IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12615 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 18899 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE ILESH J. VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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MEHRUNNISA MOHAMED FAZAL MANIAR
Versus
INCOME TAX OFFICER

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Appearance:
MR DARSHAN R PATEL(8486) for the Petitioner(s) No. 1
MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 20/01/2021
COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 Since the issues raised in both the captioned writ applications are interlinked, those were taken up for hearing analogously and are being

disposed of by this common judgement and order.

2 For the sake of convenience, the Special Civil Application No.12615 of 2019 is treated as the lead matter.

3 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

> *"(A) Issue a writ of mandamus and/or a writ of certiorari and/or any other writ direction or order to quash and set aside the impugned notice under Section 148 dated 29.3.2019 at Annexure 'A' and objection rejection order dated 15.07.2019 at Annexure 'F' and all subsequent proceedings in continuity of the same and allow the petition as prayed for.*
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> *(B) Pending admission, hearing and disposal of this petition, ad-interim relief be granted and the Hon'ble Court may pleased to stay the operation, implementation and execution of the impugned notice under Section 148 dated 29.3.2019 at Annexure 'A' and objection rejection order dated 15.07.2019 at Annexure 'F'.*
>
> *(C) Award the costs of this petition.*
>
> *(G) Grant such other and further reliefs as this Hon'ble Court deems fit."*

4 The facts giving rise to this writ application may be summarized as under:

4.1 The subject matter of challenge in the present litigation is to the notice issued under Section 148 of the Income Tax Act, 1961 dated 29th March 2019 for the purpose of reopening of the assessment for A.Y. 2012-13.

4.2 The writ applicant is an individual. For the assessment year 2012-13, the writ applicant had filed a return of income on 27th September 2012 declaring the total income of Rs.10,35,770/-. Such return was accepted without scrutiny under Section 143(1) of the Income Tax, 1961

(for short, 'the Act'). To reopen such assessment, the impugned notice came to be issued by the Assessing Officer dated 14th May 2019. In order to do so, the Assessing Officer recorded the following reasons:

> *"2. In this case, information and documentary evidences were from the office of the DDIT (Inv), Unit 1(3), Ahmedabad vide his letter No.DDIT(Inv)-1(3)/AJHD/S&S/JSSS/15 Scrips/Disssemination/ ACDPJ5838L/2018-19 dated 25.03.2019 received through mail on 25.03.2019, wherein, it was intimated that the search u/ 132 action was on 11.09.2018 in the case of Jignesh Shah, an accommodation entry provider of Ahmedabad. The search resulted into seizure of unaccounted cash of Rs.19.3 Crores (related to accommodation entries and commission earned thereon) from residential of Jignesh Shah along with incriminating digital as well as documentary evidences. It was found during investigation that Jignesh S Shah is managing and controlling multiple companies and concerns, which are not carrying out any genuine business activity. These concerns are involved into activity of providing accommodation entries of various kinds such ass unsecured loans, share premium, bogus gains, contrived losses etc. The concerns were found to be non-existent at their address. The directors of companies/persons in whose names concerns are registered admitted by way of filing affidavits that the companies/concerns are not carrying out genuine business activities and engaged into providing accommodation entries through Jignesh S Shah. The DDITI(Inv) has concluded from the investigation that the assessee Mehrunisssa M Fazal Maniar had obtain accommodation entries of Rs.25,00,000/- from Maninak Comtrade Pvt Ltd and Purvanial Trade and Commerce Pvt Ltd through Dhanlaxmi bank transfer during the F.Y. 2011-12.*
>
> *3. I have gone through the information received from the Ahmedabad Investigation Wing and I have also analyzed the material and the return for A.Y. 2012-13 filed by the assessee. On the basis of the material, it is gathered that the assessee has entered into bogus/accommodation entry transaction of Rs.25,00,000/-. The directors and the concerns persons in whose name these entities are registered, admitted by way of filing affidavit that the companies are not carrying out any genuine business and engaged into providing accommodation entries through Jignesh Shah. Therefore, the assessee has maneuvered a sum total of Rs.25,00,000/- by not showing his otherwise true income during the year under consideration by adopting fraudulent means and through a predesigned nexus.*
>
> *4 As per the above discussion, I have reason to believe that undisclosed income of Rs.25,00,000/- on account of obtained accommodation entries from Mainak Comtrade Pvt Ltd and Purvanil Trade and Commerce Pvt Ltd has escaped assessment for A.Y. 2012-13*

and I intend to reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice subsequently in the course of the proceedings under this Section.

5 In this case a return of income was filed for the year under consideration but no scrutiny assessment u /s. 143(3) of the IT Act was made. Accordingly, in this case only requirement to initiate proceedings u/s 147 of the IT Act is reason to believe which has been recorded above.

6 In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax ha escaped assessment.

7 In this case more than four years have lapsed from the end of the assessment year under consideration. Hence necessary sanction to issue notice u/s 148 of the Act is requested for approval from the Principal Commissioner of Income Tax-1, Ahmedaad as per provision of section 151 of the Act."

5 The writ applicant raised detailed objections to the notice of reopening under a communication dated 11th July 2019. Such objections were rejected by the Assessing Officer on 15th July 2019, upon which, this writ application came to be filed.

6 Mr. Darshan R. Patel, the learned counsel appearing for the writ applicant raised the following contentions:

(1) There is no material to come to the conclusion that the income in the case of the assessee has escaped assessment.

(2) The Assessing Officer has proceeded entirely on the basis of the information supplied to it by the Ahmedabad Investigation Wing and the investigation is going on without making any independent inquiry on its own. The Assessing Officer has thus proceeded on the borrowed satisfaction.

(3) The Assessing Officer wishes to make fishing inquiry.

(4) While according sanction under Section 151 of the Act for the purpose of issue of notice under Section 148 of the Act, the Joint CIT Range – 1(2), Ahmedabad and the Principal CIT – 1, Ahmedabad has only recorded, "yes, I am satisfied". This, according to Mr. Patel, is nothing, but a mechanical recording of satisfaction without proper application of mind.

7 On the other hand, this writ application has been vehemently opposed by Mrs. Mauna Bhatt, the learned Senior Standing Counsel appearing for the Revenue. The learned Standing Counsel for the Revenue raised the following contentions:

(1) The return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by the assessee.

(2) The concept of change of opinion would therefore have no application in the present case.

(3) At the stage of reopening of the assessment, the Court may not minutely examine the possible additions which the Assessing Officer wishes to make.

(4) The scrutiny at that stage would be limited to examine whether the Assessing Officer had formed a valid belief on the basis of the material available with him that the income chargeable to tax had escaped assessment.

8 In such circumstances referred to above, the learned Standing Counsel appearing for the Revenue would submit that there being no merit in this writ application, the same be rejected.

● **ANALYSIS:**

9 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the notice of reopening issued under Section 148 of the Act should be quashed and set aside.

10 The return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by assessee. The concept of change of opinion would, therefore, have no application. It is equally well settled that at the stage of re-opening of the assessment, the court would not minutely examine the possible additions which the Assessing Officer wishes to make. The scrutiny at that stage would be limited to examine whether the Assessing Officer had formed a valid belief on the basis of the material available with him that the income chargeable to tax had escaped assessment. Both these aspects have been examined by the Supreme Court in **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd. [{2007) 291 ITR 500 (SC)]** of which following observations may be noted:

> *"13. One thing further to be noticed is that intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from April 1, 1989 to March 31, 1998, the second proviso to section 143(1)(a), required that where adjustments were made under the first proviso to section 143(1)(a),*

an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till June 1, 1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between April 1, 1998 and May 31, 1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word intimation as substituted for assessment that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to section 143 by the Finance (No. 2) Act of 1991 with effect from October 1, 1991, and subsequently with effect from June 1, 1994, by the Finance Act, 1994, and ultimately omitted with effect from June 1, 1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under section 143(1) (a) was deemed to be an order for the purposes of section 246 between June 1, 1994, to May 31, 1999, and under section 264 between October 1, 1991, and May 31, 1999. It is to be noted that the expressions intimation and assessment order have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, I.e., to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J) in Apogee International Limited v. Union of India [(1996) 220 ITR 248]. It

may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any assessment is done by them? The reply is an emphatic no. The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.

16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in ***Central Provinces Manganese Ore Co. Ltd. v. ITO [1991 (191) ITR 662],*** *for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see* ***ITO v. Selected Dalurband Coal Pvt. Ltd. [1996 (217) ITR 597 (SC)]*** *;* ***Raymond Woollen Mills Ltd. v. ITO [1999 (236) ITR 34 (SC)].”***

11 The aforesaid aspects have also been reiterated by the Supreme Court in the later judgment in the case of **Deputy Commissioner of Income Tax and another v. Zuari Estate Development and**

Investment Company Limited [(2015) 373 ITR 661 (SC)].

12 In the present case, the Assessing Officer has considered the material on record which would *prima facie* suggest that the assessee had sold number of shares of a company which was found to be indulging in providing bogus claim of long term and short term capital gain. The company was *prima facie* found to be a shell company. The assessee had claimed exempt of long term capital gain of Rs.25,00,000/- (Twenty Five Lakh) by way of sale of shares of such company.

13 In the judgment in the case of Principal **Commissioner of Income Tax, Rajkot-3 v. Gokul Ceramics [Taxman Vol. 241 {2016) 241],** the Division Bench of this Court had examined the contention of the Assessing Officer proceeded on the basis of the information supplied by the department, and after referring to the several judgments, made following observations in para 9 which read thus:

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

14 In the case on hand, the information was received by the Assessing

Officer supported by documentary evidence that the search under Section 132 of the Act carried out in the case of Jignesh Shah on 11th September 2018 had revealed that he is an accommodation entry provider operating in Ahmedabad. The search resulted into the seizure of unaccounted cash of Rs.19.3 Crore (related to accommodation entries and commission earned thereon). The seizure of unaccounted cash was from the residential premises of Jignesh Shah along with incriminating digital as well as documentary evidences. The information further reveals that the writ applicant herein had obtained accommodation entries of Rs.25 Lakh from Mainak Comtrade Private Limited and Purvanil Trade and Commerce Private Limited through Dhanlaxmi Bank transfer during the F.Y. 2011-12.

15 It is the case of the Revenue that the assessee has entered into a bogus / accommodation entry transaction.

16 The case on hand is not a case where the Income Tax Officer seeks to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the materials placed before him by the assessee relating to the transfer of Rs.25 Lakh through the Dhanlaxmi Bank during the F.Y. 2011-12 and which he failed to draw at that time. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment, which goes to expose the falsity of the statement made by the assessee at the time of original assessment is different from drawing a fresh inference from the same facts and material which was available with the I.T.O. at the time of the original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself on the basis of the subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment

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

17 From the various judicial pronouncement on the subject, over a period of time, the following principles can be culled out:

[i] To confer jurisdiction to the Assessing Officer to reopen the assessment under Section 147 of the Income Tax Act, beyond four years from the end of assessment year, the following two conditions must be satisfied:

[a] that the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment; and that

[b] same occasioned, on account of either failure on the part of the assessee to make a return of his income for that assessment year, or to disclose fully and truly all material facts necessary for

assessment of that year.

18 As held by the Apex Court in **Phool Chand Bajrang Lal v. Incometax Officer** reported in **203 ITR 456 (SC)** where transaction itself on the basis of subsequent information is found to be a bogus transaction, the Court held that mere disclosure of such transaction at the time of original assessment proceedings, cannot be said to be a disclosure of 'full' and 'true' facts and the Assessing Officer surely would have the jurisdiction to reopen a concluded assessment in such a case. The Apex Court also had observed in the said case that the Assessing Officer may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed, or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and nonspecific information. To that limited extent, the Court may look the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by him and further whether that material had any rational connection or a live link with the formation of the requisite belief.

19 We now come to the second argument of the writ applicant as regards the validity of the sanction. The proposal in writing put forward

by the Income Tax Officer seeking approval from the Principal Commissioner of Income Officer – 1 under Section 151 of the Act for the purpose of reopening of the assessment under Section 147 of the Act reads thus:

> *"Reasons for reopening the assessment in the case of Mehrunisa M Fazal Maniar for A.Y. 2012-13 u/s 147 of the I.T. Act*
>
> *The assessee is an individual who had filed his return of income for the A.Y. 2012-13 on 27.09.2012 declaring total income at Rs.10,35,770/-.. The return of income was processed u/s. 1430) of the IT Act.*
>
> *2. In this case' information and documentary evidences were received from the office of the DDIT (lnv), Unit 1(3), Ahmedabad vide his letter No. DD|T(lnv.)-1(3)/AHDIS&S/JSSS/15 Scrips/Disseminatíon/ ACDPJ5838U2018-19 dated 25.03.2019 received through mail on 25.03.2019, wherein, it was intimated that the search u/s 132 action was on 11.09.2018 in the case of Jignesh Shah, an accommodation entry provider of Ahmedabad. The search resulted into seizure of unaccounted cash of Rs. 19.3 Crores (related to accommodation entries and commission named thereon) from residential premises ot Jignesh Shah along with incriminating digital as well as documentary evidences. lt was found during investigation that Jignesh S Shah is managing and controlling multiple companies and concerns, which are not carrying out any genuine business activity. These concerns are involved into activity of providing accommodation entries of various kinds such as unsecured loans, share premium, bogus gains, contrived losses etc. The concerns were found to be non-existent at their address. The directors of companies/persons in whose names concerns are registered admitted by way of ruling affidavits that the companies! concerns are not carrying out genuine business activities and engaged into providing accommodation entries through Jignesh S Shah. The DDIT (Inv) has concluded from the investigation that the assessee Mehrunissa M Fazal Maniar had obtain accommodation entries of Rs.25,00.000lfrom Mainak Comtrade Pvr Ltd. and Purvanit Trade and Commerce Pvt. Ltd. through Dhanlaxmi bank transfer during the F.Y.2011-12.*
>
> *3. I have gone through the information received from the Ahmedabad Investigation Wing and I have also analyzed the material and the return of income for A.Y. 2012-13 filed by the assessee. On the basis of the*

material. it is gathered that the assessee has entered into bogus / accommodation entry transaction of Rs.25,00,000l-. The directors and the concerned persons in whose name these entities are registered, admitted by way of filing affidavit that the companies are not carrying out any genuine business and engaged into providing accommodation entries through Jignesh Shah. Therefore, the assessee has maneuvered a sum total of Rs.25,00,000/by not showing his otherwise true income during the year under consideration by adopting fraudulent means and through a predesigned nexus.

4. As per the above discussion, I have reason to believe that undisclosed income of Rs.25,00,000/on account of obtained accommodation entries from Mainak Comtrade Pvr Ltd. and Purvanit Trade and Commerce Pvt. Ltd. has escaped assessment for A.Y. 2012-13 and I intend to reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to the notice subsequently in the course of the proceedings under this section.

5. In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s. 143(3) of the IT Act was made. Accordingly, in this case only requirement to initiate proceedings u/s 147 of the IT Act is reason to believe which has been recorded above.

6. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

7. In this case more than four years have lapsed from the end of the assessment year under consideration. Hence necessary sanction to Issue notice u/s. 148 of the Act is requested for approval from the Principal Commissioner of Income Tax-1, Ahmedabad as per provisions of section 151 of the Act.

Date : 27/3/2019 *sd/-*

(Girish M Parmar)
Income Tax officer.
Ward-1(2)(3), Ahmedabad.

Recommendation of the Jt. CIT Range-1(2), Ahmedabad

In view of the above reasons recorded by the Assessing Officer, I am satisfied that this is a fit case for reopening of asssesment u/s 147 of the IT Act, 1961 for above mentioned assessment year in the case of the assessee.

Date : 27/3/19

sd/-
(Uma Shankar Prasad)
Jr CIT, Range -1(2), Ahmedabad

Approval of the PCIT-1, Ahmedabad.

Based on the above reasons recorded by the Assessing Officer, I am satisfied that this is a fit case for reopening of assessment u/s 147 of the I.T. Act, 1961.

Date: 23 Mar 2019

sd/-
(Pradip Mehrotra)
Pr. CIT-1, Ahmedabad."

20 It can thus be seen from the above that the entire proposal along with the necessary details and the reasons recorded by the Income Tax Officer were placed before the Joint CIT and Principal CIT, who, upon perusal of the same, in their own hands, recored their satisfaction that it was a fit case for issuance of notice under Section 148 of the Act.

21 This Court, in the case of **Lalita Ashwin Jain vs. Income Tax Officer reported in 2014 (363) ITR 343**, in the context of such requirement, had made the following observations:

"17.4 However, so as to aver such allegations of non-application of mind all that is desirable is that the Joint Commissioner should briefly state his reasons. However, only because he has nodded in favour of Assessing Officer by writing 'yes' to the reasons recorded and accorded permission for reopening of the assessment, the notice of reopening on that count alone cannot fail holding that the assumption of jurisdiction under Section 147 is invalid, if application of mind is demonstrable from the material on record. From th record, it emerges that the reasons recorded were placed before the Assistant Commissioner alongwith other details in prescribed format. It was only after perusing such details that the Assistant

Commissioner agreed that it was a fit case for issuing notice under Section 148 of the Act. Thus, this is not a case where such permission can be stated to have been granted without application of mind. We are satisfied from the overall facts and circumstances that the provisions of the Act are duly complied with in the action of the Joint Commissioner."

22 For the foregoing reasons, this writ application fails and is hereby rejected. The connected writ application also fails for the foregoing reasons and the same is also rejected.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

CHANDRESH