceeding for assessment or reassessment, must be decided by the Income-tax Officer and not by the High Court. The Income-tax Officer alone is entrusted with the power to administer the Act; if he has information from which it may be said prima facie that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court, exercising powers under Article 226 of the Constitution, to set aside or vacate the notice for reassessment on a re-appraisal of the evidence."

(Emphasis supplied)

24. In *Raymond Woolen Mills Ltd. (supra)*, their Lordships of the Supreme Court rejected challenge to the issuance of notice for reassessment by observing that at the stage of notice, court can only consider whether there is a prima facie case for reassessment. *Reopening of proceedings cannot be quashed by going into the "sufficiency" or "correctness" of the material relied upon by the assessing authority.*

25. In *Vijaybhai N. Chandrani (supra)*, the Apex Court while reversing the view taken by the High Court in quashing a notice of reassessment issued under Section 153-C of the Act, by relying upon its earlier decisions, in *Bellary Steels & Alloys Ltd. V. CCT*, (2009) 17 SCC 547; and *Indo Asahi Glass Co. Ltd. v. ITO*, (2002) 10 SCC 444, directed the assessee to first exhaust alternate remedies

provided under the Act, by filing reply to the notice and take consequential action, if any, before the jurisdictional forum.

26. In *Chhabil Dass Aggarwal (supra)*, in somewhat similar circumstances, where notice issued under Section 148 of the Act and the *ex-parte* assessment proceedings came to be quashed by a writ Court, the Apex Court, by referring to its several judicial pronouncements, including that of the Constitution Bench (Five Judges) in *K.S. Rashid and Son v. Income Tax Investigation Commission*, AIR 1954 SC 207, observed that restriction of not entertaining a writ petition, when an efficacious and alternate remedy is available, is self imposed. It is essentially a rule of policy, convenience and discretion, rather than the rule of law. Only where an exceptional case, warranting interference; existence of sufficient grounds; for invoking extra ordinary jurisdiction, is made out, power, which is discretionary in nature, must be exercised. Where hierarchy of appeal is provided by a statute, party must exhaust the statutory remedies before invoking the writ jurisdiction. The right or liability created by a statute giving a special remedy for enforcing

it must be availed of. The Court reiterated the principle laid down in *Union of India Versus Guwahati Carbon Ltd.*, (2012) 11 SCC 651 and in *Munshi Ram Versus Municipal Committee, Chheharta*, (1979) 3 SCC 83, that when a statute provides for a person aggrieved, a particular remedy to be sought in a particular Forum and in a particular way, it must be sought in that manner, to the exclusion of all other modes and Forums. But it did recognize certain exceptions to this rule and that, *inter alia* being, where the action of the statutory authority is not in accordance with the statutory provisions; in defiance of fundamental principles of judicial procedure; and in total violation of principle of natural justice.

27. Justifying the action of the petitioner in bypassing the statutory remedy and directly assailing the notice for reassessment, Mr. Vishal Mohan, learned counsel, seeks reliance on the decision rendered by the Bombay High Court, in *Ajanta Pharma Ltd. (supra)*. The decision came to be rendered in the given facts and circumstances, where reason for reassessment being non-discloser of invoice/details of the purchase of the trading goods exported and failure to co-relate the

trading exports with the trading goods exported was found to have been non-existent, in fact contradicted from the record rendering the reasons of the Assessing Officer to be totally “flimsy” and not “sufficient to draw conclusion about the escapement of income” and there being “no material” before the Assessing Officer, entitling him to reopen the case of assessment, the Court found the notice so issued to be *ex-facie* bad in law. Hence it exercised its discretionary power in quashing such action. Significantly, the Court observed that a writ would lie only if the impugned action is *ex-facie* without jurisdiction or again in excess of the jurisdiction vested in the authority or the action being totally arbitrary. It cautioned that extra ordinary jurisdiction cannot be allowed to be availed as a matter of course and while deciding the issue of jurisdiction, finding of the authority on the factual aspect may be necessary, in which case, necessarily the assessee would be required to approach the Assessing Officer.

28. Mr. Vinay Kuthiala, learned Senior Counsel, also invites our attention to a decision dated 16.09.2006,

rendered in *Ema India Ltd. (supra)*, which we need not discuss in view of the settled position of law.

29. Thus it cannot be said that jurisdiction of this Court, in entertaining a petition even when an equally efficacious remedy is available to a party, is totally ousted. Notwithstanding the statutory remedies available to the aggrieved party, restriction imposed by a writ Court is more in the nature of restraint. With the ever increasing and growing scope of judicial review, exercise of extraordinary writ jurisdiction cannot be circumscribed.

30. But however, in the given facts and circumstances, for reasons to follow, we do not find the petitioner to have made out a case warranting interference in a petition filed under Article 226 of the Constitution of India.

31. While contending that this Court has no jurisdiction to quash the order of rejection of objections by the Assessing Officer, Mr. Vinay Kuthiala, learned Senior Advocate, seeks reliance on the decision rendered by the High Court of Madras in *Kalanithi Maran (supra)*. We are unable to persuade ourselves to agree with such submission. The procedure for filing the objections and

obligation to decide the same, came to be evolved with the following observations made by the apex Court in *GKN Driveshafts (supra)*, wherein it is held as under:

“5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years.”

32.

Since then, the practice has been in vogue. The mechanism evolved is only a safeguard, a protection from harassment of the assessee, for avoiding unwarranted harassment, from undesirable adjudicatory process, so initiated, perhaps on jurisdictional error or such material which *ex-facie* may be false or reason(s)

which *prima facie* appears to be baseless or without any cause or justification. The object being, affording an opportunity to an assessee of putting across its case, by placing authentic and undisputed material, satisfying no escapement of income from assessment, enabling the authority to consider, and if so required, drop the proceedings. There can be a fact situation where out of malice or for extraneous reasons, an Assessing Officer may decide the objections, in a palpably illegal manner. What if it is against the mandate of the said decision itself? In any event, orders passed by a Statutory authority are always amenable for challenge in a writ Court which power, perhaps the Court may exercise, when warranted, in the attending facts and circumstances.

NON COOPERATIVE ATTITUDE

33. Non cooperative attitude and conduct of the petitioner is vehemently pressed as a primary ground for rejection of the petition. Specific attention is drawn to the affidavit filed in response to the petition: (a) petitioner failed to furnish information during the entire period of 8½ months. (b) Save and except for filing of photocopies

of few bank accounts; unverified and unauthenticated statement of account of the loaner and the order of reassessment so passed qua him, no information privy only to the petitioner, stands furnished. (c) No response to a detailed questionnaire dated 23.5.2016 is furnished. (d) Endeavour of the revenue in having a centralized investigation and assessment of the loaner and the loanee, has, yet not, yielded any result, for such order came to be quashed by this Court and now the matter is pending before the Apex Court. (e) On the petitioner's asking, proceedings of assessment relating to financial year 2009-10 and 2012-13 in relation to the HUF, a separate legal entity, also stand stayed by this Court.

34. Much emphasis is laid on the following observations made by the Apex Court in *Sasi Enterprises (supra)*:-

"17. We are, in these appeals, concerned with the question of non-filing of returns by the appellants for the assessment year 1991-92, 1992-93 and 1993-94. Each and every order passed by the revenue as well as by the Courts were taken up before the higher courts, either through appeals, revisions or writ petitions. The details of the various proceedings in respect of these appeals are given in paragraph 30 of the written submissions filed by the revenue, which reveals the dilatory tactics adopted in these cases. Courts, we caution, be guarded against those persons who prefer to see it as a medium for stalling all legal

processes. We do not propose to delve into those issues further since at this stage we are concerned with answering the questions which have been framed by us.”

(Emphasis supplied)

35. In the given facts and circumstances, we are not inclined to dismiss the petition on such a ground. However, on this issue, we refrain from making any observation, save and except that petitioner is duty bound to fully cooperate in the expeditious adjudication of all proceedings.

REASONS TO BELIEVE

36. The expression “reasons to believe” stands adequately elaborated by the Apex Court in its various pronouncements. The issue is no longer debatable.

37. By relying upon its earlier decision, rendered by a Constitution Bench (five-Judge) judgment, in *Calcutta Discount Co. Ltd., v. Income-tax Officer, Companies District I, Calcutta and another*, AIR 1961 SC 372, a Three-Judge Bench of the apex Court in *S. Narayanappa and others v. Commissioner of Income-Tax, Bangalore*, (1967) 63 ITR 219 : [AIR 1967 SC 523], held that:

“if there are in fact some reasonable grounds for the Income-tax Officer to believe that there

had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under S. 34. Whether these grounds are adequate or not is not a matter for the Court to investigate. In other words, the sufficiency of the grounds which induced the Income-tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income-tax Officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression "reason to believe" in S. 34 of the Income-tax Act does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The belief must be held in good faith: it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section. To this limited extent, the action of the Income-tax Officer in starting

proceedings under S. 34 of the Act is open to challenge in a Court of law”.

(Emphasis supplied)

38. The position came to be reiterated by a two-Judge Bench of the apex Court in *Lakhmani Mewal Das (supra)*, wherein the Court held that the grounds or reasons which lead to the formation of belief must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly, all material facts.

39. Later on in *Phool Chand (supra)*, it stood clarified that decision to quash the action in *Lakhmani Mewal Das (supra)*, was based on its given fact situation, where information received by the Assessing Officer was wholly vague, indefinite, farfetched, remote and without any basis for holding a reasonable belief, warranting action, under Section 147 of the Act. It further observed that:

“19.....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 original assessment is different from

drawing a fresh inference from the same facts and material which was available with the I.-T.O. at the time of 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 I.-T.O. would have the jurisdiction to reopen the concluded assessment in such a, case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness to the loan transaction but in our opinion his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under S. 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the I.-T.O. acquired reasons to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific."

... ..

"26... ..One of the purposes of S. 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say

"you accepted my lie, now your hands are tied and you can do nothing." It would be travesty of justice to allow the assessee that latitude."

(Emphasis supplied)

40. The Apex Court also had an occasion to deal with the amended provisions in *Rajesh Jhaveri (supra)*. The Court found the scope and effect of section 147 to 148 as substituted with effect from April 1, 1989, to be substantially different from the earlier provisions. For conferment of jurisdiction under original section 147(a), two conditions required satisfaction (i) the Assessing Officer must have reason to believe that the income profits or gains chargeable to income tax have escaped assessment, and (ii) he must also have reason to believe that such escapement 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. However, under the substituted section 147, only the first condition required satisfaction of reason to believe, that the income had escaped assessment. It further observed that:-

"19. 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.”

“20.....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.”

(Emphasis supplied)

41. It is also the law that the Assessing Officer is not precluded to reopen assessment of an earlier year on

the basis of his finding of fact, so made on the basis of fresh material, so discovered, in the course of assessment of next assessment year [*Ess Ess Kay Engineering Co. (supra)*].

42. In *Calcutta Discount Co. Ltd., v. Income-tax Officer, Companies District I, Calcutta and another*, AIR 1961 SC 372, the apex Court held that:

"9. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example - "I have produced the account books and the documents : You, the assessing officer examine them, and find out the facts necessary for your purpose : My duty is done with disclosing these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them - including particular entries in

account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed."

(Emphasis supplied)

43. The Apex Court in *M/s S. Ganga Saran and sons (Pvt.) Ltd., Calcutta v. Income Tax Officer and others*, (1981) 3 SCC 143 has observed as under:

"6..... (a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief, entertained by the Income-tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income-tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147 (a). If there is no rational and intelligible nexus between the reasons and the belief, so that on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income-tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

(Emphasis supplied)

44. The Apex Court in *Income Tax Officer, Cuttack and others v. Biju Patnaik*, 1991 Supp. (1) SCC 161,

observed that while examining the existence of reasons, record can be looked into.

45. In *M/s Niranjan & Co. Pvt. Ltd. v. Commissioner of Income Tax, West Bengal-I and others*, 1986 (Supp) SCC 272, the apex Court held that:

“21. It was contended on behalf of the assessee/appellant relying on the observations of this Court in *Commr. of Income-tax, Gujarat v. A. Raman and Co.*, (AIR 1968 SC 49) (*supra*), that the Income-tax Officer must have had reason to believe and in consequence of information he must have that reason to believe and it was submitted that the information was already there and there was no new information from which the Income-tax Officer could have formed the belief. Having regard to the facts of this case as discussed above and the nature of the information indicated before, we are of the opinion that there was information in the form of a revised return and since the information mentioned before came to the knowledge of the Income-tax Officer subsequent to the making of the first assessment and the information being such from which a reasonable person could have formed the belief that there was escapement of income or under-assessment of income, it cannot be said that there was no jurisdiction of the Income-tax Officer to re-open the assessment. Whether in fact the reassessment to be made pursuant to the notice issued, the income assessed would be more by Re, 1/- or less than the income already assessed is not material or relevant for the question of jurisdiction to issue the notice under S. 147 of the Act.”

(Emphasis supplied)

46. Mr. Vishal Mohan, learned counsel, has referred to a decision of this Court in *Sahil Knit Fab (supra)*. So far as the ratio of law is concerned, there is

no dispute and we need not discuss in view of our discussion (supra). On facts, we find the decision of the Appellate Authority, so rendered in favour of the assessee, to be affirmed in the peculiar facts and circumstances, for it was found that there was no plausible reason available with the Assessing Officer, forming a belief of escapement of income. Though the assessee had claimed deduction on the basis of loss(s) in business but after five years, the Assessing Officer worked out profit at the rate of 14%, by comparing the profit of another company engaged in similar business, which approach was considered to be illogical and unrealistic. The jurisdictional issue was sought to be raised after a gap of five years, without considering the change of business environment.

47. It is not in dispute that reasons of belief came to be placed before the sanctioning authority. Though initially, a vain attempt was made to argue that notice (Annexure P-2) came to be issued without obtaining prior sanction and/or no reasons of belief were ever prepared or placed before the sanctioning authority, but when

confronted, Shri Vishal Mohan, learned counsel, in all fairness did not press the point any further.

48. Now in the instant case, the fact that investigation came to be conducted against the "Tarini Group" owned by Vakamulla Chandershekhar (loaner) is not disputed in the petition. The Assessing Officer, as is evident from the reasons of belief and response filed to the petition, was in receipt of information from the Deputy Director of Income Tax (Investigation), Faridabad, which revealed that out of his agricultural income and advances received from his friends, loaner had advanced payments as interest free unsecured loan to the petitioner and his family members.

49. The factum of advancement of such money came to be admitted only in response to the notice. Prior thereto, both the petitioner and his family members maintained stoic silence.

50. Also, the source from which the loaner itself received such income, prima facie, was found to be false, which fact surfaced only during the course of investigation conducted under Section 131-133A of the Act. There were only paper transactions. Neither did the

loaner receive any unsecured advance from anyone, much less the three entities, particulars whereof were disclosed by him, nor did he have sufficient income from agricultural source. Such fact also stood substantially corroborated with the disclosure of his income in the previous years. Further Smt. Tripurana Ahalya Devi, whom loaner claimed to be his Aunt, on oath, denied having know him at all, much less entered into any transaction with him, monetary or otherwise. Even transactions of unsecured loans were discovered to be bogus, for being mere paper entries taken from Ram Prakash Bhatia, who allegedly owned 17 concerns, including the ones so disclosed by the loaner, from a small room at C-48/3A-1, Lawrence Road, Delhi-35. Similarly Gurcharan Singh also denied having either known or entered into any transaction of any nature with the loaner, and that for making false entries of unsecured loans, someone had opened an account in his name.

51. Noticeably, as already observed, prior to issuance of notice dated 29.03.2016 under Section 148 of the Act, neither the petitioner nor anyone of his family members ever disclosed having received such huge

amount of ₹5.9 crores from the loaner. Even with the filing of fresh return, factum of such transaction never came to be disclosed. Such admissions came only with the filing of statement of objections dated 29.06.2016. Whether obliged in law to do so or not, petitioner also chose not to answer the questionnaire.

52. But what really acquires significance is the very nature of transaction raising reasonable doubt about its genuineness. Whereas petitioner contends the transaction to be interest bearing, the loaner terms it as a non interest bearing loan. Also, from the record so made available to us, *prima facie*, even the petitioners appear to have taken a divergent view. No authentic documents of payment of interest stand filed. What is the special relationship which the petitioner held with the loaner remains undisclosed. Are they family members? Friends? or have any business relationship? Nothing remains disclosed. Disclosure of such information would only enable the Assessing Officer in proper adjudication of fact in issue.

53. Whether there is contradiction in the stand taken by the petitioner before us, itself is a question

which needs to be examined by the Assessing Officer, for the writ petitioner wants the Court to believe that loan was repaid with interest at the rate of 10%. No authentic document of such transaction stands placed before us. In fact qua payment of interest no document stands placed either by the petitioner's wife or his son. In the case of petitioner, the document annexed does not conclusively establish payment of interest. The Assessing Officer, in our considered view, has considered the entire material while forming its prima facie view with regard to the alleged payments of interest. Also what was the purpose of loan and what was the source from where it came to be returned is a question, which being a jurisdictional fact requires adjudication by the Assessing Officer. The petitioner may also have justifiable explanation of repayment, but from the material placed before us, it cannot be said that either the initiation of process of assessment or rejection of objections is on flimsy grounds or in an arbitrary manner.

54. The burden to prove the income which stands accounted for, is on the assessee. In *Sreelekha Banerjee*

V. Commissioner of Income Tax, (1963) 49 ITR (SC) 112,
the Court held that:

"It seems to us that the correct approach to questions of this kind is this. If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The department is not at this stage required to prove anything. It can ask the assessee to bring any books of account or other documents or evidence pertinent to the explanation if one is furnished, and examine the evidence and the explanation. If the explanation shows that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does, not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, *prima facie*, evidence against the assessee which he fails to rebut, and being un rebutted, that evidence can be used against

him by holding that it was a receipt of an income nature. The very words 'an undisclosed source' show that the disclosure must come from the assessee and not from the department. In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee prima facie discharges his initial burden when he proves the balance and that it might reasonably have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof."

55. It is a matter of record that order reassessing income of the loaner came to be passed by the jurisdictional authority, i.e. Assessing Officer at New Delhi only on 27.3.2015. Before us there is nothing on record to show that prior to initiation of impugned action, the present jurisdictional officer was aware of passing of any such order. Perhaps for this reason, such fact is missing in the reasons recorded by the Assessing Officer.

56. Assuming hypothetically that order of assessment against the loaner, which is subjudice, attains finality, even then what would be its effect on the nature of transactions and creditworthiness of the loaner would be a matter of consideration by the Assessing Officer. Whether such order itself would be sufficient establishing creditworthiness of the loaner, particularly when in the last six preceding years, he disclosed income from agricultural source to be less than ₹3,00,000/- and its unusual increase to ₹85,00,000/- only in the year in question, is again a matter to be considered by the Jurisdictional Officer. *Prima facie* it stands noticed by the officer that income of the loaner, cumulative from all sources, for the last five preceding years, is far less than ₹5.9 Crores, the amount lent to the petitioner and his family member.

57. Also, according to the loaner, in the recent years by understating its value, a company closely held by the petitioner's children, had purchased a Farm House at New Delhi, for a sum of ₹6.61 crores.

58. When an assessee claims to have borrowed money, onus to establish such fact lies upon him. But

discharge of such onus, would still not preclude the Assessing Officer in otherwise examining the genuineness of the transaction, as an independent and unbiased fact finding authority.

59. We find existence of reasonable ground, enabling the Assessing Officer to form a belief, with regard to the non-disclosure/escapement of income. The belief cannot be said to be arbitrary, capricious or without any basis. It is neither pretentious. There is rational connection between the material and the reasons. Doubt stands raised with regard to the transactions being bogus in nature. Whether, at the first instance, assessee was obliged to disclose receipt of such huge amounts, or not is definitely a matter, which requires consideration by the Assessing Officer, during the course of proceedings. The principle of 'cause and justification' so laid in *Jhaveri (supra)*, stands fully substantiated by the Revenue.

60. The Assessing Officer has rejected the objections on the grounds, which appear to be reasonable on the basis of material before him.

61. It cannot be said that the belief is arbitrary or irrational or there is no intelligible nexus between the

reasons and the belief “so that on such reasons, no one properly instruct on facts and law, could reasonably entertain the belief”, as held by the apex Court in *Ganga Saran (supra)*.

62. Also, the belief of the Assessing Officer, on the information so received by him, is not such that “from which a reasonable person could have formed the belief that there was” no escapement of income or underassessment of income, as held by the apex Court in *A. Raman (supra)*.

63. What is required to be proved by the assessee is not only identity but also creditworthiness and genuineness of the transaction, beyond reasonable doubt, as held in *Mangilal Jain (supra)*; *CIT v. United Commercial and Industrial Co. P. Ltd.*, (1991) 187 ITR 596; and *Shankar Industries (supra)*.

EXERCISE OF UNDUE HASTE AND NON APPLICATION OF MIND BY THE JURISDICTIONAL AUTHORITIES

64. Submission that process of recording of reasons, obtaining sanction, and issuance of notice, was carried out without application of mind and in undue haste is factually incorrect.

65. From the affidavit, so filed in response to the petition, which goes un rebutted, and for which no opportunity was sought, it is evident that the Assessing Officer had been applying his mind for more than three months, it being a different matter that he could have expedited the same. Be that as it may, information which came to be received by him in December, 2015, was processed and placed before the appropriate authority on 29.3.2016. It is not that the sanctioning authority had no material before according sanction. Only after perusing the reasons of belief, so recorded by the Assessing Officer, and finding it to be a case fit for issuance of notice, did the authority accord its sanction. It is brought to our notice that offices of the Assessing Officer and the Sanctioning Authority are in the very same building and petitioner is also a local resident. It was convenient for the authority to have dealt with the matter the very same day. It is not a herculean, much less an impossible task to accomplish.

66. Significantly, no malafides stand alleged, much less against any one the concerned officers.

67. Hence, in the given facts and circumstances, we do not find such action to be illegal, raising suspicion or doubt, with regard to proper application of mind by the authority concerned.

68. We further find the order rejecting the objections to be a reasoned one. It is certainly not cryptic. Every issue raised by the assessee stands considered and dealt with, with a rider that it is open for the assessee to appear before the Jurisdictional Officer and place all material for just determination and conclusion of the proceedings. The view expressed by the Assessing Officer has been held to be a prima facie one. It is not a case of change of opinion.

69. While contending that the sanctioning authority acted mechanically by simply stating "Yes", rendering the impugned action to be wholly illegal, Mr. Vishal Mohan, learned counsel, invites our attention to the decision rendered by the Apex Court in *Chhugamal Rajpal (supra)*. In the said case, the Court specifically observed total non application of mind by the Assessing Officer, whose reasons were not only vague but in the realm of uncertainty, warranting investigation pertaining

to the loans, allegedly made by certain persons. It is in this backdrop, Court observed that the Assessing Officer himself was not sure about the truth of alleged transactions. The Court found that there was no material with the Assessing Officer, enabling him to record reasons of belief, that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his/her assessment for the accounted year in question, income chargeable to tax had escaped assessment for that year. The exercise of power by the authority was found to be mechanical in nature, for had he applied his mind, he wouldn't have formed satisfaction, in according sanction, and also as a result of non application of mind, noted the word "Yes" and affixed his signatures thereunder.

70. Our attention is invited to the decision rendered by the Calcutta High Court in *S.P. Agarwalla (supra)*, wherein it is observed that the Commissioner has to consider and apply his mind to the material relied upon by the Assessing Officer and that such power is not to be exercised mechanically. Commissioner can consider

sufficiency and relevancy of the material while refusing or granting such sanction.

71. Also attention is invited to the decision rendered by the Madhya Pradesh High Court in *Arjun Singh (supra)*, wherein it was observed that exercise of power by the sanctioning authority, in less than 24 hours indicated non application of mind. On first brush, it appears to be so. But closer scrutiny reveals the decision to be distinguishable on facts. The jurisdictional authority was trying to reopen assessment, on the basis of alleged escapement of income, in relation to which, after registration of the F.I.R., not only the Court of competent jurisdiction discharged the assessee but even the jurisdictional officer, after investigation had concluded the adjudicatory proceedings, ten years prior to the initiation of impugned action. The Court found the Assessing Officer not possessing any material, enabling him to record reasons of belief. Also simultaneous issuance of notices of inquiry and reassessment came to be initiated against the assessee who was called upon to furnish information of money spent on the construction of a house and much prior to conclusion of such inquiry, the

Assessing Officer, by pre-judging the issue, without any basis or material, proceeded to reassess the income declared by the assessee. It is in this backdrop, the Court found the revenue to have acted with undue haste.

72. On this count, our attention is also invited to the decision rendered by the Delhi High Court in *Central India Electric Supply (supra)*, where the sanctioning authority had simply appended its signature below the word "Yes" so affixed by a rubber stamp. In the given facts, the Court found the decision taken to be purely mechanical in manner.

73. However, the instant case is not that of mere rubber stamping, for the competent authority, in principle, was in agreement with the reasons assigned by the Assessing Officer, so placed before him, which came to be considered and sanction accorded, with proper application of mind. He himself wrote "I am satisfied that it is a fit case for issue of notice u/s 148".

PROTECTIVE AND PRECAUTIONARY PRINCIPLE

74. Capacity/creditworthiness of the creditor and genuineness of the transaction is a question of fact, which we afraid cannot be allowed to be agitated or

adjudicated in the present proceedings. Whether assessment of income in the hands of loaner would conclusively establish genuineness and nature of the transaction or his creditworthiness, in our view, is a question of fact to be considered only by the Assessing Officer, after going through the relevant material, which the parties may choose to place, more so in the light of Explanation 2(b) of Section 147 and Section 68 the Act. Whether it is a case of double taxation; protective and precautionary assessment or whether income assessed in the hands of one can be assessed as an income in the hands of another, in the given facts and circumstances, is yet to be considered and decided by the adjudicating authority, based on settled principles of law.

75. While contending that revenue was not sure as to whether the alleged escaped income was to be assessed qua the present petitioner or loaner, Mr. Vishal Mohan, learned counsel, invites our attention to the decision rendered by a Division Bench of Gujarat High Court in *Sagar Enterprises (supra)*. The said decision is clearly distinguishable on facts. Considering the fact that undisclosed income of the assessee came to be added by

way of protective addition in the previous assessment year, the Court found that it was not open for the revenue to account for the same in the succeeding financial years. It is in this backdrop, it held the revenue itself, not sure of the year of its taxability, hence such income could not be deemed to be chargeable to tax, having escaped assessment.

76. In fact, the principle of protective precautionary assessment came up for consideration before the apex Court in *Lalji Haridas (supra)*, wherein by upholding, action of reassessment initiated by the Revenue, they observed that “In cases where it appears to the income-tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant income-tax authorities to determine the said question by taking appropriate proceedings both against A and B. That being so, we do not think that Mr. Nambiar would be justified in resisting the enquiry which is proposed to be held by respondent No.1 in pursuance of

the impugned notice issued by him against the appellant. Under these circumstances we do not propose to deal with the point of law sought to be raised by Mr. Nambiar”.

77. In *Income Tax Officer, A-Ward, Lucknow v. Bachu Lal Kapoor*, AIR 1966 SC 1148, the apex Court reiterated the aforesaid principle.

78. In *Sunil Kumar Jain (supra)*, the Court affirmed the action of the Jurisdictional Officer in reopening assessments even in case where such income came to be assessed in the hands of another. In this backdrop, it was observed that:-

“Going to the merits of the case, we find that it is not in dispute that the cash amount of Rs. 2,19,000 and the pawned articles valued at Rs. 10,506 have been claimed by the petitioners as belonging to them. Merely because it has been taxed at the hands of Sri Prem Chandra Jain will not preclude the Income-tax Officer from assessing the same at the hands of the right person. From the reason recorded for reopening of the assessment which has been reproduced above it will be seen that the basis for initiating proceedings is the claim made by the petitioners on the basis of the alleged will executed by Smt. Shyama Devi, thus it cannot be said that there was no relevant material for taking proceedings under section 147 of the Act.”

“In the case of *Lalji Haridas* [1961] 43 ITR 387 the apex court has held that in cases where it appears to the income-tax authorities that certain income has been received during the relevant year but it is not clear who has received that income; and, prima facie, it appears that the

income may have been received by A or by B or by both together, it would be open to, the income-tax authorities to determine the question who is responsible to pay tax by taking assessment proceedings both against A and B.

In the case of *S. Gyani Ram and Co.* [1963] 47 ITR 472 this court has held that the mere fact that a particular income has been assessed in the hands of a particular person as his income will not prevent the Income-tax Officer from coming to the conclusion on fresh materials that that income is the income of another person and taking proceedings under section 34 of the Act for reassessment against the latter on the ground that this income had escaped assessment in his assessment.

In the case of *Sidh Gopal Gajanand* [1969] 73 ITR 226 this court has held that the validity of notice under section 34 of the Indian Income-tax Act, 1922 cannot be impugned on the ground that the assessment proceeding was already pending in respect of the same income against another entity and where it appears that the income may have been received either by A or by B or by both together, it would be open to the income-tax authorities to determine the said question by taking appropriate proceedings against both A and B.

In the case of *R. Dalmia* [1972] 84 ITR 616 the Delhi High Court has held that where the items of escaped income in respect of which the assessment is proposed is specific but the question as to whether the income, if earned, was earned by one person singly or by him along with others is a matter of inquiry, if the Income-tax Officer has reason to believe that it could have been earned either by one person singly or by him along with others there is nothing to prevent him from initiating proceedings against the concerned assessee in both capacities. In such a case where it appears to the Income-tax Officer, that certain income had been received during a particular year but it is not clear who has received that income it is open to the Income-tax Officer to start

proceedings against all the persons individually or collectively to ascertain the correct position. In the case of Sohan Singh [1986] 158 ITR 174 the Delhi High Court has taken a similar view.

In the case of *Smt. Durgawati Singh* [1998] 234 ITR 249 this court has held that it is settled that when there is a doubt as to which person amongst two was liable to be assessed, parallel proceedings may be taken against both and alternative assessments may also be framed. It is also equally true that while a protective assessment is permissible, it is not open to the income-tax appellate authorities constituted under the Act to make a protective order. The law does not permit assessment of the same income successively in different hands. The tax can only be levied and collected in the hands of the person who has really earned the income and is liable to pay tax thereon.

In the case of *Banyan and Berry* [1996] 222 ITR 831 the Gujarat High Court has held that where there is doubt or ambiguity about the real entity in whose hands a particular income is to be assessed, the assessing authority is entitled to have recourse to making a protective assessment in the case of one and a regular assessment does not affect the validity of the other assessment inasmuch as if ultimately one of the entities is really found to be liable to assessment, then the assessment in the hands of the entity alone remains the effective assessment and the other becomes infructuous. The levy is enforceable only under one assessment and not under both."

79.

While drawing our attention to the decision rendered by the Full Bench of Delhi Court in *Sophia Finance (supra)*, Shri Vinay Kuthiala wants us to adjudicate the merits of the matter, which under these proceedings is impermissible. The decision can be of

help only to the extent that the authority would be empowered to examine the transaction, which in his belief required explanation.

80. If the reasons assigned by the Assessing Officer for initiating action are considered in the light of law laid down by the Supreme Court, it is not possible to hold that he did not have any material before him for entertaining a belief, that the income of the petitioner had escaped assessment.

81. Perusal of material placed on record does not reflect the impugned action to be *ex-facie* illegal or not borne out from the record. This Court is not required to go into the sufficiency of material which led to the formation of reasons of belief, more so, when reasons are relevant and emanate from the record and are also germane for just adjudication of facts in issue. There is proper compliance of procedure. Also the assessee can adequately represent himself before the authority which otherwise has jurisdiction to initiate the impugned action.

82. It is not a case of lack of jurisdiction. It is also not a case where the authority has exceeded its jurisdiction or the action is based on no material or that

no reasons are recorded by the Assessing Officer or that reasons assigned are absolutely irrelevant or based on extraneous factors/circumstances. It also cannot be said that the impugned action is not bonafide or is based on vague , irrelevant or unspecific information. It is not that the Assessing Officer has prejudged the issue and proceeded to initiate action with a predetermined mind. In fact, there is no such assertion in the petition. Also no malafides stand alleged.

83. It cannot be said that rejection of the objections are based on frivolous or extraneous factors and circumstances. There is complete and proper application of mind to the attending facts and circumstances. The objections rejected, by a speaking order, also stands duly communicated to the petitioner. Mere rejection of objections cannot lead to formation of an opinion about the Assessing Authority, under all circumstances, deciding the matter in favour of the revenue.

84. In the instant case, we find that the petitioner seeks adjudication, on merits, of the fact in issue, which is impermissible in law. In the absence of definite and

authentic information, this Court cannot as a fact finding authority, by way of a roving inquiry examine the matter, holding the proceedings initiated under Section 148 of the Act to be untenable on merits. Assessee is always open to make all such submissions before the appropriate authority.

85. Reliance on a decision dated 04.03.2016, rendered by the Calcutta High Court in *Prem Chand Shaw (supra)*, is only for the purpose of pressing the provisions of Section 292-B of the Act, which, in the instant case, we do not find to be applicable.

86. Thus in the given facts and the circumstances, we do not find the impugned action to be illegal, arbitrary, whimsical or capricious. It cannot be said that there was no material before the Assessing Officer to proceed in accordance with law. It also cannot be said that there was no basis for the Assessing Officer to have formed reasons of belief. We do not find it to be a fit case, warranting interference by this Court, for the action cannot be said to be ex facie illegal or based on extraneous reasons and circumstances. This Court is not required to go into the correctness or sufficiency of

reasons. It definitely is not a case where the Assessing Officer lacked jurisdiction. It is also not a case of jurisdictional error. It also cannot be said that he exceeded such jurisdiction. Also, exercise of such power, statutory in nature, cannot be said to be either arbitrary or based on extraneous factors, consideration or circumstances. No malafides stands alleged against anyone.

87. We are quite convinced that reasons to believe formed by the Assessing Officer emanate from the record, having material bearing on the question of jurisdictional fact as also fact in issue so raised by him.

88. At this stage, what is required to be considered by the jurisdictional authority is only reasons to believe and not "the established fact of escapement of income", on the lines of *Rajesh Jhaveri (supra)*.

89. It stands clarified that we have not expressed any opinion on the merits of the case, which, the authority below, shall adjudicate, in accordance with law, uninfluenced of any observations made by this Court.

90. No other point is urged.

91. Hence in view of our aforesaid discussion, we find no merit in the present petitions, which stand dismissed.

Since no interim order was passed, no further order or direction is required to be passed in the miscellaneous application which also stands dismissed alongwith the main petition.

(Sanjay Karol),
Judge.

(Vivek Singh Thakur)
Judge.

December 26, 2016
(Purohit/PK/sd)