IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18325 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE BELA M. TRIVEDI
and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
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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GEETABEN DINESHCHANDRA GUPTA
Versus
INCOME TAX OFFICER CIRCLE 3(3)(2)

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Appearance:
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 MS. JUSTICE BELA M. TRIVEDI**
and
HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

Date : 23/08/2021

CAV JUDGMENT
(PER : HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI)

1. This petition, under Articles 226 and 227 of the Constitution of India, is filed by petitioner - Geetaben Dineshchandra Gupta challenging the notice dated 27.03.2019, issued under section

148 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act'*) proposing to reopen the assessment of the petitioner for the Assessment Year 2012-13.

2. The facts of the case in nutshell are that the petitioner as individual filed Return of Income (RoI) for the year 2012-13, which was thoroughly processed by the respondent and subsequently, scrutiny assessment under Section 143(3) of the Act was also framed. The petitioner filed RoI at Rs.1,42,694/- on 28.09.2012. On 13.08.2013, notice under Section 143(2) of the Act came to be issued to provide certain documents. On 22.07.2014 and subsequently, on 05.08.2014, the petitioner received notices under section 142(1) of the Act, to which, the petitioner filed detailed reply on 04.09.2014. The respondent passed Assessment Order under section 143(3) of the Act on 14.10.2014. It is contended that despite the petitioner fully and truly disclosed all material facts relevant for his assessment during the course of scrutiny assessment along with statement of income with annexures, the petitioner surprisingly received notice dated 27.03.2019, issued under section 148 of the Act. The petitioner filed RoI in response to the same under protest and requested for reasons for reopening the assessment for the Assessment Year 2012-13. On 15.07.2019, the petitioner filed objections against the reasons recorded, which were disallowed on 11.09.2019. It is further contended that there were no allegations against the petitioner for not disclosing the material on record at the time of scrutiny assessment, and therefore, in the absence of any fault on the part of the petitioner, reopening of a scrutinized issue, is contrary to law and therefore, the petitioner has prayed for quashing and setting aside the impugned notice. It is further contended that there is no tangible material found by the department. Further, it is only a change of opinion on the part of

the Assessing Officer. Moreover, in the absence of reasoned sanctioned under the Act, the proceedings initiated are required to be quashed. It is further contended that the petitioner has no alternative remedy and therefore, has filed this petition praying for to quash and set aside the impugned notice dated 27.03.2019, issued under section 148 of the Act.

3. *Per contra*, the respondent has filed affidavit-in-reply *inter-alia* contending that the petition is filed at a pre-mature stage inasmuch as, it is the notice under section 148 r/w. section 147 of the Act only. It is further contended that the petitioner, in the proprietorship concern of Subhalaxmi Trading Company, carried out huge transactions of purchases and sales. It had come on record that the petitioner accepted that she had made purchases and sales without taking delivery of good. Further, Shri Nikhil Gupta - power of attorney holder of the petitioner, in his statement, has categorically admitted that his mother is a housewife and that, she had not carried out any business activities at any point of time in her life. It is further contended that mere accommodation entries were provided without there being any physical transportation of goods. Further, such statement has also been recorded under section 131 of the Act. The inquiry conducted further revealed that for providing such accommodation entries, entry providers normally earn commission ranging from 0.5% to 1%. Therefore, despite the petitioner earning such commission for providing accommodation entries, had not shown such commission in the return and therefore, based on such tangible material and after due application of mind, assessment has been reopened. Further, the petitioner filed objections and the same had been considered threadbare and rejected subsequently. In the order disposing of the objections, it has been specifically noted that at the time of

regular assessment in the case of the petitioner, these details were not available to the effect that the petitioner was not carrying out any genuine business activities but merely providing the accommodation entries in the garb of purchase and sales to Anil Group of companies. Further, information so received from the Investigation Wing being tangible material and no opinion having been formed on the same during the original proceedings, challenge made in the petition to the impugned notice, is thoroughly misconceived and untenable.

3.1 The respondent, in the reply, has further contended that the petitioner has not fully and truly disclosed all material facts relevant for his assessment at the time of filing of return for the year 2012-13, and despite showing huge turn-over of Rs.24,10,82,501/- in the audited books of account, had disclosed a meager income of Rs.1,42,694/-. Further, on perusal of the information received from the Jt. DIT (Inv.) (OSD), Unit- 2(3), Ahmedabad, it came to the knowledge of the Assessing Officer that the assessee has shown huge sales amounting to Rs.24,10,82,501/- and purchase of Rs.27,93,86,111/- during the A.Y. 2012-13. Further, same sale and purchases were made to/from Anil group of companies *viz.* Anil Ltd, Anil Bioplus Ltd., Anil Tradecom Ltd, Anil Mines & Minerals Ltd, and Anil Nutrients Ltd. in the A.Y. 2012-13 and subsequent years as well. Further, it is contended that Shri Nikhil D. Gupta, Power of Attorney holder of Smt. Geetaben D. Gupta, in his statement before the Investigation Wing had categorically stated that they had made purchase and sales without taking delivery of goods and it was godown delivery only and hence, no transportation was involved. It was further stated that his mother was a housewife and she had not carried out any business activities at any point of time in her life. It is further contended that at the time of regular

assessment in the case of the assessee, the Assessing Officer was not aware of the fact that the assessee was not carrying any business activities but merely providing accommodation entries, nor this fact was ever brought on record during the assessment proceedings by the assessee. Hence, the assessee's contention that she had made full and true disclosure at the time of filing of return of income and during the assessment proceedings, is completely devoid of any merits.

3.2 It is further contended in the affidavit-in-reply filed by the respondent that so far as the contention of the petitioner that in the reasons recorded by the Assessing Officer, there was no allegation against the petitioner as to non-disclosure of material facts at the time of scrutiny assessment, is concerned, it is stated to be baseless and denied by the respondent for the reason that while recording reasons for reopening, the Assessing Officer was in possession of credible information, received from the Investigation Wing that the assessee had been involved in providing accommodation entries to Anil Group. It is observed that such information was not in possession of the Assessing Officer during the assessment proceedings under Section 143(3) of the Act. It is further contended that however, the assessee intentionally chose not to disclose the same, neither at the time of filing of return of income nor during the entire assessment proceedings. Moreover, if the information had not been received from the Investigation Wing, it would not have come to the knowledge of the Assessing Officer. Therefore, in the reasons recorded, it was specifically mentioned that the assessee had not correctly offered true income for tax for the year under consideration. Therefore, it was specifically alleged in the reasons recorded that the assessee had not offered her true income for the relevant year, either at the time of filing of return or during

the assessment proceedings. Further, so far as allegation regarding sanction is concerned, it is submitted that the Assessing Officer had taken necessary approval under section 151 of the Act for reopening the case of the of the petitioner. It is also mentioned that such approval was granted by the Principal Commissioner of Income Tax-3, Ahmedabad after carefully perusing the reasons recorded by the Assessing Officer. Hence, the contention of the petitioner with regard to valid sanction is devoid of any merits.

4. Learned advocate Mr. D. K. Patel for the petitioner vehemently and fervently argued that in the present case, the reopening of assessment is bad in law. He further argued that it is without independent inquiry and without application of mind. He also argued that there is no material on record so as to arrive at such *prima-facie* conclusion.

4.1 In support of his case, the learned advocate for the petitioner has relied upon following decisions:

i) Tax Appeal No. 7 of 2019 dated 10.06.2019, Principal CIT v. Atul Limited;

ii) OX KPO Services Pvt. Ltd v. DCIT, (2018) 94 Taxmann.Com 467 (Guj);

iii) DY. CIT v. OX KPO Services Pvt. Ltd Vs. DCIT, (2018) 99 Taxmann.Com 301 (SC);

iv) Parashuram Pottery Works Pvt. Ltd. v. Income Tax Officer, (1977) 106 ITR 1 (SC);

v) Cadila Healthcare Ltd. v. DCIT, 334 ITR 420 (Guj);

vi) CIT vs. S. Goyanka Lime and Chemicals Ltd. (2015) 64 Taxmann.com 313 (SC);

vii) Priyanka Carbon and Chemicals Industries Pvt. Ltd. v. DCIT, SCA No. 3797 of 2000 dated 24.07.2008.

4.2 He further drew attention of the Court to the following decisions:

i) New Delhi Television Ltd v. Deputy Commissioner of Income Tax, (2020) 116 Taxmann.com 151 (SC);

ii) Manan Exports (P) Ltd v. ITO, (2017) 78 Taxmann.Com 225 (Guj);

iii) R. Kantilal and Co. v. ITO, (2020) 424 ITR 92 (Guj);

iv) Special Civil Application No. 17756 of 2018 in Priti Paras Savla v. ITO, Ward (3)(2)(4) and;

v) CIT vs. Ranchhod Jivabhai Nakhava, (2012) 21 Taxmann.com 159 (Guj).

4.3 The learned advocate for the petitioner has heavily placed reliance upon the latest decision of the Apex Court in ***New Delhi Television Ltd. (supra)***, wherein it was held that during original assessment assessee has made disclosure about having agreed to stand guarantee for transaction by NNPLC and it had also disclosed *factum* of issuance of convertible bonds and their redemption, there being no failure on part of assessee to disclose all material facts, notice issued to assessee after a period of 4 years was to be quashed and set aside and eventually, it was decided in favour of the assessee.

4.4 It is further contended by the learned advocate for the petitioner that in the present case also the petitioner had fully and truly disclosed all material facts at the time of scrutiny assessment and hence, as such there is no reason to believe and therefore, impugned notice under section 148 of the Act deserves to be quashed and set aside.

5. *Per contra*, learned senior standing counsel Mrs. Mauna Bhatt for the respondent has heavily contended that in the present case the petitioner was provider of accommodation entries to the Anil group for which rate of commission from 0.75% to 1 % is not shown and the transaction of Rs.24,10,82,501/- is nothing but providing accommodation entries and the same is substantiated by the inquiry made by the Investigation Wing and the statement recorded to that effect under Section 131 of the Act and hence, the department has rightly issued notice under section 148 of the Act as there is reason to believe that the petitioner has not fully and truly disclosed all material facts at the time of original assessment, and therefore, this petition is required to be dismissed.

5.1 Learned senior standing counsel Mrs. Bhatt further contended that the decisions relied by the learned advocate for the petitioner are not applicable to the present case. So far as the decision in ***New Delhi Television Ltd (supra)*** upon which, the petitioner has placed heavy reliance, is concerned, the said decision also would be of no avail to the petitioner inasmuch as, in the said case, the assessee had assessed all materials prior to reopening and subsequent to the proceedings and therefore, the facts and circumstances are totally different. Eventually, she urged that this petition deserves to be dismissed being devoid of any merits.

6. Having heard the arguments advanced by both the sides and perusing material on record, as per the case of the department, the petitioner - assessee has provided accommodation entries to the Anil Group of companies to the tune of Rs.24,10,82,501/- and the income derived from commission, ranges into 0.75% to 1%, is not disclosed by the

petitioner during the year under consideration and thereby, the petitioner has not shown income of Rs.18 lakh, which has escaped assessment.

6.1 At this juncture, if the letter dated 14.03.2019, addressed to the ITO, Ward-3(3)(2), Ambawadi, Ahmedabad by Joint Director of Income Tax (Inv)(OSD), Unit–2(3), Ahmedabad, which is on record, is referred to, it is observed therein that, "*In reply subject vide her submission dated 14/09/2018 stated that they have made purchases and sales without taking delivery of goods. Shri Nikhil D. Gupta, power of authority holder of Smt. Geetaben D. Gupta, in his statement has categorically stated that his mother is a housewife and she had not carried out any business activities at any point of time in her life till date. Further, he clearly stated that as a young boy of his family he had seen one person, who is the accountant of Anil Group had in-fact contacted their family for accommodation trading activities in-lieu of financial help. Further, Shri Nikhil D Gupta also stated that there was no physical transportation of goods against such sale / purchase bills. During the recording of statement u/s. 131 of the I.T. Act, vide Qus no. 5 Shri Nikhil Dineshbhai Gupta, son and authority holder of Smt. Geetaben D. Gupta requested to offer his comments on submission dated 14/09/2018 wherein it is submitted that "We have made purchase and sales without taking delivery of goods. It was at godown delivery only hence no transportation is involved*." It is also observed that, "*In reply that Shri Nikhil D. Gupta, son and authority holder of Smt. Geetaben D. Gupta stated that they were provided accommodation transaction bills for turnover / sales to Anil Group of companies and there was no actual delivery of goods. He further stated that all the transactions were only paper transactions which were prepared and managed by the Anil Group. He further clarified that all*

bills/invoices and delivery challans for such paper transactions were generated and kept by Anil Group. All the books of accounts and relevant documents were prepared and managed by Anil Group only. On being asked regarding the benefits received by them against such accommodation entries, Shri Nikhil D. Gupta stated that his family used to receive financial benefits which have been shown as profit out of such billing activity".

6.2 It further observed therein that, "*on verification of audited books of accounts it is found that Subhalaxmi Trading Company has shown unsecured loan of Rs.1,33,97,945/- during F.Y. 2011-12 to 2013-14 relevant to A.Y. 2012-13 to 2014-15. On being asked regarding the creditworthiness and genuineness of such unsecured loan, Shri Nikhil D. Gupta, son of Smt. Geetaben D. Gupta stated that all the transactions were carried out by Anil Group only. As can be seen ultimate beneficiary of total fund of Rs.1,74,88,107/- were Agranil Marketing Ltd and Jalaram Commodities Pvt. Ltd shown as sundry debtors, are the related company of Anil Group. Further, according to Nikhil Gupta sundry creditors amounting to Rs.12,63,61,871/- as on 31.03.2012 were again Anil Group of companies. From the books of accounts of Subhalaxmi Trading for F. Y. 2011-12 and the facts stated in the statement by Shri Nikhil D. Gupta Power of authority holder of Geetaben D. Gupta, it is crystal clear that the unsecured loan shown in the audited books of accounts Subhalaxmi Trading for F.Y. 2011-12 were paper transactions (accommodation entries) carried out by Anil Group of companies in the name of Subhalaxmi Trading*". It is concluded that, "*From the detail discussion made above, it is proved beyond any reasonable doubt that whatever the transactions recorded in the case of subject i.e. Subhalaxmi Trading Company is carried out by Anil Group to facilitate to suppress the correct profit earned by it by*

inflating the purchase(s). Considering the facts, the inflated purchases carried out by the Anil Group of company from the subject for the F.Y.s 2011-12 to 2013-14, the details of which are as under:

Purchase from Subhalaxmi Trading Co.	**2011-12**	**2012-13**	**2013-14**
Anil Mines & Minerals Ltd	19,91,87,419/-	4,48,78,936/-	37,44,92,835/-
Anil Tradecom	0	0	75,82,46,217/-

6.3 It is also observed therein that, "*As the Anil Mines & Minerals Ltd has inflated it purchases for the F.Y. 2011-12, 2012-13 and 2013-14 respectively by an amount of Rs.19,91,87,419/-, Rs.4,48,78,936/- and Rs.37,44,92,835/-. Similarly, Anil Tradecom has also inflated its purchase for the F.Y. 2013-14 by an amount of Rs.75,82,46,217/- by showing purchases from Subhalaxmi Trading Company. The AO may take necessary action to disallow the above bogus purchases from Subhalaxmi Trading Company in the audited account of Anil Mines & Minerals Ltd and Anil Tradecom*". It is further concluded that, "*considering the market rate of commission, the income earned by the subject comes to Rs.18,08,118/- being 0.75% of total turnover of disclosed. Applying the same analogy the income earned by the subject is as under*:

F.Y.	**2011-12**	**2012-13**	**2013-14**
Turnover	24,10,82,501	7,79,73,081	1,15,87,71,432
Commission earned as per market rate *i.e.* 0.75% of turnover	18,08,118	5,84,798	86,90,785

6.4 At this stage, it would be apt to refer to the observations made by us with regard to the scope and ambit of section 147 of the Act in paragraphs 7, 8, 9 and 10 of CAV Judgement dated 05.07.2021 rendered in Special Civil Application No. 19821 of 2019, which are as under:

> *"7. At the outset, it may be noted that as per the settled legal position, two conditions have to be satisfied before the Assessing Officer invokes his jurisdiction to reopen the assessment under section 147 of the said Act after the expiry of four years from the end of the relevant assessment year – firstly, that the Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment for the concerned assessment year, and secondly, such escapement of assessment was by reason of failure on the part of the assessee to make the return under section 139, or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all the material facts necessary for his assessment for that assessment year. So far as the case of the present petitioner is concerned, the assessment for the A.Y. 2012-13 is sought to be reopened by the Assessing Officer under section 147/148 of the said Act, on his having arrived at a satisfaction that the income for the said assessment year had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.*
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> *8. It is pertinent to note that as held by the Supreme Court in catena of decisions, the formation of belief by the Assessing Officer at the stage of initiation of action under section 147 of the Act is within the realm of subjective satisfaction. The Supreme Court in the case of* ***Assistant Commissioner of Income Tax versus Rajesh Jhaveri Stock Brokers P. Ltd.*** *reported in* ***(2007) 291 ITR 500(SC)****, had an occasion to deal with the scope and effect of section 147 as substituted w.e.f. April 1st, 1989, in which the Court has observed as under :* ***-***
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> > *"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 Supreme 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 P. Ltd. [1996] 217 ITR 597 (SC)]****;* ***Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC).***

The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these

conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147."

9. In the case of ***Raymond Woollen Mills Ltd. Versus Income-Tax Officer and others*** reported in ***1999 236 ITR 34(SC),*** *the Supreme Court observed that the Court has only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*

10. It is very pertinent to note that in the case of ***Phool Chand Bajrang Lal versus Income-Tax Officer*** *reported in* ***203 ITR 456 (SC),*** *it was observed that the acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment, which went to expose the falsity of the statement made by the assessee at the time of original assessment was different from drawing fresh inference from the same facts and material which was available with the Income-Tax Officer at the time of the original assessment proceedings. Where the transaction itself on the basis of the subsequent information was found to be a bogus transaction, the mere disclosure of that transaction at the time of original proceedings could not be said to be disclosure of the true and full facts, and the Officer would have the jurisdiction to reopen the concluded assessment in such a case. The precise observation made by the Supreme Court in the said case may be reproduced as under : -*

"In the present case as already noticed, the Income-Tax Officer, Azamgarh, subsequent to the completion of the original assessment proceedings, on making an enquiry from the jurisdictional Income-Tax Officer at Calcutta, learnt that the Calcutta company from whom the assessee claimed to have borrowed the loan of Rs. 50,000/- in cash had not really lent any money but only its name to cover up a bogus

> *transaction and, after recording his satisfaction as required by the provisions of section 147 of the Act, proposed to reopen the assessment proceedings. The present is thus not a case where the Income-Tax Officer sought to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company 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 the original assessment is different from drawing fresh inference from the same facts and material which were available with the Income-Tax Officer at the time of the original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself, on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be a disclosure of the "true" and "full" facts in the case and the Income-Tax Officer would have the jurisdiction to reopen the concluded assessment in such a case."*

6.5 Further, the term "*reason to believe*", however, is not defined in the Act but it can be gathered and available from the information, leading the Assessing Officer to reopen the assessment. The term itself is suggestive of its *prima facie* characteristics and not established or conclusive facts or information. Meaning thereby, it is the Assessing Officer's *prima facie* belief, of course, derived from the some material / information, etc. leading him to reopen the assessment.

6.6 The ambit and import of the term "*reason to believe*" has been examined in numerous cases, notably in ***ITO v. Lakhmani Mewal Das [(1976) 103 ITR 437: 1976 (3) SCC 757]***. The Apex Court held that, "*the reason must be held in good faith. It*

cannot be merely a pretence. It is open to the Court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a Court of law. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment".

6.7 It would also be worthwhile to refer to the observations made by us in the CAV Judgment dated 06.08.2021 Special Civil Application No. 22613 of 2019, which read as under:

> *"7. As stated hereinabove, the often posed question as to whether the Assessing Officer could have assumed the jurisdiction under Section 147/148 of the said Act on the basis of the information / material received from the investigating wings unearthing the bogus transactions or accommodation entries involving the assessee, has been again posed before this Court. Before adverting the submissions made by the learned advocates for the parties, it may be noted that the words "accommodation entries"*

have not been defined anywhere in the Act, however, in catena of decisions, the Courts have dealt with the issue of "accommodation entries". It cannot be gainsaid that the tax-evaders in order to bring back their unaccounted income to their books of accounts without paying any tax thereon, use numerous methods and techniques. For routing the unaccounted income, the tax evaders under the guise of loan entries or share capital entries or other camouflage entries create an appearance of legitimate transactions in their books of accounts. Such well recognized rackets are controlled and conducted by the persons known as "accommodation entry providers", and the "accommodation entries" are provided by them to the persons who are the tax evaders. The entries on paper apparently may appear to be of routine nature, but the trail of money transited through the layers would be subsequently unearthed during the search and seizure operations conducted either at the assessee's premises or his associate's premises or at the premises of some third party, who may be an accommodation entry provider. Under the circumstances, when the material is brought to the notice of the Assessing Officer, which would prima facie discredit or impeach the genuineness of the particulars furnished by the assessee at the time of original assessment, and when it prima facie establishes the link between the assessee and the third party who is an accommodation entry provider, the Assessing Officer is empowered rather duty bound to make further inquiry / investigation to unearth such camouflage or wrong or illegal dealings of the assessee. As observed by the Supreme Court in the case of Sumati Dayal vs Commissioner Of Income-Tax reported in AIR 1995 SC 2109, apparent must be considered as real until it is shown that there are reasons to believe that apparent is not real, and that the Taxing Officers are entitled to look into the surrounding circumstances to find out the reality, and the matter has to be considered by applying the test of human probabilities."

7. Thus, considering the totality of facts and the circumstances of the case on hand as narrated herein above in the preceding paragraphs *vis-a-vis.* considering the settled legal position, it appears that there is direct nexus / live link between the material coming to the notice of the Assessing Officer and

that, for formation of his belief that there has been escapement of the income of the assessee from assessment in the year under consideration because of his failure to disclose fully and truly all material facts as from the inquiry/investigation by the Investigation Wing of the respondent, some tangible material was found to substantiate the fact that the assessee was the provider of accommodation entries and that, the income from commission, ranging from 0.5% to 1% was not disclosed and thereby, the income chargeable to tax has escaped assessment for the year under consideration. As emerges from the record, the petitioner has filed RoI for the A.Y. 2012-13 disclosing income of Rs.1,42,694/- despite showing a huge turnover of Rs.24,10,82,501/- in the audited books of account. Further, a detailed investigation is carried out by the Investigation Wing of the respondent and the outcome of the same is referred to herein above, which *prima facie* substantiates the case of the respondent. Thus, we are of the considered opinion that formation of belief by the Assessing Officer that the income chargeable to tax has escaped assessment, based upon material derived during inquiry/investigation, appears to be justified.

8. The learned advocate for the petitioner has placed reliance upon several decisions, as referred to herein above. A perusal of the same revealed that they are mainly based on the aspects of change of opinion and reason to believe. There cannot be any dispute with regard to the ratio laid down in the same, however, as discussed herein above, the petition has failed so far as such aspects are concerned and accordingly, we deem it proper not to delve deep into them as would be of no avail to the petitioner.

9. For the aforesaid discussion and observations, this petition fails and is dismissed accordingly. Notice is discharged. Ad-interim-relief shall stand vacated forthwith.

[Bela M. Trivedi, J.]

[A. C. Joshi, J.]

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