IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'G': NEW DELHI
(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.1855/Del/2016
Assessment Year : 2007-08

M/s VSR Enterprises, **House No. G-146-A, Khasra** **No.1/24, Shiv Ram Park,** **Nilothi Nangloi,** **New Delhi-110041,** **PAN-AAFFV5459F**	**Vs.**	**ITO,** **Ward-27(4),** **New Delhi**
(Appellant)		**(Respondent)**

Appellant by : Sh. P.C. Yadav, Adv.
Respondent by : Sh. Prakash Dubey, Sr. DR

Date of hearing : 23.03.2021
Date of pronouncement : 18.05.2021

ORDER

PER R.K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 29.01.2016 of the learned CIT(A)-17, New Delhi, relating to Assessment Year 2007-08.

2. Facts of the case, in brief, are that the assessee is a partnership firm and engaged in the business of import and export of auto parts. It filed its original return of income on 30.10.2007 declaring total income of Rs.7,05,890/-. Subsequently, the Assessing Officer reopened the case u/s 147 of the Act by recording the following reasons:-

" Information has been received from REIC through ITO Ward 43(4) New Delhi that M/s VST Enterprises Bank A/c No.43750 with Punjab & Sind Bank, Fatehpuri, Delhi, reveals an inflow of Rs.72 lakhs in cash and Rs.1.82 crores from Foreign Sources in 2007. According to the information, M/s VSR Enterprises is part of a Syndicate involved in smuggling of Red Sanders Wood run by one Shri Shekhar. The syndicate involved in trading of banned items across the borders such as exotic herbs, such as Ashwagandha, Peacock feather and a host of items wide name :pyaaz, "Aalu", "Adrak" and "Seb".

After considering carefully the contents and nature of the information available before me, I have reason to believe that income chargeable to tax has escaped assessment in the case of M/s VSR Enterprises for Asstt. Year 2007-08. Hence, proceeding u/s 147 of the I.T. Act, 1961 initiated.

Issue notice u/s 148 for the Asstt. Year 2007-08"

3. The Assessing Officer accordingly issued notice u/s 148 of the Act on 13.04.2011. In response to the same, the assessee vide letter dated 28.10.212 stated that the return filed originally on 30.10.2007 may be treated as return filed in response to notice u/s 148 of the Act.

4. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the various credit entries appearing in the bank account and also explain the reasons for cash withdrawal from the bank account. Various opportunities were granted by the Assessing Officer to the assessee to which the assessee filed a cash flow summary for the period of 01.04.2006 to 31.03.2007 which are reproduced at page 4 and 5 of the assessment order. Since, the assessee, according to the Assessing Officer, could not explain the source of cash deposits alongwith documentary evidence, of Rs.27,29,000/-, the Assessing Officer, invoking the provisions of section 68 of the Act made addition of the same to the total income of the

assessee. Similarly, since, the assessee could not explain to his satisfaction regarding the credit of Rs.74,12,226/- in the bank account of the assessee, the Assessing Officer, invoking the provisions of section 68 of the Act, made addition of Rs.74,12,226/- to the total income of the assessee on account of unexplained credits. Similarly, in absence of production of books of accounts by the assessee, the Assessing Officer rejected the book results and adopted profit rate of 15% of the total turnover of Rs.2,41,87,078/- and determined the net profit of Rs.38,28,061/-. The Assessing Officer accordingly determined the total income of the assessee at Rs.1,37,69,290/-.

5. In appeal, the learned CIT(A), after considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, deleted the addition of Rs.74,12,226/- made by the Assessing Officer u/s 68 on account of unexplained credit. He, however, sustained the addition of Rs.27,29,000/- made by the Assessing Officer u/s 68 of the Act on account of various cash deposits. He also restricted the net profit adopted by the Assessing Officer @15% of the total turnover to 10%.

6. Aggrieved with such part relief granted by the learned CIT(A), the assessee is in appeal before the Tribunal by raising following grounds of appeal:-

> *Ground No.1*
>
> *In its impugned order, the CIT (Appeals) has relied on the information available with assessing officer and has passed the order deleting some additions while upholding the addition made under section 68 of the Act.*
>
> *The Learned AO made an addition of Rs. 27,29,000 section 68 of the Income Tax Act, 1961. The details are as below.*

Date	Source Explained	Amount
10/04/2006	Cash withdrawn Dec 5	94,000.00
10/04/2006	Cash withdrawn Dec 5	40,000.00
30/05/2006	Cash withdrawn Dec 5	300,000.00
1/06/2006	Cash withdrawn Dec 5	120,000.00
8/6/2006	Taken from partner	1,270,000.00
8/6/2006	Taken from partner	230,000.00
10/06/2006	Taken from partner	575,000.00
12/06/2006	Taken from partner	100,000.00
Total		27,29,000.00

CIT (Appeals) has erred in law and in facts in not deleting the addition on account of amount taken from partner.

Ground No.2

In its impugned order, the CIT (Appeals) has relied on the information available with assessing officer and has passed the order dismissing the appeal filed by the aggrieved assessee in the CIT (Appeals)

As per Section 250(6) of the Income Tax Act, 1961, the CIT (Appeals) should dispose the appeal in writing and shall state the points for determination of the decision thereon and the reason for such determination.

CIT (Appeals) have not decided the appeals on merits. He has not gone through the facts of appeals filed and has given no findings on the grounds of appeal.

Therefore, the mandate of the statute is that the CIT (Appeals) has to give his findings on merits on the basis of material information available with the assessing officer and presented by the assessee to be considered. There is no exception provided for order .A reasoned order based on the merits of the case is pre requisite for disposing appeal .Therefore ,the CIT (Appeals) has erred in passing the order ex parte giving the assesse a reasonable opportunity to arrange and present the documents.

Relief Claimed in the Appeal:

As explained above, the assessee is a Partnership firm having net profit margin of about 3%.The method of income computation and Income computed by the assessing officer in order u/s- 1443(3)/ 147 is at the fancy desire of the assessing officer and is erroneous at law. Further, the upholding of addition under section 68 by the Ld. CIT (Appeals) is not valid and without considering the grounds/ merits of appeal filed before the Ld, CIT (Appeals)."

7. The assessee has also filed additional grounds of appeal which read as under:-

On the facts and circumstances of the case the jurisdiction of the AO under section 147 is bad / in law, as there is no independent application of mind to the vague material for reopening of a matter and clearly a case of borrowed satisfaction, which is bad in law.

On the facts and under the circumstances of the case the assumption of jurisdiction is bad in law as there is no live nexus between the reasons recorded and belief entertained vis-a-vis escapement of income, as is evident that finally the AO has assessed other income which does not form part of the reasons recorded.

On the facts and under the circumstances of the case the jurisdiction assumed by the AO u/s 147 is bad in law as the material on the basis of which jurisdiction has been assumed was totally vague and has no bearing on the income finally assessed by the AO

8. The learned counsel for the assessee referring to the above additional grounds, submitted that these grounds are purely legal in nature and go to the roots of the case and all the facts necessary for adjudication of the above grounds are on record.

9. Relying on the decisions of Hon'ble Supreme Court in the case of CIT vs Varas International reported in 284 ITR 80(SC), and NTPC Ltd. vs CIT reported in 229 ITR 383(SC) and the decision of the Special Bench of the Tribunal in the case of DHL Operators reported in 108 TTJ 152(SB) he submitted that the additional grounds raised by the assessee should be admitted.

10. Referring to the decision of the Tribunal in assessee's own case for the immediately succeeding assessment year vide ITA No.1856/Del/2016, order dated 17.02.2021, he submitted that under identical circumstances,

the Tribunal has admitted the additional ground raised by the assessee. He accordingly submitted that additional grounds raised by the assessee should be admitted.

11. After hearing the arguments advanced by the learned counsel for the assessee and the counter argument advanced by the Learned DR and considering the fact that identical additional grounds have been admitted by the Tribunal in assessee's own case for AY 2008-09, the additional grounds raised by the assessee are admitted for adjudication.

12. The learned counsel for the assessee, referring to the decision of the Tribunal in assessee's own case in the immediately succeeding year, drew the attention of the Bench to the order of the Tribunal and submitted that identical reasons were recorded by the Assessing Officer for reopening of the assessment for AY 2008-09. The Tribunal, after considering the rival arguments made by both the sides has allowed the additional grounds and quashed the reassessment proceedings. Since, facts of the impugned appeal are identical to the facts of the case decided by the Tribunal in assessee's own case for AY 2008-09, therefore, reopening of the assessment by the Assessing Officer being not in accordance with law should be quashed.

13. The learned DR on the other hand submitted that the Assessing Officer has reopened the assessment on the basis of information available at his disposal and therefore the basis of reopening of the assessment is fully justified under the facts and circumstances of the case.

14. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer has reopened the assessment in the instant case on the basis of information received from REIC through Income Tax Officer, Ward 43(4), New Delhi, the reasons of which have already been reproduced in the preceding paragraphs. From the various details furnished by the assessee, we find that a part of the amount mentioned in the reasons has been added in AY 2008-09 and the balance part has been added in the hands of the assessee for AY 2007-08. We find that the assessee has challenged the validity of reopening of assessment for AY 2008-09 in shape of additional ground before the Tribunal and the Tribunal vide ITA No.1856/Del/2016, order dated 17.02.2021 has quashed the reassessment proceeding by observing as under:-

> *"9. We have considered the rival submissions. It is well settled Law that validity of the re-assessment proceedings is to be determined with reference to the reasons recorded for reopening of the assessment. The reasons recorded for reopening of the assessment are reproduced above in which A.O. has mentioned that as per information received from REIC through Income Tax Officer, Ward-43(4), New Delhi, assessee has involved in smuggling of various banned items. The A.O. has mentioned that as per information assessee has inflow of Rs.72 lakhs in cash and Rs.1.82 crores from foreign source. The assessee has explained that assessee-firm is engaged in business of trading and exporting various products. The A.O. did not dispute the explanation of assessee that assessee is an exporter. Therefore, whatever sale proceeds were received by assessee in assessment year under appeal from foreign buyer, have been deposited into the impugned bank accounts of the assessee. The details of the same are noted in the assessment order. The A.O. ultimately did not make any addition against the assessee of the impugned amounts as have been mentioned in the reasons recorded for reopening of the assessment. The A.O. has also not made any addition against the assessee on account of any income earned by assessee through smuggling activities. The A.O, thus, recorded wrong, incorrect and non-existing reasons in the reasons recorded for reopening of the assessment. It would also show that A.O. did not apply his mind to the*

information received from REIC through ITO, Ward-43(4), New Delhi. The A.O. without any basis has recorded wrong, incorrect and non-existing reasons for reopening of the assessment. The A.O. also did not mention in the reasons that as to how much amount, the income chargeable to tax has escaped assessment in the case for assessee for assessment year under appeal. All these facts clearly support the explanation of assessee that A.O. without any cause or justification recorded wrong, incorrect and non-existing reasons for reopening of the assessment. The ITAT, Delhi E-Bench, Delhi in the case of Shri Natrajan Monie, Gurgaon vs., ITO, Ward-2(5), Gurgaon vide Order Dated 07.12.2020 in ITA.No.1817/Del./2017, relying upon several decisions of jurisdictional and other High Courts has held that in case incorrect, wrong and non-existing reasons are recorded by the A.O. for reopening of the assessment and A.O. failed to verify the information received due to non application of mind to information, reopening of the assessment would be unjustified and is liable to be quashed. The Order of the Tribunal is reproduced as under :

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1817/Del./2017
Assessment Year 2011-2012

Shri Natrajan Monie, *S-19/001, The Close South,* *Nirwana Country, Sector-50,* *Gurgaon.* *PAN AAFPN2890N*	*vs.*	*The Income Tax Officer, Ward – 2 (5),* *Gurgaon.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Kapil Goel, Advocate*
For Revenue :	*Ms. Rinku Singh, Sr.DR*

Date of Hearing :	*03.12.2020*
Date of Pronouncement :	*07.12.2020*

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 30.01.2017, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 147/148 of the I.T. Act, 1961, addition of Rs.59,50,000/- on account of cash deposit, confirming addition of Rs.1,50,000/- out of Rs.9,85,000/- and addition of income of Rs.7,72,461/- from MCX Business.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that this is a NMS Case. Notice under section 148 of the I T Act, 1961 was issued to the assessee on 11.02.2015, after duly recording the reasons. The assessee did not file his return of income. The A.O. issued statutory notice for completion of the assessment. The assessee filed information before A.O. which were discussed by the A.O. with the Counsel for Assessee. The A.O. noted that as per information available with him, assessee had received salary on which TDS had been deducted by the employer. The assessee has also made investment of Rs.10 lakhs in the purchase of Mutual Funds and deposited cash of Rs.52 lakhs in his ICICI Bank account in assessment year under appeal. Further the assessee had also made contract in commodity exchange exceeding Rs.10 lakhs. During the course of assessment proceedings the assessee furnished copy of Form No.16, Form No 26AS, statement of his bank accounts maintained with different Banks, copy of the computation of income and documents relating to MCX business made with Aditya Birla Commodities Broking Ltd. The assessee also filed copy of the sale deed of property at Gurgaon Dated 21.03.2011 sold by assessee for a consideration of Rs.1.20 crores. The A.O. issued detailed show cause notice to the assessee and after considering the reply of the assessee, made certain additions and computed the total income at Rs.84,37,210/-. The net income of the assessee is computed as under :

1.	*Income from salary as discussed in para 3.1.*	*Rs. 4,34,338/-*
2.	*Income from interest as discussed in para 3.2.*	*Rs. 1,59,237/-*
3.	*Income from MCX business as discussed in para 3.3.*	*Rs. 7,72,461/-*
4.	*Income from unexplained cash deposits as discussed in para 3.4*	*Rs. 59,50,000/-*
5.	*Income from unexplained cash credits as discussed in para 3.5(i).*	*Rs. 9,85,000/-*
6.	*Income from profit on redemption of MF/FD as discussed in para 3.5(ii)*	*Rs. 1,32,174/-*
	TOTAL	*Rs.84,37,210/-*

3.1. The assessee challenged the reopening of the assessment as well as additions on merit before the Ld. CIT(A). However, the appeal of assessee has been partly allowed.

4. Learned Counsel for the Assessee referred to the reasons recorded for reopening of the assessment which have been provided to the assessee under RTI Act, copy of which is placed on record. He has submitted that A.O. in the reasons mentioned that assessee has made investment of Rs.2 lakhs for purchase of mutual fund and transaction of commodities exchange contract of Rs.10 lakhs in assessment year under appeal. He has submitted that A.O. has recorded wrong, incorrect and non-existing reasons and did not apply his mind to the material on record

before recording reasons for reopening of the assessment. He has submitted that assessee did not make any fresh investment during subject period in mutual fund and even the A.O. did not make any addition on account of investment of Rs.2 lakhs for purchase of mutual funds. He has submitted that as regards transaction of commodity exchange contract of Rs.10 lakhs, A.O. has made addition of Rs.7,72,461/- on account of profit on the MCX business instead of Rs.11,80,571/- as mentioned in the show cause notice. The A.O. thus, recorded wrong, incorrect, non-existing facts / reasons and did not apply his mind to the information, which itself is also incorrect. He has referred to page-14 of the PB which is the details supplied to the assessee which may be the basis for reopening of the assessment and referred to item Nos.5, 6 and 9 which are information received from CIB Code for deposit of cash of Rs.2 lakhs with the Bank, contract of Rs.10 lakhs or more in commodity exchange and payment of Rs.2 lakhs or more for purchase of units of mutual funds. He has submitted that these are incorrect information and did not relates to the assessee. He has, therefore, submitted that reopening of the assessment is illegal and bad in law and as such reopening of the assessment is liable to be quashed. He has submitted that no notice under section 142(1) or any query under section 133(6) have been issued. No letter have been delivered to the assessee.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below as regards reopening of the assessment.

6. We have considered the rival submissions and perused the material on record. It is well settled Law that validity of the re-assessment proceedings is to be judged with reference to the reasons recorded for reopening of the assessment. The copy of the reasons for reopening of the assessment are placed on record which reads as under :

1.	*Name and Address of the Assessee*	*Monie Natrajan 1408, Beverley Part-II, DLF-II, Gurgaon.*
2.	*PAN*	*AAFPN2890N*
3.	*Status*	*INDL*
4.	*Ward/Circle/Range*	*Ward-2(5), Gurgaon*
5.	*Assessment Year*	*2011-12*
6.	*Date*	*11.02.2015*

Reasons for initiating proceedings u/s. 147/148 of the Income Tax Act, 1961.

Information has been received through NMS (P-1 category that during the period under consideration, the assessee had made investment of Rs.200000/- for purchase of mutual fund and transaction in commodity exchange contract of Rs.10,00,000/- during the assessment year 2011-12. As per record assessee do not have file return of income for the Assessment year 2011-12. The income chargeable to tax amounting to Rs.1200000/- which is chargeable to tax has escaped assessment and any other income found during the course of assessment proceedings which is chargeable to tax has escaped assessment. I have reasons to believe that the above said income/transaction of Rs.1200000/- and any other income found during the course of assessment proceedings which is

chargeable to tax has escaped assessment which needs examination in the light of the information in my possession.

Notice under section 148 of the Income Tax Act, 1961 is being issued.

Sd/- Shamsher Singh
Income Tax Officer
Ward 2(5), Gurgaon."

6.1. In view of the above reasons, the A.O. has mentioned that he has information received through NMS that assessee has made investment of Rs.2 lakhs for purchase of mutual funds and transaction of commodity exchange contract of Rs.10 lakhs in assessment year under appeal and thus, there is an escapement of income of Rs.12 lakhs. The A.O. also noted in the reason that this information needs examination. However, no material is produced before us if the A.O. made any investigation on the information supplied to him through NMS if there is any escapement of income in the case of assessee. Learned Counsel for the Assessee categorically stated at Bar that assessee has not made any fresh investment in assessment year under appeal in mutual fund. The written submissions to that effect is also placed on record. Learned Counsel for the Assessee has also categorically stated that A.O. has not made any addition of Rs.2 lakhs in assessment year under appeal which fact is corroborated by the net income computed by A.O. as reproduced above. It is, therefore, clear that neither assessee has made any investment of Rs. 2 lakhs for purchase of mutual fund in assessment year under appeal nor the A.O. has made any such addition in the assessment year. Therefore, such information received by A.O. was totally wrong, incorrect and non-existing and thus the fact mentioned in the reasons recorded for reopening of the assessment as regards investment made in purchase of mutual fund is wrong, non-existing and incorrect. The A.O. has recorded wrong, incorrect and non-existing reasons for reopening of the assessment which is not permissible under Law. As regards the transaction in commodity exchange contract of Rs.10 lakhs, Learned Counsel for the Assessee referred to para-3.3 of the assessment order in which the A.O. has made addition of Rs.7,72,461/- on account of profit on the MCX business. The A.O. has also mentioned in the same para that in the show cause notice he has mentioned such income at Rs.11,80,571/- which is appearing at page-3 of the assessment order, but, after examination this figure was also found incorrect and A.O. has ultimately restricted the addition to Rs.7,72,469/- i.e., for income only but no addition is made of transaction of MCX Investment. Therefore, A.O. has recorded wrong, incorrect and non-existing facts in the reasons recorded for reopening of the assessment that assessee has made transaction in commodity exchange contract of Rs.10 lakhs. It may also be noted here that A.O. in the assessment order in para-2 has mentioned that assessee has made investment of Rs.10 lakhs in purchase of mutual funds which fact is also incorrect and is contradictorily recorded in the reasons for reopening of the assessment for Rs.2 lakhs only. The A.O. in the assessment order has also recorded same statement that assessee has made contract in commodity exchange exceeding Rs.10 lakhs which fact was ultimately found incorrect by the A.O. himself and he has made part addition as against the income mentioned in the show cause notice. These facts clearly show that A.O. did not apply his mind to the information received through NMS and also

recorded wrong, incorrect and non-existing facts in the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee has also referred to page-14 which is supplied to the assessee under RTI which according to assessee was asked under the RTI Act. The first page of the RTI reply PB-10 shows that assessee has asked for the copy of the reasons for reopening of the assessment as well as details which are basis of reopening of the case under section 148 of the I.T. Act, 1961. Page-14 is the material supplied by the A.O. which is the information summary in which information is supplied to assessee through CIB Code that there is a deposit in cash aggregating to Rs.2 lakhs or more with the Banking company, contract of Rs.10 lakhs or more in commodities exchange ,Rs. 2 lakhs or more paid for purchase of units of Mutual Fund. Rule 114E of the I.T. Rules provides the statement of financial transactions required to be furnished under sub-section (1) of Section 285BA of the Act in Form 61-A. This Rule provides that return or the statement shall be provided in respect of receipt from any person of an amount of Rs.2 lakhs rupees or more for acquiring units of mutual fund and other statements in different cases of the amount more than Rs.10 lakhs in different categories. It, therefore, appears that the information which A.O. has received as per page-14 of the PB was the details to be submitted under Rule 114E of the I.T. Rules. It may not be actual figure received by the A.O. as per NMS information. The actual figure might be different as is noted above. Therefore, such information received by the A.O. is not in accordance with Law and would not provide any information to the A.O. to record reasons for reopening of the assessment as regards escapement of income for making the investment in purchase of mutual funds or transaction of different commodity exchange contract. Thus the entirety of facts clearly show that A.O. recorded wrong, incorrect and non-existing reasons for reopening of the assessment without application of mind. It may also be noted that A.O. himself has mentioned in the reasons that whatever information he has received through NMS needs examination in the light of information in his possession, but, he did not make any examination prior to recording reasons for reopening of the assessment and totally vague, non-existing, wrong and incorrect facts have been mentioned in the reasons recorded for reopening of the assessment. Further, the reopening of the assessment would be invalid if the A.O. wanted to make investigation out of information. Such exercise should have been prior to recording of the reasons. In support of our findings, we rely upon the following decisions.

6.2. The Hon'ble Punjab & Haryana High Court in the case of CIT vs., Atlas Cycle Industries [1989] 180 ITR 319 (P&H) held as under :

> *"Held, (i) that the Tribunal was right in cancelling the reassessment as both the grounds on which the reassessment notice was issued were not found to exist, and, therefore, the Income-tax Officer did not get jurisdiction to make the reassessment."*

6.3. The Hon'ble Delhi High Court in the case of Pr. CIT vs., SNG Developers Ltd., [2018] 404 ITR 312 (Del.) in which it was held as under :

> *"Held, dismissing the appeal, that the reasons recorded by the Assessing Officer for reopening the assessment under section*

147, issuing a notice under section 148 did not meet the statutory conditions. As already held by the Appellate Tribunal, there was a repetition of at least five accommodation entries and the total amount constituting the so-called accommodation entries would therefore, not work out to Rs.95,65,510. It was unacceptable that the Assessing Officer persisted with his "belief" that the amount had escaped assessment not only at the stage of rejecting the assessee's objections but also in the reassessment proceedings, where he proceeded to add the entire amount to the income of the assessee. Therefore there was non-application of mind on the part of the Assessing Officer. The Appellate Tribunal was justified in confirming the order of the Commissioner (Appeals) and holding that the reopening of the assessment was bad in law."

6.4. The Hon'ble Delhi High Court in the case of Shamshad Khan vs., ACIT [2017] 395 ITR 265 (Del.) in which it was held as under :

"Held, allowing the petition, that the form for recording the reasons for initiating the proceedings under section 148 of the Act for obtaining approval of the Commissioner itself proceeded on the erroneous basis that the quantum of income which had escaped assessment was Rs.28,75,000 whereas the assessee had filed returns showing income of merely Rs.20,56,145 and it was on this basis that the Additional Commissioner and the Commissioner granted their approval for reopening the assessment. Even though the assessee highlighted this fundamental error at the initiation of the case by stating that his income was mentioned as Rs.20,56,145 instead of Rs.69,71,191, this was summarily rejected stating that it was a clerical mistake and that the latter figure would be treated as his income. If the correct income i.e. Rs.69,71,191 was put before the Commissioner at the time of seeking his approval, he might have taken a different view. There was nothing on record to show that the clerical mistake of substituting Rs.20,56,145 for Rs.69,71,191 was ever brought to the notice of the Commissioner either before or after approval or sanction under section 151(1) of the Act. The initiation of the case for reopening of the assessment was erroneous and without application of mind especially since the Assessing Officer had not examined the return filed, which would have revealed that the assessee had filed regular returns, had sufficient opening balance in his account and the withdrawals therefrom substantiated the donation made. Therefore, the reopening of the assessment was unsustainable in law and the notice issued under section 147 of the Act was to be quashed."

6.5. The Hon'ble Bombay High Court in the case of Siemens Information Systems Ltd., vs., ACIT & Others [2007] 293 ITR 548 (Bom.) held as under :

"The petitioner had several EOU/STP units engaged in the business of export of software. In response to the notice for reopening the assessment for the assessment year 1999-2000, the petitioner, objecting to the issuance of the notice, stated that the reasons furnished by the authority had quoted the provisions of section 10A as amended by the Finance Act, 2000, with effect from the assessment year 2001-02 and as such could not have been made applicable to the assessment year 1999-2000 and the notice had been issued under the mistaken belief about the correct position of law. However, opportunity to show cause was given to the petitioner as to why the loss claimed should not be disallowed to be carried forward. On a writ petition :

Held, allowing the petition, (i) that it would be clear from the reasons given that the authority proceeded on the presumption that the law applicable was the law after the amendment and not the law in respect of which the petitioner had filed the return for the year 1999-2000. This by itself clearly demonstrated that there was total non-application of mind on the part of the authority and consequently, the notice based on that reason would amount to non-application of mind.

(ii)
That the income derived by the assessee from an industrial undertaking to which section 10A applies could not be included in the total income of the assessee. Therefore, the petitioner was right in filing the return by excluding the income in terms of section 10A."

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

"In the present case too, the information received from the Inv. Wing cannot be said to be tangible material per se without a further enquiry being undertaken by the learned assessing officer"

6.7. In the case of Pr. CIT vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), the Hon'ble Delhi High Court held as under :

"Reassessment notice condition precedent recording of reasons to believe that income has escaped assessment mere reproduction of investigation report in reasons recorded absence of link between tangible material and formation of ceding illegal Income Tax Act, 1961, Sec.147, 148"

6.8. In the case of Pr. CIT vs., G And G Pharma India Ltd., [2016] 384 ITR 147 (Del.), the Hon'ble Delhi High Court held as under :

"Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped assessment - No independent application of mind to information received from Directorate of

Investigation and no prima facie opinion formed- reassessment order invalid".

6.9. In the case of Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), the Hon'ble Delhi High Court held as under :

["No independent application of mind by the Assessing officer but acting under information from Inv. Wing - Notice U/s. 147 to be quashed".

6.10. The crux of the above Judgments had been that in case incorrect, wrong and non-existing reasons are recorded by the A.O. for reopening of the assessment and A.O. failed to verify the information received due to non application of mind to information, reopening of the assessment would be unjustified and is liable to be quashed. Considering the totality of the facts and circumstances of the case and in the light of material on record, we are of the view that reopening of the assessment is illegal and bad in Law and is liable to be quashed. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. In view of the above, there is no need to decide other issues raised in the present appeal which are left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

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

9.1. Considering the above discussion in the light of decision of ITAT, Delhi E-Bench, Delhi in the case of Shri Natrajan Monie, Gurgaon vs., ITO, Ward-2(5), Gurgaon (supra), it is clear that A.O. has recorded incorrect, wrong and non-existing reasons in the reasons recorded for reopening of the assessment reproduced above and have also did not apply his mind to the information received from REIC through ITO, Ward-43(4), New Delhi. Therefore, we are of the view that reopening of the assessment is illegal and bad in Law and liable to be quashed. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. In view of the above, there is no need to decide other issues raised in the present appeal on merits which are left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

10. In the result, appeal of the Assessee allowed."

15. Since, the facts of the instant case are identical to the facts of the case in the succeeding assessment year which have already been decided by the Tribunal in assessee's own case, therefore, in absence of any contrary material brought to our notice, we hold that the Assessing Officer in the instant case has recorded incorrect/wrong and non-existing reasons in the reason for reopening of the assessment and has not applied his mind to the

information received from REIC, Ward 43(4)(New Delhi). Therefore, the reopening of the assessment is illegal and bad in law and is liable to be quashed. Therefore, the additional grounds raised by the assessee are allowed.

16. Since, the assessee succeeds on the legal grounds challenging the validity of reopening of the assessment, the other grounds challenging the addition on merit are not being adjudicated being academic in nature.

17. In the result, the appeal filed by the assessee is allowed.

Oder pronounced in the open court on 18.05.2021.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA) **JUDICIAL MEMBER**	**(R.K. PANDA)** **ACCOUNTANT MEMBER**

Delhi/Dated- 18.05.2021
Shekhar
Copy forwarded to: -
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,
ITAT, Delhi