IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI

BEFORE SH. SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 1799/Del/2023
(Assessment Year : 2012-13)

Ish Buildcon Pvt. Ltd. G-8, 58, Sahyoga, Nehru Place New Delhi – 110 048 PAN No. AABCI 8459 D	Vs.	**ITO** Ward – 12(4) Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Salil Kapoor, Adv., Ms. Ananya Kapoor, Adv. and Shri Shivam Yadav, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	09.04.2026
Date of Pronouncement:	01.07.2026

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER :

This captioned appeal has been filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-NFAC-Delhi ['CIT(A)' in short] dated 28.02.2023 arising from the assessment order dated 18.01.2020 passed by the Income Tax Officer, Ward-12(4), Delhi under Section 147 r.w.s 144 of the Income Tax Act, 1961 ('the Act') concerning Assessment Year (A.Y.) 2012-13.

2. The grounds raised by the assessee are as under :

1. *That the notice dated 29.03.2019 issued under Section 148 of the Act and the assessment order dated 28.12.2019 passed under Section 147 r.w.s. 144 of the Act by the Assessing Officer ('AO') for Assessment Year ('AY') 2012-13, and the additions made therein are illegal, bad in law, without jurisdiction and based on conjectures and surmises.*
2. *That the approval of the senior authority obtained, if any, is illegal and bad in law and also without any application of mind. As such, the notice issued under Section 148 and the assessment order passed are illegal, bad in law and without jurisdiction and are liable to be quashed.*
3. *That no notice under Section 143(2) of the Act was served within time as required under the provisions of the Act, hence the assessment order passed and the additions made are illegal, bad in law and the same are liable to be deleted.*
4. *That the reassessment has been made on the basis of mere change of opinion which is ex-facie perverse and hence, the assessment order and the additions made is illegal, bad in law and deserves to be annulled.*
5. *That the amount of paid-up capital and the share premium received by the Appellant Company is genuine and is not the income which has escaped assessment. Hence, the reassessment under Section 147 is factually incorrect and liable to be cancelled.*
6. *The additions made are illegal, unjust, and arbitrary and based on conjectures and surmises. The same cannot be justified on the basis of material available on record.*
7. *That the documents, explanations filed by the Appellant, and the material available on record have not been properly considered and judicially interpreted and have been wrongly ignored.*
8. *That the order dated 28.02.2023 passed under Section 250 of the Income Tax Act, 1961 ('the Act') by the National Faceless Appeal Centre ('NFAC') is illegal and is in gross violation of the principle of natural justice and the same is liable to be quashed.*
9. *That in view of the facts and circumstances of the case, the NFAC has erred in confirming/upholding the additions made by the AO and assessing the total income of the Appellant at Rs. 6,96,00,000/- against the returned income of Rs. NIL/-.*
10. *That the proper opportunity was not given to the Appellant to enable it to represent its case properly."*

3. There is a delay of 40 days in filing the appeal. The reasons stated are sickness of office attendant of the CA who handled the files/documents. The ld DR vehemently countered the reasons as not

convincing and satisfactory without supporting evidences. The ld DR relied on ***Ramlal and others Vs Rewa Coalfields Ltd*** (AIR 1962 SC 361), ***Tractors and Farm Equipments Ltd*** (ITAT Chennai 104 ITD 149) and ***Madhu Dadha*** (Madras 317 ITR 458); ***Baroda Rayon Corporation Ltd.*** (Gujarat 87 STC 266), ***BaldeoLal Roy Vs State of Bihar*** (Patna 11 STC 104) and ***M Loganathan VS CIT*** (Madras 302 ITR 139); ***Sri Venkatesa Paper & Boards Ltd.*** (2006) 98 ITD 200, Hon'ble ITAT Chennai ; ***T. Kishan*** [2012] 23 taxmann.com 383, Hon'ble ITAT Hyderabad; Hon'ble Bombay High Court in ***Shri Subodh Parkash Vs JCIT*** (2017-TIOL-2249-HC-P&H-IT) ; Hon'ble Orissa High Court in the case of ***Brijbandhu Nanda*** (44 ITR 688); and the Madras High Court in ***Krishna v, Chathappan***.

4. We find the reasons for 40 days delay in filing appeal is the Chartered accountant who handled the files and documents relating to income tax appeals and assessment, being ill and quarantined. We find the explanation reasonable and the assessee had sufficient cause for the delay. Following the decision of hon'ble Supreme Court in the case of ***Collector, Land Acquisition V Mst Katiji*** (1987) 87 ELT 185 (SC), we condone the delay.

5. Brief facts of the case is this that the Assessing Officer received an information from the Investigation Wing, Faridabad that the

assessee has received accommodation entries by way of share premium amounting to Rs.6,96,00,000/- from the various paper concerns controlled and operated by Shri Himanshu Verma. The AO finally made an addition of Rs.6,96,00,000/- as accommodation entry towards share capital and share premium, under section 68 of the Act and further added commission income @ 2% for such entry under section 69C of the Act amounting to Rs.13,64,160/-.

6. On appeal, the CIT(A) dismissed the assessee's appeal on both jurisdictional ground as well as on merits. Aggrieved, assessee is before us.

7. Assessee's main challenge is to the validity of invocation of section 147 of the Act. The learned Counsel of the assessee stated that the reason recorded by the AO do not follow the law mandated by the Act and the judicial precedents. The ld AR took us to the 'reasons recorded' at pages 32 to 37 of the paper book and pointed out that the reopening was made after four years and as the initial assessment was made u/s 143(3) of the Act, it was incumbent upon the AO to demonstrate that there was failure on the part of the assessee to disclose fully and truly the material facts necessary for assessment. It is submitted that the AO failed to record that there was failure on the part of the assessee to disclose fully and truly all material facts.

8. Per contra the ld DR filed a detailed submission as follows:

i) On 24.06.2015, the then ITO Ward -12(4) received information from DDIT(Inv.), Faridabad vide letter dated 15.06.2015 about the result of survey u/s 133A carried out in the case of Shriji Group of concerns on 21.11.2013. Appellant assessee company ISH Buildcon Pvt. Ltd. was one of the group entity. During the course of survey it was gathered that group entities had received share capital/premium from various dummy entities controlled and managed by Himanshu Verma, a Delhi based entry operator. To be specific, the assessee company had received share capital/premium from 9 such non descript entities of Himanshu Verma namely Allegians Trading Pvt. Ltd., Assent Telecom Services Pvt. Ltd., Hope Realtech Pvt. Ltd., Lion Infracon pvt. Ltd., Mithilanchal Investment and Finance, Omexpo Enterprises Pvt. Ltd., Rising Portfolio India Pvt. Ltd., Saffron Logistics Pvt. Ltd., Timely E Net Solutions Pvt. Ltd. and Bliss Buildcon Pvt. Ltd., aggregating to Rs. 6.96 Cr.

During the course of verification before the DDIT(Inv.), Faridabad, assessee failed to submit any satisfactory explanation to prove the identity, genuineness and creditworthiness of the share capital/premium subscribers. It is also worthwhile to note here that inquiry report subsequent to the search conducted in the case of Himanshu Verma, entry operator was also provided to the assessing officer wherein the modus operandi of providing accommodation entries and list of entities controlled and managed by Himanshu Verma were detailed.

various beneficiaries.

ii) Vide the communication 11.03.2019 from ITO (Inv.), Faridabad, the assessing officer was shared information/ result of search and seizure action conducted in the case of Himanshu Verma and others on 13.04.2017 wherein it was categorically reported about his admission of involvement in providing accommodation entries to It was also informed that direct enquiries were also conducted by them from assessee company Ish Buildcon Pvt. Ltd about the transactions claimed to have been made with the non-descript entities

managed and controlled by Himanshu Verma, entry operator. Summons were issued to the director of the assessee company on 15.02.2019 and 28.02.2019 for personal deposition and calling for information and details to establish the genuineness of transactions made with these entities. However, there was no compliance of any sort from the assessee company. It was thus apparent that during the course of preliminary investigation itself assessee failed to explain the genuineness of share capital/ premium received (supra).

iii) The Jurisdictional AO Ward 12(4), New Delhi applied his mind to the detailed information, which was altogether a new fact, recorded reasons on 11.03.2019 for initiating proceedings u/s 147 of the Income Tax Act and concluded that the information regarding accommodation entries was not there before the assessing officer at the time of original assessment u/s. 143(3) and it was case of escapement of income is the extent of Rs. 7,09,92,000/- (Ref. para 4.1 to 4.3). Thereafter, the competent authority i.e. Pr. CIT, Delhi-4 13.03.2019 having considered the reasons recorded by AO and discussing the case granted his approval u/s. 151(1) for issuing notice u/s. 148 with his hand written remarks, "*Discussed. I am satisfied that income of approximate Rs.7 crore has escaped assessment due to non disclosure of material fact of accommodation entry in the ROI. Hence, action u/s.148 is approved.*"

iv) Notice u/s. 148 dated 29.03.2019 was issued through ITBA and it was also sent by Speed Post calling for Return of Income within 30 days from Service of this notice. On 18.11.2019 the assessee submitted that return filed u/s 139 may be considered as filed u/s 138. Copy of reasons and approval was also sought. **It is pertinent to note here that there was no valid return filed by the assessee within the period of 30 days allowed, vide notice u/s 148 dated 29.03.2019. As such there was no requirement to issue notice u/s 143(2) of the Income Tax Act**

v) Assessment order was passed by the AO making additions of Rs. 6,96,00,000/- And Rs.13,64,160/- on account of unexplained share capital/premium u/s 68 and towards

commission for obtaining accommodation entries w/s 69C respectively.It is pertinent to note here that one of the contention of the assessee is that assessment order is without mentioning any section of the Income Tax Act. Hence, it is invalid. This is not correct. It is true that no section has been mentioned in this subject at first page of the assessment order but in the concluding para of the assessment order, at internal page no. 4, section of order is found categorically noted as "assessed at total income of Rs. 70964160/- u/s 147/144 of the Income Tax Act." Further, the Income tax computation form attached with and forming an integral part of the assessment order also mentions section of order as order u/s 147 r.ws 144. As such there is no infirmity in the assessment order so far as the quoting section of order is concerned.

vi) In this regard, reliance is placed on section 292B which states that no assessment, notice, summons or other proceedings taken by the authorities under the Act shall be invalid by reason of any mistake, defect or omission if such notice or proceedings or assessment is otherwise valid under the Act. This provision embodies the principle that mere non-mentioning or mentioning of a wrong provision of law in a proceedings or order can not be a ground to invalidate it if that is otherwise permissible and valid under law. In a number of judgments various courts have confirmed this principle like in the following:

a) In the case of Jayeshkumar Chhakaddas Shah v/s Gordhanji Mafaji Thakor, Civil Appeal No. 10521 of 2013 (SC), it was observed by the Hon'ble Apex Court that mere non-mention of a correct provision is not fatal to the application if the power to pass such an order is available with the court.

b) In the case of J. Kumaradasan Nair Vs. IRIC Sohan 2009 AIR SCW 1921 (SC) it was observed by the Hon'ble Apex Court that when the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, then there is no reason as to why the court will refuse to apply the same only because a wrong provision or no provision has been mentioned.

c) In the case of P.K. Palanisamy v. N. Arumugham, (2009) 9 SCC 173 (SC) the Hon'ble Apex Court held that mentioning of the wrong provision or not mentioning that provision will not make the order invalid, if the court and/or statutory authority have the requisite jurisdiction.

The ld DR relied on the following Case Laws on Reopening:

It is a settled legal position that at the stage of recording of reason, no final finding is required to be given and only prima facie belief is required to be reached by the assessing authority. The AO can initiate reassessment proceedings u/s 147 on the basis of credible and specific information available with him.

[Application of mind by AO] Even, if an AO, from perusal of an extensive report from the Inv. Wing. culls out information or entries specific to the appellant assessee is an evidentiary exercise in the form of application of mind on the part of the AO/Department and an examination thereof on merits is akin to prima facie belief. This preposition was laid down in Rakesh Gupta Vs CIT [2018] 93 taxmann.com 271 Hon'ble Punjab & Haryana High Court holding that where Assessing Officer received information from Principle Director of Income Tax [Inv.] that assessee had received bogus loss from his broker by client code modification, reassessment on basis of said information was justified.

[Prima-facie case] The landmark decision of the Hon'ble Apex Court in Raymond Woollen Mills Ltd. Vs ITO 236 ITR 236 ITR4 (SC) wherein it was held that the AO is not to conclusively prove the escapement of income to assume jurisdiction u/s 147 of the Act.

[Prima-facie case] Hon'ble Jurisdictional Delhi High Court in the case of CIT Vs Nova Promotoers & Finlease P Ltd [2012] 18 taxmann.com 217 [Delhi] has held that at the stage of issuing notice u/s 148, the merits of the case are not relevant and the Assessing Officer at that stage is required for form only prima facie belief or opinion that income chargeable to tax has escaped assessment.

[On Investigation report/information] Further, the Hon'ble Jurisdictional Delhi High Court in the case of Paramount Communications Ltd. Vs Pr. CIT 392 ITR 444(Del) has held that the information by the investigation or the other authority is valid material for initiating reassessment proceedings. This judgment of Delhi High Court has been approved in by Hon'ble Supreme Court in 250 Taxmann 100 (SC).

[Sufficiency and Correctness of Material [information/reasons Hon'ble Calcutta High Court in a recent decision delivered on 13.09.2022 in the case of PCTT 1 Kolkata Vs Arshin Global Tradecom P Ltd in ITAT/175/2021 [IA No:GA/02/2021] has categorically held that when sufficient material evidence has been passed on to the AO by Inv. Wing and reassessment having been done on new facts does not amount to change of opinion. The main proposition made by the Hon'ble Court was that crucial factual aspects which are relevant to the reopening of the assessment cannot be ignored in deciding the validity of reopening merely going on the basis as to what are the conditions to be fulfilled in order to reopen an assessment.

[Reopening on information of accommodation entry from Inv. Report) Hon'ble Jurisdictional Delhi High Court in the case of Pratibha Finvest P Ltd Vs ITO [2013] 29 taxmann.com 420(Del) has held that Reopening of assessment on the basis of

investigation report in case of search on third parties revealing accommodation entries received by assessee, was justified.

[Bogus accommodation entry post original assessment] Hon'ble Jurisdictional Delhi High Court in the case of J MD Global P Ltd Vs PCTT [2019] 112 taxmann.com 204 (Delhi) 31.10.2019 has held that where Assessing Officer issued reassessment notice on basis of an information received from Investigation wing that assessee had received bogus accommodation entries in form of share capital, since Assessing Officer did not examine issue related to share capital during original assessment, impugned reopening was justified.

[Information of Bogus accommodation entry share capital/premium] The Hon'ble Supreme Court in its decision delivered on 28.03.2022 [SLP [C] No.22921 of 2019] in the case of DCIT Vs MR Shah Logistics P Ltd [2022] 136 taxmann.com 373 (SC) laid down the proposition that reopening of a case u/s 147 with an objective to verify some information regarding accommodation entry or share premium and share capital is valid and sufficiency of that material cannot dictate the validity of Notice u/s 148.

[On full and true disclosure): The Hon'ble Supreme Court in its decision delivered in the case of Shri Krishna P Ltd 221 ITR 538, 549 had observed that every disclosure is not and can not be treated to be a true and full disclosure. A disclosure may be a false one or a rue one. It may be a full disclosure or it may be. The Hon'ble Apex Court held that a partial disclosure may very often be a misleading one. Therefore, what is required is a full and true disclosure of all material facts necessary for making assessment for that year.

[Bogus accommodation entry post original assessment) Aradhna Estate (P.) Ltd. Vs DCIT [2018] 91 taxmann.com 119 (Gujarat) where Hon'ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinised by Assessing Officer during original assessment, reassessment could not be held unjustified.

[Sufficiency and Correctness of Material [information/reasons] Experion Developers Pvt. Ltd. Vs. ACIT (Delhi High Court) (422 ITR 355) (115 taxmann.com 338) In para 24 of the judgment the Hon'ble Court has held "In our opinion, the tangible material in the present case is information received by the AO from DIT (I&CI). It would thus be apposite to refer to the said referred report which has been placed to the record." It has been further held in para 30 that "There cannot be any doubt from the reasons recorded, that the petitioner companies are beneficiaries of the funds received from 'Gold Singapore'. If needed, the investing entities do not have any creditworthiness to make such huge investments into the petitioner company, in our view, there would be sufficient cause or justification for the AO to attribute the income to the petitioner. Thus, at this stage, there are sufficient "Reasons to Believe" that such income has escaped assessment and to reopen the assessment proceedings. Since there is relevant material to form reasonable belief in the background of the facts noted above, at this stage of the proceedings, where the AO has yet to finally adjudicate the issues, it is not for this Court to deal with the questions as to whether the reopening of the assessment would ultimately result in creating further demand.

We are therefore of the opinion that the AO had sufficient tangible materials and was justified in issuing notice for assessment."

[Prima-facie case] Rajat Export Import India Pvt. Ltd. Vs ITO [2012] 341 ITR 135 (Delhi)/ [2012] 252 CTR 307 (Delhi)/ [2012] 206 Taxman 50 (Delhi) "The information contained in the table itself constitutes reasons to believe, prima facie, the income chargeable to tax has escaped assessment in the hands of the petitioner. It must be noticed that the information contained in table was received by the Assessing Officer from DIT (Inv.), who was in charge of the investigation into groups that operate as entry providers or entry operators. The material before the Assessing Officer, in our opinion, is relevant and affords a live link or nexus to the formation of the prima facie belief that income chargeable to tax had escaped assessment in the assessee's hands. We are not at this stage concerned whether the material before the Assessing Officer is sufficient for the formation of the belief. What are we concerned at this stage is whether the material before the Assessing Officer is relevant for forming the prima facie belief that income chargeable to tax has escaped assessment. It is also well settled that at that stage, that is at the stage when reasons are recorded for reopening the assessment, the Assessing Officer is not required to build a fool proof or a fort-like case for making addition to the assessee's income; all that he is required at that stage is to form a prima facie opinion or belief that income has escaped assessment. The relevancy of the material before the Assessing Officer is to be judged only from that perspective and not from the perspective as to whether the material is sufficient or adequate to sustain the addition ultimately. That will be an aspect which the Assessing Officer will examine and decide in the course of the re-assessment proceedings after hearing the assessee in the manner required by law. These propositions are so well settled that they do not require citing of any authority."

[On Investigation report/information of search on another person] Ankit Financial Services Ltd. Vs DCIT [2017] 78 taxmann.com 58 (Gujarat) Where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

[Beneficiary of accommodation entry] Aaspas Multimedia Ltd. Vs DCIT [2017] 83 taxmann.com 82 (Gujarat) where Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

[Beneficiary of accommodation entry] Ankit Agrochem (P.) Ltd. Vs JCIT [2018] 89 taxmann.com

45 (Rajasthan) where Hon'ble Rajasthan High Court held that where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified.

[Prima-facie case] Vasudev Fatandas Vaswani Vs ITO (2018-TIOL-2305-HC-AHM-IT) Where Hon'ble Gujarat High Court held that when issuing notice for re-opening assessment, the AO is only required to show reasonable belief that income escaped assessment & is not required to establish the same beyond. reasonable doubt.

[Beneficiary of accommodation entry] AGR Investment Ltd. Vs Addl. CIT (333 ITR 146) (Delhi) The Hon'ble High Court upheld the notice u/s 148 and held that there was material on the basis of which notice u/s 148 could be issued as the Assessing Officer had specific information from office of DIT (Inv.) as regards transaction entered into by assessee

company with a number of concerns which have made accommodation entries and they were not genuine transactions.

Whether initiation of re-assessment proceedings is merely on the basis of change of opinion.

1. In the Full Bench decision of Hon'ble Delhi High Court in CIT Vs. Usha International (2012) 348 ITR 485 (Delhi), the principle of "change of opinion" was discussed extensively as under:-

"16. Here we must draw a distinction between erroneous application/ interpretation/understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time of the assessment order, the principle of change of opinion will not apply. The reason is that opinion is formed on facts. Opinion formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of change of opinion. Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression material facts means those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a precondition which confers jurisdiction to reopen the assessment,

17. Correct material facts can be ascertained from the assessment records also and it is not necessary that the same may come from a third person or source, i.e., from source other than the assessment records. However, in such cases, the omus will be on the Revenue to show that the assessee had stated incorrect and wrong material facts resulting in the Assessing Officer proceeding on the basis of facts, which are incorrect and wrong. The reasons recorded and the documents on record are of paramount importance and will have to be examined to determine whether the stand of the Revenue is correct. Decision of this Court in Writ Petition (Civil) No. 6205/2010, Dalmia Private Limited versus Commissioner of Income Tax Delhi 10 and Another, dated 26th September, 2011 and decision of Bombay High Court in Writ Petition No. 1017/2011. The Indian Hume Pipe Company Limited versus The Assistant Commissioner of Income Tax, dated 8th November, 2011 are two such cases. In the first case, the Assessing Officer in the original assessment had made additions of Rs. 19,86,551/- under Section 40(1) on account of unconfirmed sundry creditors. The reassessment proceedings were initiated after noticing that unconfirmed sundry creditors, of which details etc. were not furnished, were to the extent of Rs.52.84,058/- and not Rs. 19,86,551/-. In Indian Hume Pipe Company Limited (supra), after verification the claim under Section 54-EC was allowed but subsequently on examination it transpired that the second property was purchased prior to the date of sale. The aforesaid decisions/facts cases must be distinguished from cases where the material facts on record are correct but the Assessing Officer did not draw proper legal inference or did not appreciate the implications or did not apply the correct law. The second category will be a case of change of opinion and cannot be reopened for the reason that the assessee, as required, has placed Commissioner Of Income Tax-Vi Vs Usha International Limited on 21 September, 2012 on record primary factual material but on the basis of legal understanding, the Assessing Officer has taken a particular legal view.

However, as stated above, an erroneous decision, which is also prejudicial to the interest of the Revenue, can be made subject matter of adjudication under Section 263 of the Act.

18. In New Light Trading Co. vs. Commissioner of Income Tax (2002) 256 ITR 391 (Del), a Division Bench of this Court had referred to decision of the Supreme Court in CIT vs. P.V.S. Beedies Pvt. Ltd. (1999) 237 ITR 13 (SC) and the following observations were made:-

In the case of P. V. S. Beedies Pvt. Ltd. [1999] 237 ITR 13, the apex court held that the audit party can point out a fact, which has been overlooked by the Income-tax Officer in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. As the Tribunal has rightly noticed, this was not a case of the Assessing Officer merely acting at the behest of the audit party or on its report. It has independently examined the materials collected by the audit party in its report and has come to an independent conclusion that there was escapement of income. The answer to the question is, therefore, in the affirmative, in favour of the Revenue and against the assessee.

19. As recorded above, the reasons recorded or the documents available must show nexus that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income. At the same time, it is not the requirement that the Assessing Officer should have finally ascertained escapement of income by recording conclusive findings. The final ascertainment takes place when the final or reassessment order is passed. It is enough if the Assessing Officer can show tentatively or prima facie on the basis of the reasons recorded and with reference to the documents available on record that income has escaped assessment."

2. **OPG Metals & Finsec. Ltd. Vs CIT(2014) 41 Taxmann.com (Delhi),**

Where information regarding all transaction including undisclosed investments was not subject matter of earlier re-assessment proceedings and there was fresh material for A.O., it would not be a case of change of opinion.

3**. SC in the case of ESS ESS Kay Engineering co. Pvt. Ltd. 247 ITR 818.**

This is a case of reopening. We have perused the documents. We find there was material on the basis of which the Income-tax Officer could proceed to reopen the case, it is not a case of mere change of opinion. We are not inclined to interfere with the decision of the High Court merely because the case of the assessee was accepted as correct in the original assessment for this assessment year. It does not preclude the Income-tax Officer to reopen the assessment of an earlier year on the basis of his findings of fact made on the basis of fresh materials in the course of assessment of the next assessment year. The appeal is dismissed. No order as to costs.

4. **Delhi High Court Consolidated Photo and Finvest vs Asst. Commissioner of Income Tax, 281 ITR 394 Delhi.** We have also seriously, considered the entire case law from which aforesaid paragraphs are relied on. In so far as the expressions "reason to believe" and "change of opinion" are concerned, we are of the view that though the material was available on record, at the time of first assessment, when no conscious consideration of the material is made and a mistake has been committed, it would not, in any case, create an embargo or a ban on the competent officer to exercise powers under the amended section 147 of the Income-tax Act, 1961, as prima facie, there could not be "change of opinion" in that factual scenario. It has also not been shown to us on behalf of an assessed.

If conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making assessment and again a different or divergent view is sought, it would tantamount to "change of opinion", whereas, in the case of existing material, no conscious attempt has been made, it would tantamount to mistake in not considering the relevant point or proposition and it would not be a "change of opinion".

In the light of the authoritative pronouncements of the Supreme Court referred to above, which are binding upon us and the observations made by the High Court of Gujarat with which we find ourselves in respectful agreement, the action initiated by the assessing officer for reopening the assessment cannot be said to be either incompetent or otherwise improper to call for interference by a writ court. The Assessing Officer has in the reasoned order passed by him indicated the basis on which income exigible to tax had in his opinion escaped assessment. The argument that the proposed reopening of assessment was based only upon a change of opinion has not impressed us. The assessment order did not admittedly address itself to the question which the assessing officer proposes to examine in the course of re-assessment proceedings. The submission of Mr. Vohra that even when the order of assessment did not record any explicit opinion on the aspects now sought to be examined, it must be presumed that those aspects were present to the mind of the assessing officer and had been held in favour of the assessed is too far fetched a proposition to merit acceptance. There may indeed by a presumption that the assessment proceedings have been regularly conducted, but there can be no presumption that even when the order of assessment is Page 436 silent, all possible angles and aspects of a controversy had been examined and determined by the assessing officer. It is trite that a matter in issue can be validly determined only upon application of mind by the authority determining the same. Application of mind is, in turn, best demonstrated by disclosure of mind, which is best done by giving reasons for the view which the authority is taking. In cases where the order passed by a statutory authority is silent as to the reasons for the conclusion it has drawn, it can well be said that the authority has not applied its mind to the issue before it nor formed any opinion. The principle that a mere change of opinion cannot be a basis for reopening computed assessments would be applicable only to situations where the assessing officer has applied his mind and taken a conscious decision on a particular matter in issue. It will have no application where the order of assessment does not address itself to the aspect which is the basis for reopening of the assessment, as is the position in the present case. It is in that view inconsequential whether or not the material necessary for taking a decision was available to the assessing officer either generally or in the form of a reply to the questionnaire served upon the assessed. What is important is whether the assessing officer had based on the material available to him taken a view. If he had not done so, the proposed reopening cannot be assailed on the ground that the same is based only on a change of opinion.

5. Hon'ble Delhi High Court in the case of Chetan Sabharwal Vs ACIT [2019] 110 taxmann.com 57 (Delhi) order dated 06.08.2019 held that where original assessment orders were silent on aspect on which reopening had been ordered, it could not be said that reason to believe constituted a 'change of opinion'.

[Sufficiency and Correctness of Material [information/reasons] would not be considered at the stage of issue of notice u/s 148: This is the proposition held by the Hon'ble Delhi High Court in the case of Saif II Mauritius company Ltd Vs ACIT [2023] 148 taxmann.com 446 [Delhi] order dated 23.03.2022.

Approval of the Competent Authority:

So far as the contention of the appellant assessee, raised as additional ground that the approval of the competent authority granted u/s 151[1] was in a mechanical manner without application of mind is concerned, the following submission may kindly be considered:

1. That there is no infirmity in the approval/sanction granted by the competent authority u/s 151[1] of the L. T. Act, 1961.

2. That the statute does not lay down any manner or format in which the approval is to be granted.

3. That the remarks of the competent authority may kindly be read with the first part of the column No.12 which reads "Whether the Pr. CIT, is satisfied on the reason recorded by the AO that it is a fit case for issue of Notice u/s 148" along with the remarks Discussed I am satisfied that income of approximate Rs. 7 crore has escaped assessment due to non disclosure of material fact of accommodation entry in the ROI. Hence, action w's 148 is approved before the signatures are there in the approval form/column.

4. That the Hon'ble Calcutta High Court in Prem Chand Shaw [Jaiswal] Vs ACIT [2016] 67 taxmann.com 339 has categorically held that "the mere fact that the sanctioning authority did not record his satisfaction in so many words would not render invalid the sanction granted under section 151(2) when the reasons on the basis of which sanction was sought could not be assailed and even an appellate authority is not required to give reasons when it agrees with the finding unless statute or rules so requires." It was further held that there is no requirement to provide elaborate reasoning to arrive at a finding of approval when the PCIT is satisfied with the reasons recorded by the AO.

5. Virbhadra Singh Vs Deputy Commissioner, Circle Shimla [2017] 88 taxmann.com 888 (Himachal Pradesh) Where the competent authority 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, by recording "I am satisfied that it is a fit case for issuance of notice u/s 148", the issuance of notice under section 147/148 was held to be valid.

6. That the Hon'ble Delhi Court in the case of Experion Developers (P.) Ltd. v. ACIT [2020] 115 taxmann.com 338 (Delhi) in WP (C) NOS. 11302, 11303 OF 2019 CM APPL NOS. 46536 TO 46539 & 46540 TO 46542 OF 2019 FEBRUARY 13, 2020,

While discussing Section 151 of the Income-tax Act, 1961-Income escaping assessment - Sanction for issue of notice (Recording of reasons) held that where necessary sanction to issue reopening notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons of reopening. [Ref. Para 42 and 43 of the said order]

"It is a requirement for issuance of notice for reopening of assessment proceedings under section 151 of the Act that the Principal Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for issuance of such notice.

In the recorded reasons also, it has been noted that "necessary sanction to issue notice under section 148 of the Act is being obtained separately from the Pr CIT, Delhi 03, New Delhi as per the provisions of section 151 of the Act". In its reply on this issue, in the order

dated 25.09.2019 dismissing objections of the petitioner to the notice under section148, it has been pointed out that the approval of the competent authority was obtained vide note sheet entries dated 31.03.2019 and the same was enclosed alongwith the order. However, the same has not been annexed to the present petitions. It has been argued that obtaining approval of the Additional Commissioner of Income Tax is not provided for under section 151 and therefore, the same is not justified. However, in the present case, approval/sanction has been obtained from both, the Addl. Commissioner of Income Tax as well as Principal Commissioner of Income Tax, which is the appropriate authority for issuance of such sanction, as noted in Commissioner of Income-tax-8 (Erstwhile CIT-III) V. Soya Industrial Resources Lid [2015] 58 taxmann.com 336 (Delhi)."

Case Laws to be relied upon on Merits of the case ie, additions u/s 68 and 69C:

(When assessee claims that the subject transaction was made through banking chennals): The Hon'ble Guwahati High Court in Nemi Chand Kothari Vs CIT [2004] 136 Taxmann 2013 [2003] 264 ITR 254 has held that "merely because a transaction takes place by cheque is not sufficient to discharge the burden.."

On issue of Cross Examination it is submitted that the right to cross examination is not an absolute right. In this regard reliance is placed on the decisions of the Hon'ble Apex Court in the case of State of J&K Vs Bakshi Gulam Mohad. AIR 1967 [SC] 122, und Nath International Sales Vs UOI AIR 1992 Del 295 that the right to hearing does not include a right to cross examine. The right to cross examine must depend upon the circumstances of each case and also on the statue concerned. Further reliance was also made on T. DevasahayaNadar Vs CIT [1964] 51 ITR 20 [Mad.] and GTC Industries Ltd. Vs ACIT [1998] 60 JTJ [Bomb-Trib] 308.

Further reliance is also taken on the following decisions:

Durga Prasad More 82 ITR 540; Sumati Dayal 214 ITR 801 and McDowell & Co. 154 ITR 148.

So far as the reliance by the appellant on several judgments presuming to be in its favour it is submitted that in those case the direct evidences, as available in this case were not available before the Hon'ble Benches hence, they are not applicable in this case.

As the facts are always distinct and separate in each case the principles of one case cannot be applied blindly to another case. In Union of India Vs Major Bahadur Singh [2006] 1SCC 368 [Para 9 & 11] the Hon'ble Supreme Court held that the observations made in a judgment must be read in the context in which they appear to have been stated. Their lordships of the Supreme Court further held that circumstantial flexibility.
one additional or different fact, may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision was held to be not proper. Thus, principles enunciated therein are different from the facts of the instant case and hence the appellant's plea that these judgments are applicable to the appellant has no locus standi. In view of the detailed discussions in assessment order, order of Ld. CIT(A), case laws relied by the AO & Ld. CIT(A), above submissions and relevant case-laws, it is requested that the appeals of the assessee may kindly be dismissed. It is also requested to kindly allow further oral submissions, which may also be made during the course of hearing, if required."

9. We have heard the rival submissions and have carefully perused the materials on record. In order to appreciate the issue, we reproduce the 'reasons recorded' as under:

"***Reasons for issue of Notice u/s 148 for reopening of assessment u/s 147 of 1.T. Act, 1961 for the A.Y.2012-13 in the case of M/s Ish Buildcon Private Limited***

(PAN-AABCI8459D)

Background of the case

1. The assessee company was incorporated on 19.06.2006. The assessee company is engaged in the business of real estate. As per the ITD database, the assessee filed its Return of Income vide Ack. No.496475721260912 dated 26.09.2012 at the Return Income NIL. The same was processed on 14.03.2013 u/s 143(1) of the Act. The directors of the assessee company are Sh. Amit Dhawan and Sh. Raman Khanna. Thereafter the case was selected for scrutiny under CASS and was assessed u/s 143(3) of the IT Act, 1961 at returned income.

Information received from the Investigation Wing, Faridabad and its Analysis

2.1 In this case information was received from DDIT(Inv)-1, Faridabad vide letter F.No. DDIT/Inv-1/FBD/2015-16/1291 dated 15.06.2015 enclosing thereby survey report dated 27/10/2014 in the case of Shriji Group. As per this report M/s Ish Buildcon (P) Ltd. Is a Shriji group company and has entered into sale purchase agreement in respect of various properties detailed as under:-

S. No	*Name and address of the seller*	*Name and address the buyer*	*Land of particulars*	*Price/value of total agreement*	*Date of Agreement*
1.	*Bhagat Singh, Mahinder Singh*	*M/s Ish Buildcon (P) Ltd*	*87 Kanal, 10 Marla, Samyapur, Ballabgarh*	*15,31,25,000*	*23.08.2010*

2.2 This information originated from the survey operation u/s 133A of the Income Tax Act, 1961 carried out on the premises of Shriji Group of concerns on 21.11.2013. The DDIT(Inv-I), Faridabad in the above quoted letter(s) has stated that the source of the funds for the purchase of this property by the assessee company remains unverified.

2.3. As per report received from DDIT(Inv-I), Faridabad M/s Ish Buildcon Pvt. Ltd. has also entered into sale / purchase agreement in respect of one more property as detail as under:-

S. No	Name and address of the seller	Name and address the buyer	Land of particulars	Price/value of total agreement	Date of Agreement
1.	Dalip Singh	M/s. Ish Buildcon (P) Ltd.	2 Acre, 1	3,79,19,375	14.03.2011

2.4. It may also be mentioned that as per the survey report dated 15.06.2015, the assessee company has taken accommodation entries during A.Y. 2012-13 as per

Sr. No.	Date on which fund received	No. of shares	Amount of share capital	Amount of premium	Total	Name of the entity	PAN of the entity	Name of the entry operator controlling entity
1.	29.07.2011	4000	40000	1960000	2000000	Allegiance Trading Pvt. Ltd.	AAJCA2771J	Himanshu Verma
2.	29.07.2011	6000	60000	2940000	3000000	Allegiance Trading Pvt. Ltd.	AAJCA2771J	Himanshu Verma
3.	04.08.2011	6000	60000	2940000	3000000	Accent Telecom Services Pvt.Ltd.	AAICA1846K	Himanshu Verma
4.	05.05.2011	5000	50000	2450000	2500000	Hope Realtech Pvt. Ltd.	AACH2297M	Himanshu Verma
5.	05.05.2011	10000	100000	4900000	5000000	Lion Infracon Pvt. Ltd.	AACL0325J	Himanshu Verma
6.	11.04.2011	7200	72000	3528000	3600000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
7.	06.05.2011	7000	70000	3430000	3500000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
8.	18.05.2011	7000	70000	3430000	3500000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
9.	18.07.2011	2000	20000	980000	1000000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
10.	09.07.2011	3000	30000	1470000	1500000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
11.	09.07.2011	5000	50000	2450000	2500000	Mithalanchal Investment & Finance	AACCV5762B	Himanshu Verma
12.	09.12.2011	7000	70000	3430000	3500000	Mithalanchal	AACCV5762B	Himanshu

						Investment & Finance		*Verma*
13.	*18.05.2011*	*10000*	*100000*	*4900000*	*5000000*	*Omexpo Enterprises Pvt. Ltd.*	*AAACO8604R*	*Himanshu Verma*
14.	*07.12.2011*	*4000*	*40000*	*1960000*	*2000000*	*Omexpo Enterprises Pvt. Ltd.*	*AAACO8604R*	*Himanshu Verma*
15.	*27.12.2011*	*1000*	*10000*	*490000*	*500000*	*Omexpo Enterprises Pvt. Ltd.*	*AAACO8604R*	*Himanshu Verma*
16.	*10.05.2011*	*10000*	*100000*	*4900000*	*5000000*	*Rising Portfolio India Pvt. Ltd.*	*AAACR1677D*	*Himanshu Verma*
17.	*01.08.2011*	*4000*	*40000*	*1960000*	*2000000*	*Rising Portfolio India Pvt. Ltd.*	*AAACR1677D*	*Himanshu Verma*
18.	*26.11.2011*	*4000*	*40000*	*1960000*	*2000000*	*Rising Portfolio India Pvt. Ltd.*	*AAACR1677D*	*Himanshu Verma*
19.	*16.12.2011*	*7000*	*70000*	*3430000*	*3500000*	*Saffron Logistics Pvt. Ltd.*	*AANCS7939J*	*Himanshu Verma*
20.	*14.05.2011*	*10000*	*100000*	*4900000*	*5000000*	*Timely E Net Solution Pvt. Ltd.*	*AADCT4113F*	*Himanshu Verma*
21.	*23.11.2011*	*4000*	*40000*	*1960000*	*2000000*	*Timely E Net Solution Pvt. Ltd.*	*AADCT4113F*	*Himanshu Verma*
22.	*23.11.2011*	*6000*	*60000*	*2940000*	*3000000*	*Timely E Net Solution Pvt. Ltd.*	*AADCT4113F*	*Himanshu Verma*
23.	*26.12.2011*	*10000*	*100000*	*4900000*	*5000000*	*Bliss Buildcon Pvt. Ltd.*	*AAECB4597Q*	*Himanshu Verma*
	Total		*1392000*	*68208000*	*69600000*			

2.5. It has also been mentioned in the survey report that in spite of repeated opportunities the assessee company did not submit any satisfactory explanation or reply to prove identity, genuineness and creditworthiness of the above mentioned share capital/premium.

2.6 Furthermore, in the post-survey investigation it was found that the many of the entities which have introduced bogus share capital/premium are controlled and managed by an accommodation entry operator Sh. Himanshu Verma of Delhi. It is relevant to mention here that Sh. Himanshu Verma group was searched on 29.03.2012 by the Directorate of Income Tax (Inv.), Delhi and it was established that Sh. Himanshu Verma was controlling many paper entities for providing various kind of accommodation entries to different beneficiaries in lieu of unaccounted cash after charging fixed percentage of commission. During the investigations in the case of Sh. Himanshu Verma, his complete modus operandi of providing various kind of accommodation entries was established. The relevant part of Appraisal Report in the case of Himanshu Verma Group giving the details of modus operandi and having list of companies controlled and managed by Sh. Himanshu Verma has also been forwarded along with the report by the DDIT (Inv), Faridabad.

2.7 Sh. Himanshu Verma has admitted on oath that he is in the business of providing accommodation entries through his paper concerns. On analysis of the financials (ITRs and bank statement) of share capital/premium introducing companies, it is found that these paper companies are not having any assets for doing any meaningful work and are filing almost nil income ITRs which suggest that these are paper companies with no means. It is also found that the share capital/premium introduced in various companies of Iris Group are mere accommodation entries in lieu of unaccounted cash and assessee has not produced any document for providing the identity, genuineness and creditworthiness of the share capital/premium introducer.

Enquiries subsequent to receipt of information and Reason to believe that income has escaped assessment

3.1 On perusal of ITR for the A.Ys. 2011-12 and 2012-13, the following observation has been made:

Particulars	*A.Y. 2011-12 (in Rs.)*	*A.Y. 2012-13 (in Rs.)*
Paid up share capital	*1,00,000/-*	*1,64,92,000/-*
Share Premium	*Nil*	*6,82,08,000/-*
Unsecured Loan	*1,85,00,000/-*	*2,01,50,000/-*
Sundry Creditors	*18,58,72,952/-*	*14,63,88,912/-*
Inventories	*20,06,26,625/-*	*20,06,26,625/-*
Loan & Advances	*36,50,000/-*	*5,03,82,500/-*

3.2 It is clear from the above that information received from the Investigation wing is corroborated with the details filed by the assessee in its return of income i.e amount of share premium received by the assessee from the company controlled by Sh. Himanshu Verma (an established accommodation entry provider) is exactly same as filed by assessee its ITR for the A.Y. 2012-13. It is further gathered from the ROC website that the share premium charged from above 10 companies is Rs. 490/- per share as against Rs. 90 as premium charged from promoters/director of the assessee company and their family members.

3.3 It is also relevant to mention here that a search operation was also conducted on 29.03.2012 by the Investigation Wing on Shri Himanshu Verma group. During search, it was established that Shri Himanshu Verma was controlling many paper entities for providing various kind of accommodation entries to difference beneficiaries in lieu of unaccounted cash after charging fixed percentage of commission. During the investigation in the case of Shri Himanshu Verma his complete modus operandi of providing various kind of accommodation entries was established. The name of 23 companies to whom shares were allotted in AY

2012-13 as detailed above are appearing in the list of paper companies controlled by Shri Himanshu Verma.

3.4 It may be mentioned that on an earlier occasion, information was received from Investigation Division, Faridabad in which the date of agreement of property purchased from Sh. Bhagat Singh and Mahendra Singh was mentioned as 23.08.2008. Accordingly, the case of the assessee was reopened for A.Y.2009-10. During the course of re-assessment proceedings for AY 2009-10, the assessee has filed copy of sale deed executed on 23.08.2010 in a total consideration of Rs. 19,10,44,375/- and filed a letter dated 25.11.2016 filed in this office on 28.11.2016 stated that the said property has been purchase on 23.08.2010 by the assessee company and transactions relates to A.Y.2011-12 instead of A.Y.2009-10.

3.5 During the re-assessment proceedings for A.Y. 2009-10 the assessee company was specifically asked to explain the source of funds used for purchasing the property for an amount of Rs. 15,31,25,000/- however, no explanation whatsoever was given by the assessee regarding the sources of funds and the assessee simply stated that the property was purchased in A.Y. 2011-12. The assessee company also filed a copy of sale deed for this immovable property which suggests that though the property was registered on 23.08.2010 only a very small portion of sale consideration was paid during F.Y. 2010-11 and most of the payment has been shown through post dated cheque payable during F.Y. 2011-12.

3.6 Accordingly, the case of the assessee company has been re-opened for assessment u/s 148 of the IT Act. 1961. During the course of assessement proceedings, assessee company has submitted that source of investment made was unsecured loan received during the year. However, the assessee company failed to discharge its onus as per the provisions of section 68 of the IT Act, 1961. Hence, the unsecured loan amounting to Rs. 1,85,00,000/- received during the year was added to the total income of the assessee company. Assessee company further submitted that only part payment was made during A.Y. 2011-12 and remaining payments was made in subsequent years. As per the sale deed filed by the assessee as discussed above only a part payment was made in AY 2012-13 and further payment was made in subsequent year. As per ITR, the total value of land as shown in inventory is at Rs. 20,06,26,625/- and outstanding sundry creditors are 14,63,88,912/-. Thus, the company paid an amount of Rs. 3,94,84,040/- during the year and the source of same is seems to be accommodation entries received from Himanshu Verma Group.

3.7 The above discussion makes it very clear that the assessee company has been involved in taking accommodation entry for routing its unaccounted income in the books through hawala operators. Further, during the investigation made at Faridabad as well as during the reassessment proceedings, the assessee could not explain the sources of funds used for purchasing above mentioned immovable properties. Moreover, as per information available with this office assessee company

has received accommodation entries amounting to Rs. 6,96,00,000/- from companies controlled by Himanshu Verma and the same was used for the above mentioned immovable properties part payment. Thus, the source of Rs. 6,96,00,000/- remained unexplained and thus income to the extent of at least Rs. 6,96,00,000/- has escaped assessment.

3.8 During the AY 2012-13, the assessee company has received bogus share capital/share premium of at least Rs. 6,96,00,000/- from the shell compaies controlled by Shri Himanshu Verma, a well established accommodation entry operator shares were allotted during the year @ 500/- per share (Rs 10 face value plus Rs. 490 per equity share).

3.9 Further, it is established that the sharecapital/share premium has been provided by Shri Himanshu Verma who is a entry operator and provided entries from various dummy concerns controlled by him, it is clear that the assessee company has taken accommodation entries of at least Rs. 6,96,00,000/- during the year.

3.10 Further, the assessee company must have paid certain percentage of amount as commission to obtain such accommodation entries. Therefore, commission @ 2% which comes to Rs.13,92,000/- is also an escaped amount which has been paid by assessee company in lieu of accommodation entries to the tune of Rs. 6,96,00,000/- taken from Shri Himanshu Verma.

3.11 Considering the above referred credible information, and analysis subsequent to the information, I have reason to believe that an amount at least of Rs.7,09,92,000/-has escaped assessment in case the of M/s Iris Real Estate Private Ltd for the A.Y.2012-13 within the meaning of Section 147/148 of Income Tax Act. 1961. Therefore, I am satisfied and have reason to believe that it is a fit case for issuance of notice under section 148 of I.T. Act, 1961.

Applicability of the provisions of Section 147/151 to the facts of the case:

4.1 Prior to 1989 section 147 provided (for two grounds to reopen concluded assessments:

(i) On basis of information received by the Assessing Officer assessment could be reopened. This had to be within four years.

(ii) Where facts material for assessment are not disclosed in the course of assessment, whether within or beyond four years.

4.2 Supervening these two requirements in the alternative, the initial condition is that the Assessing Officer has reason to believe that there is escapement of income. The first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only

requirement is "reason to believe". For a period beyond 4 years in cases where an original assessment was made u/s 143(3), further requirement is the non-disclosure of material facts necessary for assessment by the assessee. However in cases where no scrutiny assessment has been made even beyond period of 4 years the only requirement is "reason to believe".

4.3 In this case a return of income was filed for the year under consideration and the ITR was processed u/s 143(1) of the Act. Thereafter case was selected for scrutiny. under CASS and the case was assessed u/s 143(3) of the Act at retuned income. However, in this case it is pertinent to mention here that above information i.e. assessee company has received accommodation entries from the companies managed and controlled by Sh. Himanshu Verma, an established accommodation entry provider was available with the AO at the time of scrutiny assessment u/s 143(3) of the IT Act, 1961. This information was received in this office later. Hence, in this case I have reason to believe that an amount at least of Rs. 7,09,92,000/- has escaped assessment.

4.4 In this case, four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lakh necessary sanction to issue notice u/s 148 of the Act is being obtained separately from the Pr. Commissioner of Income Tax, Delhi under amended provisions of section 151 of the Act w.e.f. 01.06.2015.

(Faqir Chand)

Income Tax Officer
Ward-12(4), New Delhi

10. The admitted fact is that the reopening is made after four years from the end of assessment year under consideration. The notice u/s 148 of the Act was issued for AY 2012-13 on 29.03.2019. It is also undisputed that the original return has been assessed u/s 143(3) of the Act on 02.03.2015. It is also acknowledged by the AO while recording the reasons at para 4.3, that the information i.e. assessee company has received accommodation entries from the companies managed and controlled by Sh. Himanshu Verma, an established accommodation

entry provider, was available with the AO during the time of original scrutiny assessment u/s 143(3) of the IT Act, 1961. Even after having the information of accommodation entries, the assessment was completed u/s 143(3) without taking any adverse view on the basis of such information. In such situation, the law mandates that it is incumbent upon the AO, while recording the reasons to reopen the assessment, to demonstrate that the income has escaped assessment due to the failure of the Assessee to disclose fully and truly all the material facts for assessment. In the instant case, we find that the AO has failed to record that the income has escaped assessment due to the failure of the Assessee to disclose fully and truly all the material facts for assessment. In such a situation, the hon'ble Delhi High Court in the case of ***PCIT (Central)-2 versus M/s K.R. Pulp And Papers Ltd*** ITA No. 529/2023 delivered on 31.05.2025, held that where the jurisdictional ingredients for reopening the assessment provided in the first proviso to Section 147 of the Act were absent, both in form and substance and therefore, the proceedings were bad in law. In the case of ***CIT v. Multiplex Trading*** (2015) 378 ITR 351, the hon'ble Delhi High Court held as under:- —

> ***10. The first and foremost issue to be addressed is whether the Assessing Officer could assume jurisdiction to reopen the assessment based on the information received from the Investigation Wing of the***

Department. It is now well settled that the Assessing Officer can reopen the assessment if he has reason to believe the assessee's income has escaped assessment. However, his reasons to believe must not be based on surmises, conjectures or occasioned by change in opinion but must be based on some tangible and credible material on the basis of which a reasonable belief could be formed that income of an assessee has escaped assessment. The language of section 147 requires the Assessing Officer to have a reason to believe and not a reason to suspect. The reason to believe that income of an assessee has escaped assessment must be bona fide and reasonable. It is also settled that the material on which the Assessing Officer forms his opinion must not be the same material which had been considered at the time of the initial assessment, as in that case, the proceedings under section 147 of the Act would amount to reviewing the assessment order merely on a change of opinion, which is not permissible.

11. By virtue of the proviso to section 147 of the Act, an assessment, which has been concluded under section 143(3) of the Act—that is, the return filed by the assessee was scrutinised and verified by the Assessing Officer—cannot be reopened after the expiry of four years from the end of the relevant assessment year unless the condition as specified under the proviso to section 147, is met; that is, the income of an assessee has escaped assessment on account of failure on the part of the assessee to make a return, either under section 139(1) of the Act or pursuant to a notice under section 142(1) of the Act, or is occasioned by the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

11. Similar decisions was rendered in the case of ***PCIT Central-11 Versus DSC Ltd*** in ITA 546/2019 dated 18.07.2023; ***JSRS Udyog Ltd. v. ITO***, 313 ITR 321 (Del); ***Wel Intertrade Pvt. LTd. v. ITO***, 308 ITR 22 (Del); ***Haryana Acrylic Manufacturing Company v. CIT***, 308 ITR 38

(Del) and ***Atma Ram Properties Pvt. Ltd. v. DCIT***, 343 ITR 141 (Del). The plethora of case laws relied upon by the ld DR are distinguishable in facts and law. The ld DR has not addressed the crucial absence of the AO's responsibility of adhering to the dictate of the first proviso of section 147 of the Act. In view of such factual matrix of the case, following the aforesaid judicial precedents discussed in paragraph 10 and 11, we are of the considered view that in absence of jurisdictional ingredients for reopening the assessment as provided in the first proviso to Section 147, the reopening cannot be considered as valid and sustainable in the eyes of law. We accordingly quash the notice u/s 148 and the consequential reassessment order. The ground of appeal is decided in aforesaid terms.

12. As the appeal is allowed on legal grounds, no adjudication is made on merits.

13. In the result, the appeal of the assessee in ITA No. 1799/DEL/2023 is allowed.

Order pronounced in the open court on 01.07.2026

Sd/-	**Sd/-**
(SATBEER SINGH GODARA)	**(NAVEEN CHANDRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 01.07.2026

Priti Yadav, Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI