

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.366/Del./2016
Assessment Year 2005-2006

M/s. Key Components (P) Ltd., Delhi – 110 092. PAN AADCK2210N C/o. M/s. RRA Tax India, D-28, South Extension, Part-I, New Delhi – 049.	vs.	The Income Tax Officer, Ward-5(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Smt. Rano Jain, Advocate & Shri Pranshu Singhal, C.A.
For Revenue :	Shri Amit Katoch, Sr. D.R.

Date of Hearing :	06.02.2019
Date of Pronouncement :	12.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-17, New Delhi, Dated 02.12.2015, for the A.Y. 2005-2006.

2. Briefly the facts of the case are that information has been received from the Investigation Wing that the assessee-company has indulged in accommodation entries.

The Investigation Wing reported that a report of inquiries made by DIT (Inv.), New Delhi, into the accommodation entries given by entry operators has been received. The said report of the Investigation Wing of the Department with information of entry operators and beneficiaries contained in the CD was forwarded by the then DIT (Inv.)-1, New Delhi, and the said report along with relevant information was forwarded to the O/o. A.O. through proper channel. As per the information the assessee company in assessment year under appeal has taken accommodation entries to the value of Rs.5,00,545/- from M/s. V.R. Traders Pvt. Ltd., on three occasions. The A.O. also noted that it has been revealed that many persons were using service of accommodation entries operators to channelize their own unaccounted money in their regular books of account by routing the same through the accounts of accommodation entry providers. The *modus operandi* of the entry providers have been highlighted in the re-assessment order. The A.O. after getting approval of Addl. CIT, issued notice under section 148 on 28.03.2012. The assessee filed letter stating

that return filed originally may be treated as having been filed in response to notice under section 148 of the I.T. Act. The A.O. after examining the records before him rejected the objection of the assessee regarding reopening of the assessment and noted that in assessment year under appeal assessee has raised share capital of Rs.1.90 crores from 32 parties including M/s. V.R. Traders Pvt. Ltd., (Rs. 5 lakhs). The A.O. issued letters under section 133(6) to the parties but the same were returned un-served, but the parties have confirmed the transactions. The A.O. after considering the material on record, made the addition of Rs.1.90 crores on account of undisclosed income of assessee under section 68 of the I.T. Act, 1961.

3. The assessee challenged the reopening of the assessment as well as addition on merits before the Ld. CIT(A). It was submitted that A.O. recorded reasons for reopening of the assessment without independent application of mind. A.O. did not verify or examine the report or material produced before him. The A.O. merely adopted vague information provided by the Investigation

Wing. Therefore, reasons are invalid and bad in law. Several decisions in support of the contention was relied upon. The assessee also submitted that assessee received genuine share capital which is supported by share application forms, confirmations, bank statements and copy of the Board resolutions. The burden upon the assessee has been thus to prove the genuine credits of the matter, was discharged. The Ld. CIT(A), however, dismissed the appeal of assessee on both the grounds.

4. The assessee in the present appeal has challenged the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.1.90 crores under section 68 of the I.T. Act, 1961. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and filed copy of the reasons recorded under section 148 of the I.T. Act for reopening of the assessment at pages 16 and 17 of the paper book. The same reads as under :

*“M/s. Key Components (Pvt.) Ltd.,
Asstt. Year 2005-06*

A Report on enquiries made by the Directorate of Income Tax (Investigation), New Delhi into accommodation entries given by entry operators has been received. The said report of Investigation Wing of the department with information on entry operators and beneficiaries contained in the C.D, was forwarded by the then DIT(Inv.)-I, and the said report along with relevant information was forwarded to this office through proper channel.

As per the information received from the DIT (Inv.), New Delhi revealed that during the F.Yr. 2004 - 05 relevant to A.Yr.2005 - 06, M/S Key Components (Pvt.) Ltd, has taken the following accommodation entries. It has been revealed that many persons were using services of accommodation entry operators to channelise their own unaccounted money in their regular books of accounts by routing the same through the accounts of Accommodation entry providers.

2. *The modus operandi of these entry providers and beneficiaries of their services, was detected to be as under :*

2.1. *Entries were being broadly taken for two purposes :*

0.1. *To plough back unaccounted black money for the purpose of business for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*

0.2. *To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.*

2.2. *The assessee who had unaccounted money (called as entry takers or beneficiaries) and wanted to introduce the same in the books of accounts without paying tax, approached another person (called as entry operator) and handed over the cash (plus commission) and had taken cheques/DDs/Pos. The cash was being deposited by the entry' operator in a bank account either in his own name or in the name or relative/*

friends or other person hired by him, for the purpose of opening bank account. In most of these bank accounts the introducer was the main entry operator and the cash deposit slips and other instruments were filled by him. The other persons (in whose name the A/c is opened) only used to sign the blank cheque book and hand over the same to the main entry' operator. The entry operator then used to issue cheques /DDs/ Pos in the name of the beneficiary from the same account (in which the cash is deposited) or another account in which funds were transferred through clearing in two or more stages. The beneficiary in turn deposited these instruments in his bank accounts and the money came to his regular books of account in the form of gift, share application money, loan etc through banking channels.

2.3. *The operators gave the account holders amounts ranging from Rs.1000 to 2000 per month. These account holders were masons, plumbers, electricians, peons, drivers etc, whose earnings are not sufficient for a living. They earned normally Rs.3 to 5*

thousand per month in their normal work and by working for the entry operators blank gift deeds, cheque books, share application money etc. In fact these persons signed all types of papers they were asked to sign. They were made directors of companies, partners of firms and proprietor of different concerns solely for operation of these accounts. Actually, many of them were not even aware of the tax implications etc. Their only concern was with the thousand rupees given to them by the entry operators.

3. Summing up, the report as a result of these extensive enquiries carried out by the D.I.T. (Inv.), New Delhi has established the non-genuineness of transactions, whether shown by beneficiaries as inflow of Share Capital or receipt of Gifts or consideration for sale-purchase. The creditworthiness of the persons/persons controlling the concerns who have given these credit entries/share capital/gifts /sale consideration has also not been established.

4. In the instant case of the assessee, M/S Key Components Pvt. Ltd. has taken the accommodation entries noted below :-

Beneficiary's name	Beneficiary's Bank name	Branch	Value of Entry	Inst. No.	Date of entry	Name of Account Holder of entry giving	Bank from which entry given	Branch	A/c. No.
Key Components (P) Ltd.,	State Bank of Bikaner & Jaipur.	N. Delhi	2,50,265/-	Transfer CHQ. 00761057	22.05.2004	V.R. Traders (P) Ltd.,	SBJJ	NRR	24781
Key Components (P) Ltd.,	State Bank of Bikaner & Jaipur.	N. Delhi	1,00,115/-	Transfer CHQ. 0152064	14.06.2004	V.R. Traders (P) Ltd.,	SBJJ	NRR	24781
Key Components (P) Ltd.,	State Bank of Bikaner & Jaipur.	N. Delhi	1,50,165	Transfer CHQ. 00152091	28.06.2004	V.R. Traders (P) Ltd.,	SBJJ	NRR	24781
		Total	5,00,545/-						

5. As per the findings of the report of the investigating wing-the creditworthiness of the lenders has not been established and these transactions seem to be not genuine. I, therefore have reasons to believe that this amount of Rs.5,00,545/- represents income of the assessee chargeable to tax which has escaped assessment for A.Y. 2005 - 06.

Sd/- DHARAM VEER
Income Tax Officer,
Ward-5(2), New Delhi.”

4.1. The Learned Counsel for the Assessee submitted that reasons are based on information and findings of the

Investigation Wing. The A.O. did not apply his mind to the same. The A.O. merely concluded without verifying the facts that it is a case of reopening of the assessment. No details have been provided as to who has provided the accommodation entry and the observation of the A.O. is merely based on “transactions seems to be not genuine”. The A.O. did not verify the transaction and did not specify the nature of the alleged accommodation entries. No name of the accommodation entry provider have been mentioned in the reasons . The contents of the reasons recorded by the A.O. for reopening of the assessment is merely an introduction about the investigations conducted by the Investigation Wing, modus operandi of the entry provider, summing-up of enquiry of Investigation Wing, information received from Investigation Wing and facts stated by the A.O. that assessee has taken accommodation entry. The A.O. without verifying anything concluded that assessee has taken accommodation entry. The A.O. has not brought any material on record on the basis of which any nexus could have been established between material and the escapement

of income. The reasons do not show any application of mind nor the same show any belief independently arrived at by the A.O. which is the basic pre-requisite for issue of notice under section 148 of the I.T. Act. Learned Counsel for the Assessee, therefore, submitted that reopening of the assessment is illegal and bad in law and liable to be quashed. She has relied upon the following decisions in support of her contention.

- (i) Decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., 395 ITR 677.
- (ii) Decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. G & G Pharma India Ltd., 387 ITR 147.
- (iii) Decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (I) Ltd., 396 ITR 5
- (iv) Decision of Hon'ble Delhi High Court in the case of Sab Infrastructure Ltd., vs. ACIT 2017-(9)-TMI-1589.

- (v) Decision of Hon'ble Delhi High Court in the case of CIT vs. Atul Jain 299 ITR 383.
- (vi) Decision of Hon'ble Delhi High Court in the case of Shiv Sai Infrastructure Pvt. Ltd., vs. DCIT 2018-(8)-TMI-205.
- (vii) Order of ITAT, Delhi Bench in the case of M/s. MRY Auto Components Ltd., vs. ITO – ITA.No.2418/Del./2014, Dated 15.09.2017.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that information was received by the A.O. from DIT (Inv.) which is material for recording the reasons for reopening of the assessment. The Ld. D.R. submitted that enquiries were conducted by the Investigation Wing, therefore, no fresh enquiry is to be conducted by the A.O. The Ld. D.R. relied upon the following decisions :

- (i) PCIT vs. Paramount Communication (P.) Ltd., 2017-TIOL-253-SC-IT.

- (ii) PCIT vs. Paramount Communication (P.) Ltd.,
(2017) 392 ITR 444 (Del.).
- (iii) Amit Polyprints (P) Ltd., vs. DCIT (2018) 94
taxmann.com 393 (Guj.).
- (iv) Aaspas Multimedia Ltd., vs. DCIT (2017) 83
taxmann.com 82 (Guj.).
- (v) Decision of Delhi High Court in the case of
Indulata Rangwala 384 ITR 337.

5.1. The Ld. D.R. submitted that at the time of commencement of re-assessment proceedings, the A.O. has to see whether there was prima facie some material on the basis of which the department could reopen the case. Sufficiency or correctness of the material is not a thing to be considered at this stage – Raymond Woolen Mills Ltd., vs. ITO 236 ITR 34 SC.

6. We have considered the rival submissions. and perused the material available on record. It is well settled Law that validity of the reopening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment. The Learned

Counsel for the Assessee has filed copy of the reasons for reopening of the assessment which is reproduced above. The reasons contain the report of enquiries made by DIT (Inv.), New Delhi, about accommodation entries given by entry operators. It is also informed by DIT (Inv.), New Delhi, that assessee has received 03 accommodation entries totaling to Rs.5,00,545/- from M/s. V.R. Traders Pvt. Ltd., It is also reported that extensive enquiry have been carried-out by the DIT (Inv.) regarding non-genuine transactions. The A.O. reproduced the same facts in the reasons and straightaway concluded that the findings of the report of Investigation Wing shows the creditworthiness of the lender has not been established, therefore, these transactions SEEM to be non-genuine. The record reveals that vide Order dated 16.05.2018, the Ld. D.R. was directed to produce copy of the report of the DIT (Inv.) referred to and recorded by the A.O. in the reasons. However, till date, no such report has been produced on record for verification of the Tribunal. It may be noted that though in the reasons the A.O. has mentioned that value of the entry was of

Rs.5,00,545/- but ultimately the A.O. made addition of Rs.5 lakhs in the case of M/s. V.R. Traders Pvt. Ltd., in which case accommodation entry is stated to have been received. There is, thus, a factual error in the reasons recorded for reopening of the assessment regarding the amount of the accommodation entry. In the present case, the A.O. has merely reproduced the precise information which he has received from Investigation Wing of the Revenue Department and reproduced the same in the reasons recorded under section 148 of the I.T. Act, 1961, which was not produced for our perusal. It would show that assessee has received the amount of 03 credits through banking channel by mentioning the names of the parties and cheque numbers, name of the Bank with amount. The A.O. has not gone through the details of these information and has not even applied his mind and merely concluded that the transactions seems not to be genuine, therefore, A.O. was not sure whether transaction was genuine or not. Then, he has merely further concluded that he has reason to believe that amount of Rs.5,00,545/- represents income of the

assessee chargeable to tax which has escaped assessment. These reasons to believe are, therefore, not in fact reasons but, only conclusion of the A.O. The expression “accommodation entry” is used to describe the information set-out without explaining the basis for arriving at such conclusion. Even the A.O. has not stated in the reason that he has gone through the reports of the Investigation Wing. The A.O. merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment, without arriving at his satisfaction. The reasons to believe contain no reason, but, the conclusion of the A.O. without any basis. Even no name of entry provider has been mentioned who has provided accommodation entry. Thus, there is no independent application of mind by the A.O. to the report of the Investigation Wing which formed the basis for reasons to believe that income chargeable to tax has escaped assessment. The conclusion of the A.O. in the reasons are at the best reproduction of conclusion of the Investigation Report. It is merely followed which is not permissible in law.

The A.O. has not brought anything on record on the basis of which any nexus could have been established between the material and the escapement of income. The reasons fails to demonstrate the link between the alleged tangible material and formation of the reason to believe that income has escaped assessment. The Hon'ble Delhi High Court in the case of Pr. CIT vs. G & G Pharma India Ltd., (2016) 384 ITR 147 (Del.) held as under :

“The basic requirement of law for reopening an assessment is application of, mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied- a post mortem exercise of analysing materials produced subsequent to the. reopening will not make an inherently defective reassessment order valid. ;

The assessee filed returns for the assessment year 2003-04 which was processed under section 143(3) of the Income-tax Act, 1961. Based on information received from

the Directorate of Investigation about four entries, stated to have been received by the assessee on a single date, i.e., February 10, 2003} from four entities which were termed as accommodation entries, the Assessing Officer issued notice to the assessee for reassessment for the assessment year 2003-04 on March 19, 2010 stating that it was evident that the assessee company had introduced its own unaccounted money in its bank by way of accommodation entries. The assessee's appeal was dismissed by the Commissioner (Appeals). The Tribunal concluded, from the reasons recorded, that the¹ Assessing Officer issued notice only on the basis of information received from the Investigation Wing but without coming to an independent conclusion for reason to believe that income had escaped assessment and allowed the appeal of the assessee. On appeal:

Held, dismissing the appeal} that once the date on which the so-called accommodation entries were provided was known, it would not have been difficult for the Assessing Officer, if he had in fact undertaken the

exercise, to make a reference to the manner in which those very entries were provided in the accounts of the assessee, which must have been tendered along with the return, which was filed on November 14 2004 and was processed under section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company -as introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment. The order of the Tribunal was proper. No question of law arose.”

6.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (I) Ltd., (2017) 396 ITR 5 (Del.) held as under:

“The assessee filed its return for the assessment year 2008-09 and assessment was made under section 143(1) of the Income-tax Act, 1961. The Assessing Officer issued a notice for reassessment based on information received from the Investigation Wing that the assessee was the beneficiary of certain accommodation entries, which were given in the garb of share application money or expenses or gifts or purchase of shares during the period relevant to the assessment year 2004-05. He recorded that the assessee had not filed a return for the assessment year 2004-05, as there was no return available in the database of the Department, and that consequently he had not offered any income for taxation. On appeal:

Held, dismissing the appeal that no link between the tangible material and the formation of the

reasons to believe that income had escaped assessment, could be discerned. The information received from the Investigation Wing was not tangible material per se without a further enquiry having been undertaken by the Assessing Officer, who had deprived himself of that opportunity by proceeding on the erroneous premise that the assessee had not filed a return for the assessment year, 2004-05, when in fact it had. In his assessment order, the Assessing Officer had, instead of adding a sum of Rs.78 lakhs, even going by the reasons for reopening of the assessment, added a sum of Rs.1.13 crores and the basis for such addition had not been explained. No error was committed by the Appellate Tribunal in holding that reopening of the assessment under section 147 was bad in law. No question of law arose.”

6.2. The ITAT, Delhi E-Bench in the case of M/s. MRY Auto Components Ltd., vs. ITO (supra), on identical facts, following the decision of the Hon'ble Delhi High Court in the

case of Meenakshi Overseas Pvt. Ltd., (supra), set-aside and quashed the reopening of the assessment. The findings of the Tribunal in paras 2 to 7 are reproduced as under :

“2. Briefly the facts of the case are that information was received from Investigation Wing of Department to the effect that the assessee was a beneficiary in accommodation entry racket being run by certain persons. It had reportedly received certain accommodation entries during the year under assessment. The assessee is registered in Delhi and as per the alphabetical jurisdiction in the case of corporate assessee, the jurisdiction over the assessee lies with the Ward of the A.O. The information was considered and notice under section 148 was issued on 26th March, 2010 after duly recording the reasons as required by provisions of law. The details regarding address of the assessee-company and its Directors were obtained from the Official website of the Ministry of Corporate Affairs. Assessee filed letter dated 30.11.2010, filed a return declaring NIL income in response to notice under section

148 of the Act along with copy of the balance sheet. The reasons recorded on issuance of notice under section 148 were provided to the assessee vide letter dated 30th October, 2010 which are reproduced in the assessment order as under :

“...The Investigation wing of the Income Tax Department had unearthed a huge money laundering mechanism wherein it was established that bogus accommodation entities were being provided/taken. These accommodation entries are received in lieu of payment of cash of equivalent amount plus commission thereon to the entry operator. For obvious reasons, these cash transactions are not routed through the books of account of the assessee. In this case, information has been received from Directorate of Income Tax, (Investigation), New Delhi that during the relevant assessment year, this assessee had received the following cheque amount(s) in nature of accommodation entry :

Value of entry taken	Instrument No. by which entry taken	Date on which entry taken	Name of account holder of entry giving account	Bank from which entry given	Branch of entry giving bank	A/c. no. entry giving account
300375		13-Mar-03	Rahul Finlease P. Ltd.,	SB Patiala	Darya Ganj	50082
300315		26-Mar-03	Kuldeep Textiles (P) Ltd.,	SBBJ	NRR	24624
400415		27-Mar-03	Division Trading Pvt. Ltd.,	SBBJ	NRR	24620

Therefore, I have reason to believe that an income of Rs.10,01,105/- plus commission @ 2% thereon amounting to Rs.20,022/- totaling to Rs.10,21,127/- has escaped assessment during the assessment year. On the basis of this information, I have reason to believe that the incomes described above have escaped assessment and the case is fit for issuing. Notice u/s 148 of Income Tax Act, 1961."

2.1. The A.O. noted that assessee has not filed any objections to the validity of the notice issued under section 148 of the Act. The assessee informed the A.O. that it has had no transaction with M/s. Kuldeep Textiles (P) Ltd., as noted in the reasons. The assessee

filed details to show that addition to the amounts mentioned above from RahulFinlease P. Ltd., and Division Trading Pvt. Ltd., it had received money allegedly towards share capital from the three other companies as well. The total amount of money received from these entities towards share capital is noted at page-3 of the assessment order totaling to Rs.27 lakhs from five parties. The A.O. after discussion made addition of Rs.27 lakhs to the income of the assessee company under section 68 of the I.T. Act and also disallowed Rs.54,000 being commission paid for taking these accommodation entries. Income of the assessee was computed at Rs.27,54,000. The assessee challenged the reopening of the assessment as well as addition on merit before the Ld. CIT(A). However, the Ld. CIT(A), dismissed the appeal of assessee.

3. *Learned Counsel for the Assessee submitted that the issue is covered in favour of the assessee by the recent Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd.,*

reported in 395 ITR 677 (Del.). He has also relied upon the decision of the Hon'ble Bombay High Court in the case of General Electoral Trust vs. ITO 289 CTR 284 (Bom.) on the proposition that non-filing of the return of income does not ipso-facto give jurisdiction to reopen the assessment. He has also relied upon the decision of ITAT, Delhi 'G' Bench, in the case of Mrs. Sonia Choudhary vs. ITO, Ward-47(1), New Delhi dated 07th October, 2016, ITA.Nos.2036 & 2037/Del./2010, in which on the identical reasons for reopening of the assessment, the re-assessment proceedings have been quashed. Learned Counsel for the Assessee, therefore, submitted that reopening of the assessment may be quashed in this case.

4. *The Ld. D.R. on the other hand, relied upon the orders of the authorities below.*

5. *We have considered the rival submissions. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd., (supra), in paras 19 to 38 held as under :*

“19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation

was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to be believe that an income of Rs.5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment.. "

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry

operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under [Section 147](#) is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income

has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of [Section 147](#) (1) of the Act.

25. At this stage it requires to be noted that since the original assessment was processed under [Section 143](#) (1) of the Act, and not [Section 143](#) (3) of the Act, the proviso to [Section 147](#) will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of [Section 147](#) (1) of the Act requires the AO to have "reasons to believe" that any income

chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under [Section 147](#) of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

27. Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the AO for a valid assumption of

jurisdiction under [Section 147](#) of the Act to reopen a past assessment.

28.1. [In Signature Hotels Pvt. Ltd. v. Income Tax Officer](#) (supra), the reasons for reopening as recorded by the AO in a proforma and placed before the CIT for approval read thus:

"11. Reasons for the belief that income has escaped assessment.- Information is received from the DIT (Inv.-1), New Delhi that the assessee has introduced money amounting to Rs. 5 lakh during the F.Y. 2002-03 relating to A.Y. 2003-04. Details are contained in Annexure. As per information amount received is nothing but accommodation entry and assessee is a beneficiary."

28.2. The Annexure to the said proforma gave the Name of the Beneficiary, the value of entry taken, the number of the instrument by which entry was taken, the date on which the entry was taken, Name of the account holder of

the bank from which the cheque was issued, the account number and so on.

28.3. Analysing the above reasons together with the annexure, the Court observed:

"14. The first sentence of the reasons states that information had been received from Director of Income-Tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure, reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.

15. The aforesaid reasons do not satisfy the requirements of [Section 147](#) of the Act. The reasons and the information referred

to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

28.4. The Court in [Signature Hotels Pvt. Ltd. v. Income Tax Officer](#) (supra) quashed the proceedings under [Section 148](#) of the Act. The facts in the present case are more or less similar. The present case is therefore covered against the Revenue by the aforementioned decision.

29.1. The above decision can be contrasted with the decision in [AGR Investment v. Additional Commissioner of Income Tax](#) (supra), where the 'reasons to believe' read as under:

"Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/accommodation entries provided by certain individuals/companies. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. In the said information, it has been inter-alia reported as under:

"Entries are broadly taken for two purposes:

1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.

2. To inflate expense in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

It has been revealed that the following entries have been received by the assessee:...."

29.2. The details of six entries were then set out in the above 'reasons'. These included name of the beneficiary, the beneficiary's bank, value of the entry taken, instrument number, date, name of the account in which entry was taken and the account from where the entry was given the details of those banks. The reasons then recorded:

"The transactions involving Rs. 27,00,000/-, mentioned in the manner above, constitutes fresh information in

respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income/income from other sources of the assessee company, which has not been offered to tax by the assessee till its return filed.

On the basis of this new information, I have reason to believe that the income of Rs.27,00,000/- has escaped assessment as defined by [section 147](#) of the Income Tax Act. Therefore, this is a fit case for the issuance of the notice under [section 148](#)."

29.3. The Court was not inclined to interfere in the above circumstances in exercise of its writ jurisdiction to quash the proceedings. A careful perusal of the above reasons reveals that the AO does not merely reproduce the information but takes the effort of revealing what is contained in the investigation report specific to the Assessee. Importantly he notes that the information obtained was 'fresh' and had not been offered by the Assessee till its return pursuant to the notice issued to it was filed. This is a crucial

factor that went into the formation of the belief. In the present case, however, the AO has made no effort to set out the portion of the investigation report which contains the information specific to the Assessee. He does not also examine the return already filed to ascertain if the entry has been disclosed therein.

30.1. [In Commissioner of Income Tax, New Delhi v. HighgainFinvest \(P\) Limited](#) (2007) 164 Taxman 142 (Del) relied upon by Mr. Chaudhary, the reasons to believe read as under:

"It has been informed by the Additional Director of Income Tax (Investigation), Unit VII, New Delhi vide letter No. 138 dated 8th April 2003 that this company was involved in the giving and taking bogus entries/ transactions during the financial year 1996-97, as per the deposition made before them by Shri Sanjay Rastogi, CA during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transaction of this nature are as under:

<i>Date</i>	<i>Particulars of cheque</i>	<i>Debit Amt.</i>	<i>Credit Amt</i>
18.11.96	305002		5,00,000

Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the PNB, New Rohtak Road, New Delhi.

Note: It is noted that there might be more such entries apart from the above.

The return of income for the assessment year 1997-98 was filed by the Assessee on 4th March 1998 which was accepted under [Section 143](#) (1) at the declared income of Rs. 4,200. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs. 5,00,000 (as mentioned above) has escaped the assessment within the meaning of the proviso to [Section 147](#) and clause (b) to the Explanation 2 of this section.

Submitted to the Additional CIT, Range -12, New Delhi for approval to issue notice

under [Section 148](#) for the assessment year 1997-98, if approved."

30.2. The AO was not merely reproducing the information received from the investigation but took the effort of referring to the deposition made during the survey by the Chartered Accountant that the Assessee company was involved in the giving and taking of bogus entries. The AO thus indicated what the tangible material was which enabled him to form the reasons to believe that income has escaped assessment. It was in those circumstances that in the case, the Court came to the conclusion that there was prima facie material for the AO to come to the conclusion that the Assessee had not made a full and true disclosure of all the material facts relevant for the assessment.

31. [In Commissioner of Income Tax v. G&G Pharma](#) (supra) there was a similar instance of reopening of assessment by the AO based on the information received from the DIT (I). There again the details of the entry

provided were set out in the 'reasons to believe'. However, the Court found that the AO had not made any effort to discuss the material on the basis of which he formed prima facie view that income had escaped assessment. The Court held that the basic requirement of [Section 147](#) of the Act that the AO should apply his mind in order to form reasons to believe that income had escaped assessment had not been fulfilled. Likewise in [CIT-4 v. Independent Media P. Limited](#) (supra) the Court in similar circumstances invalidated the initiation of the proceedings to reopen the assessment under [Section 147](#) of the Act.

32. [In Oriental Insurance Company Limited v. Commissioner of Income Tax](#) 378 ITR 421 (Del) it was held that "therefore, even if it is assumed that, in fact, the Assessee's income has escaped assessment, the AO would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the

assessment, the question of assessing or reassessing income under [Section 147](#) of the Act would not arise."

33. In Rustagi Engineering Udyog (P) Limited (supra), it was held that "...the impugned notices must also be set aside as the AO had no reason to believe that the income of the Assessee for the relevant assessment years had escaped assessment. Concededly, the AO had no tangible material in regard to any of the transactions pertaining to the relevant assessment years. Although the AO may have entertained a suspicion that the Assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under [Section 147](#) of the Act. A reason to believe - not reason to suspect - is the precondition for exercise of jurisdiction under [Section 147](#) of the Act. "

34. Recently in [Agya Ram v. CIT](#) (supra), it was emphasized that the reasons to believe "should have a link with an objective fact in the form of information or materials on record..." It was further emphasized that "mere allegation

in reasons cannot be treated equivalent to material in eyes of law. Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessments."

35. In the decision of this Court dated 16th March 2016 in W.P. (C) No. 9659 of 2015 ([Rajiv Agarwal v. CIT](#)) it was emphasized that "even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment."

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO

are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under [Section 147/148](#) of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs".

5.1. *In this case, the reasons for reopening are also reproduced in the judgment of the Hon'ble Delhi*

High Court in which similarly information has been received from Director of Income Tax (Investigation), New Delhi that assessee has received amount of Rs.5 lakhs. The A.O. on going through the information found that it is an accommodation entry and reopened the assessment. In the instant case under appeal, the A.O. has reproduced the precise information he has received from Investigation Wing of the Revenue and reproduced the same in the reasons recorded under section 148 of the I.T. Act. This information shows that assessee has received the amount of credit through banking channels by mentioning names of the parties and cheque nos. with amount. This information by itself cannot be said to be tangible material. The A.O. has not gone through the details of these information and has not even applied his mind and merely concluded that he has reason to believe that income chargeable to tax has escaped assessment. The reason to believe are therefore, not in fact reasons but only conclusion of the A.O. The expression “accommodation entry” is used to describe

the information set-out without explaining the basis for arriving at such conclusion. In the case of Meenakshi Overseas Pvt. Ltd., (supra), the A.O. in the reasons has even mentioned that he has gone through the information so received which is lacking in the instant case. The A.O. being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. The A.O. however, merely repeated the report of Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment without arriving at his satisfaction. The reason to believe contain no reason but the conclusion of A.O. without any basis. Thus, there is no independent application of mind by the A.O. to the report of Investigation Wing which form the basis for reasons to believe that income has escaped assessment. The conclusion of the A.O. in the reason are at best reproduction of conclusion of the Investigation report. It is borrowed satisfaction not permissible in law. The reasons fail to demonstrate the

link between the alleged tangible material and the formation of the reason to believe that income has escaped assessment. The issue is therefore, identical in the present appeal as has been considered and decided by the Hon'ble Delhi High Court in the case of Meenakshi Overseas Pvt. Ltd., (supra). The issue is therefore, covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of Meenakshi Overseas Pvt. Ltd., (supra).

5.2. *The Hon'ble Bombay High Court in the case of General Electoral Trust vs., ITO (supra) held as under:*

“Non-filing of return of income and/or not obtaining of PAN does not ipso facto give jurisdiction to reopen an assessment under section 147/148, prima facie jurisdiction even in case of non-filing of the return of income, to issue notice of reopening notice is a reasonable belief of the Assessing Officer that income chargeable to tax has escaped assessment.”

5.3. *The Learned Counsel for the Assessee also relied upon the order of ITAT, Delhi “G” Bench in the case of Mrs. Sonia Choudhary vs. ITO (supra), in which on identical facts the reopening of the assessment have been quashed.*

5.4. *In view of the above, reopening of assessment in the facts and circumstances of the case are not justified and have to be quashed.*

6. *Considering the facts and circumstances of the case, in the light of above discussion and decision of the Hon’ble Delhi High Court in the case of Meenakshi Overseas Pvt. Ltd., (supra), we set aside the orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act. Resultantly, the entire additions of Rs.27,54,000 are deleted. Since the reopening of the assessment is quashed, therefore, there is no need to decide the addition on merit.*

7. *In the result, appeal of the assessee is allowed.”*

6.3. Considering the above discussion, it is clear that there is a total non-application of mind on the part of the A.O. while recording the reasons for reopening of the assessment. He has recorded incorrect amount which escaped assessment. His conclusion was merely based on observations and information received from DIT (Inv.), New Delhi, which is not brought on record and his conclusion is merely based on doubts because he was not sure whether transaction in question is genuine or not. Therefore, the decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case. The decisions relied upon by the Ld. D.R. would not support the case of the Revenue. Since, there is a total lack of mind while recording the reasons for reopening of the assessment, therefore, assumption of jurisdiction under section 147/148 of the I.T. Act, 1961, is bad and illegal. The A.O. was not justified in assuming jurisdiction under section 147/148 of the I.T. Act, 1961. We, therefore, hold

that reopening of the assessment in the matter is bad in law and illegal, as such, same cannot be sustained in law. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted.

7. In the result, appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th February, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.