

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**

[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

I.T.A. No. 2408/Kol/2019**Assessment Year : 2011-12**

DCIT, Circle-6(1), Kolkata	Vs.	M/s G.K. Ispat Pvt. Ltd. (PAN: AACCG 5067 A)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

C.O. No. 55/Kol/2019**(Arising out of I.T.A. No. 2408/Kol/2019)****Assessment Year : 2011-12**

M/s G.K. Ispat Pvt. Ltd. (PAN: AACCG 5067 A)	Vs.	DCIT, Circle-6(1), Kolkata
Cross-objector		Respondent / (प्रत्यर्थी)

I.T.A. No. 2407/Kol/2019**Assessment Year : 2011-12**

DCIT, Circle-6(1), Kolkata	Vs.	M/s Gaurav Rose Real Estate Pvt. Ltd. (PAN: AABCG 0729 J)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

C.O. No. 56/Kol/2019**(Arising out of I.T.A. No. 2407/Kol/2019)****Assessment Year : 2011-12**

M/s Gaurav Rose Real Estate Pvt. Ltd. (PAN: AABCG 0729 J)	Vs.	DCIT, Circle-6(1), Kolkata
Cross-objector		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	08.09.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.11.2022
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, CA
For the Respondent/ राजस्व की ओर से	Shri Amal Sudhir Kamat, CIT

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

These are the appeals preferred by the revenue and Cross-objections by the different assesseees are against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 30.08.2019 for the AY 2011-12.

2. First of all we will adjudicate revenue's appeal in ITA No. 2408/Kol/2019 for AY 2011-12.

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

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in nullifying the assessment done u/s 147.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that the addition made by the AO was merely based on suspicion and surmises without any cogent material to controvert the evidence filed by the assessee in support of claim.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the AO by treating the receipts of Rs. 14,11,00,000/- as unexplained cash credit u/s 68 of the Act.

4. That the appellant craves for leave to add, delete and modify any of the grounds of appeal before or at the time of hearing.

4. By virtue of ground nos. 1 and 2, the revenue has assailed the order of Ld. CIT(A) whereby the Ld. CIT(A) has quashed the reopening proceeding u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. Facts in brief are that the assessee filed return of income on 13.09.2011 which was selected for scrutiny. The assessment was framed u/s 143(3) of the Act vide order dated 28.01.2014 assessing the total income at Rs. 97,19,400/-. During the course of original assessment proceedings, the AO examined the issue of interest bearing loan taken from M/s Gaurav Rose Real Estate Pvt. Ltd. of Rs. 14.11 crores by calling for various details and evidences which were duly furnished by the assessee. In order to verify the transactions independently the AO also issued notice u/s 133(6)/131 of the Act to M/s Gaurav Rose Real Estate Pvt. Ltd. and the impugned notices were duly complied with and responded in the original assessment proceedings. The said transaction of Rs. 14.11 crores was explained by the assessee before the AO and assessment was also framed accordingly by accepting the transactions as genuine. Subsequently the AO received information from Investigation Wing that the assessee had transaction with M/s Gaurav Rose Real Estate Pvt. Ltd. of Rs. 70 Lakhs during the F.Y. 2010-11 which is paper company managed and controlled by Shri Manohar Lal Nangalia and accordingly the case was reopened by issuing notice u/s 148 of the Act dated 31.03.2018 which was complied with by filing return of income on 24.04.2018. In response to proceedings u/s 147 of the Act, the assessee raised objections vide its letter dated 15.11.2018 which was disposed off by letter sent with notice u/s 142(1) dated 08.12.2018. The AO during the original assessment proceedings called for various details and evidences which were duly filed by the assessee comprising loan confirmation, bank statement of the assessee as well as of M/s Gaurav Rose Real Estate Pvt. Ltd. proving the source of funds received by the assessee. The AO also noted that the address of lender company of M/s Gaurav Rose Real Estate Pvt. Ltd. was shown as C/o G.K Steels, Sagar Estates, 2, N.C. Dutta

Sarani, 4th Floor, Unit-3, Kolkata which is an unit of M/s G.K. Ispat Pvt. Ltd. with the same address and thus the AO came to the conclusion that the assessee and this company M/s Gaurav Rose Real Estate Pvt. Ltd are operating in collusion with the result that assessee is the ultimate beneficiary of Rs. 14.11 crores and M/s Gaurav Rose Real Estate Pvt. Ltd. has played the role of accommodation entry provider and therefore accordingly the amount was added u/s 68 of the Act to the income of the assessee thereby assessing the income at Rs. 15,08,19,400/- vide order dated 30.12.2018. Needless to say the assessment of M/s Gaurav Rose Real Estate Pvt. Ltd. was also reopened u/s 147 of the Act and addition was on protective basis.

6. The aggrieved assessee challenged the order of AO before the Ld. CIT(A) who allowed the appeal of the assessee on the legal issue of reopening u/s 147 by quashed the same by observing and holding as under:

“As regards to the ground No. 1 to 4 relates to reopening of the assessment, the AR has submitted that the AO reopened the case on the basis of report of the Investigation Wing without any tangible material or applying his own mind to form the belief that income of the assessee chargeable to tax has escaped assessment. The AR has further submitted that only the reasons which has to be looked into for the purpose of justifying the reopening and placed his reliance to the judgement of Bombay High Court in Hindusthan Lever Ltd reported in 268 ITR page 332 has held that it is only the reasons recorded which has to be considered. No word can be added or substituted, No inference can be drawn. No other document or paper outside the reasons recorded can be referred or relied on to justify the reasons.

The AR has further, keeping in mind the aforesaid principles as laid down by the courts, invited the attention to the reasons recorded by the AO, a copy of which has been enclosed.

1. *In para No, 1 of the reasons the Ld. AO has recorded the fact of filing the return as well as the fact of assessment having been completed under sec. 143(3).*
2. *In the second para the Ld. AO has simply reproduced the information from ADIT, Inv., Unit2(3), Kolkata that the Director of Gaurav Rose Real Estate Pvt Ltd opened a bank account wherein credits were received from various companies and that M/s. Gaurav Rose Real Estate Pvt Ltd is an identified paper and company managed and controlled by one Manohar lal Nangalia.*

The AR submitted that the fact of opening of bank account is a matter of record but there is no material or evidence incorporated in the reasons recorded to support the reasons that M/s. Gaurav Rose Real Estate Pvt. Ltd is an identified paper and company managed and controlled by one Manohar lal Nangalia. Neither the statement of any person in the name of Manohar lal Nangalia is incorporated nor any contents thereof have been mentioned in the reasons. Therefore, the observation that Gaurav Rose Real Estate Pvt. Ltd is identified paper company or is managed and controlled by Manohar lal Nangalia cannot convey any

responsible belief of income having escaped assessment. Moreover, the director was Sri Balkishan Agarwala who was looking after the business and only his statement for Gaurav Rose Resources was recorded. No question was asked to Balkishan Agarwal about Manoharlal Nanglia in respect of Gaurav Rose Resources. Therefore, the reliance on the alleged statement of Manoharlal Nangalia and reopening the assessment on that basis and thereafter making the addition was uncalled for .

3. In third para again the information from ADIT Wing have been reproduced that there was transaction to the tune of Rs. 70 lakhs by the assessee company with M/s. Gaurav Rose Real Estate Pvt Ltd which again was observed by the ADIT as identified paper company managed and controlled by Sri ManoharlalNangalia.

The AR submitted that since the very basis of treating M/s. Gourav Rose Real Estate PvtLtd as identified paper company mentioned in the reasons has no legs to stand upon, the observation of the ADIT, Inv. Wing cannot be a ground to form a reasonable belief that income has escaped assessment.

3. In para four again the AO has reproduced the observations of the ADIT that statement of Mr.Manoharlal Nangalia was recorded by income Tax Department on various occasionswherein he allegedly accepted of being engaged in facilitating various prearranged entries and that Sri Manohalal Nangalia was Director of Gaurav Rose Real Estate Pvt Ltd. The AO further stated that there Was transaction of Rs. 70 lakhs which was not genuine. The AO then recorded that the said transaction needs to be verified to ascertain its genuineness.

The AR submitted that the here again the AO simply reproduced. the observation of the ADIT, Inv Wing but has not mentioned even a single date when the statement of Sri Manoharlal Nangalia was recorded and in what connection. such statement was recorded. The AO has not reproduced or quoted the alleged statement ofSri or any portion thereof in the reasons 'recorded which can show or through any light about the transaction of Rs. 70 lakhs and the nature of transactions. Simply because there issome transaction with some company the same cannot be a ground to form the reasonable belief of escapement of income of the assessee.

Moreover,theAO did not form the reasonable belief that the Income of the assessee has escaped assessment on the basis of the information reproduced by the AO in para] to 4, the AO formed the opinion and belief that "the same needs to be verified to ascertain its genuineness,"

The AR submitted that the proceedings initiated u/s. 147 for the purpose of verification of a transaction or genuinity thereof is bad in law. No assessment call he reopened for verification. The assessment reopened merely to verify the transactions as mentioned in the reason. No reason to believe that income has escaped assessment. Assessing Officer wanted to inquire about the certain transaction are made by assessee. No reason to issue notice for reassessment. The AR further placed his reliance on various case laws are **mentioned supra**. The AO thereafter recorded his own reasons as under:-

“Based on the above facts, the undersigned has reasons to believe that transaction of a minimum ofRs. 70 lakhs was made during FY 2010-11 by the assessee company/s G.K IspatPvt. Ltd from the identified paper company which are not genuine with the help of accommodation entry operator and his paper/bogus/shell companies which appears to be done to escape the income from taxation and in order to adjust the income/losses in their return of income which needs to be added to their income”.

The AO, thereafter, also recorded the fact that during the assessment proceedings various notices were issued and, the assessee replied, with the same, However, the AO, further observed that the assessee had not fully and truly disclosed the following material facts, No such non-disclosure of material facts have been mentioned in the reasons recorded, The AO further observed that it was not a case of change of opinion and thereafter the AO noted that the notice u/s. 148 is issued after obtaining approval from the Pr. CIT.

The AR has further submitted that the proceedings have been initiated on the basis of the report and opinion of the ADIT, (Inv) which is apparent from para 6 of the reasons recorded. ,The AO himself did not verify from the assessment records that the transactions with M/s, Gourav Rose Real Estate Pvt Ltd were duly examined in the course of assessment proceedings u/s. 143(3) after calling for the evidences, bank statements and other details. Not only that it was also on record that in the course of proceedings U/s. 143(3) the Ld.AO issued notice u/s. 133(6)/131 to which reply was filed vide letter dated 13.12.2013 which was referred in the assessee's reply dated 26.12,2018 filed before the Ld. AO which remains uncontroverted, It is apparent that the AO has not discussed the said letter which contained the entire transactions with the said company but has simply borrowed the report and opinion of the ADIT and proceeded on the basis of borrowed satisfaction of the ADIT, Investigation. Assessment cannot be reopened simply on the basis of the information of the Inv. Wing and on the basis of borrowed satisfaction, The AO should have applied his own mind, should have gone through the records and formed his own belief to form reasonable belief that income has escaped assessment.

The AR has placed is reliance to the High Court in the case of Principal CIT vsG&GPharma India Ltd. in ITA 545/2015 vide order dt. 08,10.2015 at paras 12 and 13 was held as follows:

"12, In the present case, after setting out four entries, stated to have been received by the assessee on a single date i.e 10th Feb. 2003 from four entries which were received by the assessee on a single date i.e 10th Feb.,2003 from four entries which were termed as accommodation entries, which information was given to him by the Director Investigation, the AO stated 'I have also perused various material and report from Investigation Wing and on that basis, it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries.' The above conclusion is unhelpful in understanding whether the AO applied his mind in the materials that he talks about particularly since he did not describe what these materials were. Once the date on which these called accommodation entries were provided is known, it would not have been difficult for the AO. If he had in fact undertaken the exercise, to make a reference in the manner in which those very entries were provided in the accounts of the assessee, which must have been tendered along with the return, which was filed on 14th November, 2004 and was processed u/s. 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: It is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decision discussed, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment is missing in the present case.

13. A perusal of the reasons recorded demonstrate total non-application of mind by the A.O. Thus, applying proposition laid down by the Jurisdictional High Court in G&G Pharma India (supra) we hold that the reopening of assessment is bad in law."

The AR further submitted that the AO has recorded the reasons and issued the notice u/s. 148 on 31.3.2018. However before that, the same AO himself has issued notice u/s. 148 in the name of Gourav Rose Real Estate Pvt Ltd for the same assessment year, wherein in he has not treated the said Gourav Rose Real Estate Pvt Ltd as identified paper company. It appears from the reasons recorded in the case of Gourav Rose Real Estate Pvt Ltd. a copy whereof is enclosed herewith. that the AO also examined their bank statement from which it was clear that M/s. Gourav Rose Real Estate Pvt Ltd has advanced loan to the assessee company. Therefore even otherwise on 31.03.2018 there was no reason to believe that M/s. Gourav Rose Real Estate Pvt Ltd was identified paper company.

As regards to ground No. 5 and 6, relating the addition on merits, the AR of the appellant has submitted that the assessee duly filed the loan confirmation letter along with bank statement and produced books of accounts and evidences in the course of original assessment proceedings. Not only that the assessee also explained the source of source though in the case of cash credit by way of loan the assessee is not required to produce source of source. The loan creditor is group' company of the assessee. In the balance sheet of the lender company there was share capita) of Rs. 31.18 Crores as on 31st March 2010 which was represented by investment in the assets. The capital of the Investor company' was duly accepted by the department in the proceedings and assessment completed u/s. 143(3) for the Assessment year 2009-10 wherein the aforesaid capital was accepted. The creditor also filed the loan confirmation letter as well as source of the money and the same was duly accepted in the original assessment proceedings. The assessee u/s. 68 is not required to prove the source of source, but only identity. creditworthiness and genuinity of the transact is to be proved. The identity cannot be disputed, since the AO himself has assessed the said Gaurav Rose, The capital and reserves of Gaurav Rose as on 31.3.2010 as accepted in the order u/s. 143(3) was Rs. 31,18,92,014/-. Further the genuinity of the transaction cannot be doubted since the amount was received by account payee cheque and the same was also accepted after due verification in the original assessment. The AR further submitted that source of source is not required to be proved in case of cash credit and placed his reliance on various case laws.

As regards to reopening of the case I find that the AR of the appellant has challenged the reasons for reopening the case and also placed his reliance on various case laws. Hence, having taken into consideration the aforesaid judicial precedents and other case laws cited by the AR of the appellant, in order to appreciate the legal ground raised. It need to be look into the reasons recorded by the AO before proposing to reopen the assessment which find placed in the paper book, which is reproduced as under:-

1. The assessee company M/s. G.K. Ispat Ltd. is a wholeseller. The original return of income for assessment year 11-12 was filed on 13.9.2011. Assessment U/s. 143(3) of the I.T. Act was completed on 28.1.2014 .wherein income was assessed at Rs. 97,19,400/-.
2. Information has been received from ADIT(Inv)Unit 2(3), Kolkata that ShriBalkrishnaAgarwal, director of M/s. Gaurav Rose Real Estate Pvt Ltd opened current account (A/c. No.33105155545) in standard chartered bank, Kolkata Branch in which credits are mainly from transfer of funds from G.K. IspatPvt Ltd and RTGS credit are from entities namely Sunflower Deal Mark Pvt Ltd, ManaliCommotradePvt Ltd, DhankalashVanijyaPvt Ltd, Emson Trading Pvt

Ltd, KasiVishwanathTradecomPvt Ltd, Mangalvani Distributors Pvt Ltd, Pukhraj Dealers Pvt Ltd etc . The debits are mainly cash withdrawal and fund transfer to G.KI. [spatPvt Lid, ShriTirupati Industries, SomaniAgarwal and inward clearing cheques issued to Corp Homes Pvt Ltd, Rukmani Forgings Pvt Ltd, Tuscan Constructions and Property Developers, Bhavya . Ferro Products Pvt Ltd. Vee Pee Steels Pvt Ltd, etc. In response to the summons issued U/s. 131 of the I. T. Act it was submitted by Smt. NirmalaBankia that she is neither a shareholder nor a director of the said company namely M/s. Gaurav Rose Real Estate Pvt Ltd- as of now. It was stated in the information that M/s. Gaurav Rose Real Estate Pvt Ltd, is an identified paper company-managed-and-controlled-byShriManohar-Lal-Nangalia' and its another director namely ShriBalkrishnaAgarwal is also a director ofM/s. G.K. IspatPvt Ltd.

3. The transactions are seen to be made by the assessee company M/s. G.K. [spat Pvt Ltd with M/sGaurav Rose Real Estate Pvt Ltd during F. Y. 10-11 to the tune of Rs. 70,00,000/- which is an identified paper company managed and controlled by ShriManoharLalNagalia.
4. It is seen that the statement of Shri.ManoharLalNangalia has been recorded by income Tax Department earlier on various occasion wherein he has accepted under oath the fact of his being engaged in facilitating pre arranged accommodation entries to various beneficiaries in lieu of some commission with the help of 11is dummy directors and various papers/ bogus/ shell entities controlled by him. It is seen that ShriManoharLalNangalia himself was a director of M/s. Gaurav Rose Real Estate Pvt. Ltd during FY 11-12.
5. **It appears that the assessee company M/s. G.K IspatPvt. Ltd had made transactions of a minimum of Rs. 70,00,000/- during FY 10-11 from entries viz. M/s. Gaurav Rose Real Estate Pvt. Ltd which are not genuine. The same needs to be verified to ascertain its genuineness.**
6. Based on the above facts, the undersigned has reasons to believe that transaction of a minimum of Rs. 70 lakhs was made during FY 10-11 by the assessee company M/s. G.K IspatPvt. Ltd from the identified paper company which are not genuine, with the help of accommodation entry operator and his paper/bogus/shell companies which appears to be done to escape the income from taxation and ill order to adjust the income/losses in their return of income which needs to be added to their income.
7. In this case a return of income as filed for the year under consideration and regular assessment u/s. 143(3) of reassessment u/s 147 was made on 28.1.2014. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding V/so 147 of the Act are reason to believe that income Jar the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all . material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above. I have carefully considered the assessment records containin9 the submissions made by the assessee in response to various notices issued durin9 the assessment/reassessment proceedings and have noted that theassessee has not

fully and truly disclosed the following material facts necessary for his assessment for the year under consideration.

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s. 147 of the Act.

It is true that the assessee has filed a copy of annual report and audited P&L Account and balance sheet along with return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited Profit and loss Account and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons (or reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course at regular assessment/reassessment. It is important to highlight here that material facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report audited profit and loss account balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For afore stated reasons, it is not a case of change of opinion by the AO.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice U/s. 148 has been obtained separately from Pr. CIT as per the provisions of sec. 151 of the I.T Act.

In this regard I would firstly like to quote section 147 of the Income Tax Act, 1961 which reads as follows:

147. If the [Assessing Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section or recomputed the loss or the depreciation allowance or any other allowance as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year);

A bare reading of the foregoing provision suggests that if the assessing officer has the reason to believe that any income chargeable to tax has escaped assessment then the Assessing Officer may, subject to the provisions of section 148 to 153 assess or reassess such income. Thus, what is important to note here is that the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment. The Reason to believe being the foremost criteria for reopening of assessment under section 148 of the Act, it should be interpreted in the right perspective. 'Reason to believe' cannot be reason to suspect merely. There must be a direct nexus between the material coming to the notice of the Assessing Officer and the subsequent formation of belief based on such material that there has been

escapement of the income. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer when he recorded reason. I further find that it is well settled that even in case where the original assessment is made without scrutiny, the requirement of the Assessing Officer forming the belief that income chargeable to tax has escaped assessment, would apply. The assessment cannot be reopened for verification of the transaction as mentioned by the AO in para 5 of reason as recorded for reopening the case for reassessment.

I further find that assessment is also bad in law since the quantum of the alleged escaped income is not mentioned in the reasons recorded. In fact, the AO has mentioned a transaction figure of Rs. 70,00,000/- but the same is not stated to be escaped income. What the AO says that the assessee received Rs. 70 lakhs from Gourav Rose Real Estate Pvt Ltd., which is not genuine and the same need to be verified to ascertain its genuineness. Therefore, when the escaped income is not quantified, the reasons fail and the assessment is bad in law. It is mandatory to quantify the escaped income as has been held by various courts.

I find that the AO had gone through the records, it would have been apparent that the transaction with Gourav Rose were to the tune of about 14.11 crores. This fully proves that the AO has not gone through the records, did not apply his mind and simply acted on basis of the observations of the ADIT. It is failure on the part of the AO before issue of notice for reopening the case u/s] 48 of the act . The Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyviny (I) Ltd (2017) 395 ITR 5 (Del) has held that

“Where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material as per se and thus, reassessment on sold basis was not justified.”

It is dear from the reason as recorded by the AO that the simply mentioned the transaction of Rs 70 Lacs and did not examine the assessment record where the loan amount was of Rs 14.11 Cr as submitted by the appellate at the time for first scrutiny assessment.

I find that there must be a live link between the materials on which conclusions are based and the actual conclusion 'of the Assessing Officer in formation of his belief that any income chargeable to tax has escaped assessment. Such reason must be held in good faith and cannot be pretence and also cannot be based on extraneous or irrelevant consideration. Unless the Assessing Officer has "reason to believe" and such reason is material and relevant to form a belief that there is an escaped assessment, no action under section 147 of the Act can be taken. The Hon'ble Calcutta High Court in the case of East Coast Commercial Co. Ltd. V. ITO [1981] 128 ITR 326 (Cal.) observed that The recording of reasons in our opinion is not an idle formality but is a mandatory requirement of the statute casting a duty and obligation on the ITO to record his reasons for issuing a notice for 'reopening an assessment and the CBDT or the Commissioner, as the case may be, being satisfied that it is a fit case for issue of such notice solely on the basis of the said reasons recorded, accords its sanction to the issue of such notice.

Therefore, the reasons recorded is factually incorrect, vague, remote and farfetched. It is clear that the reasons recorded are prima facie factually erroneous and such erroneous facts cannot lead to reopening of the assessment. The reasons recorded are the primary basis for any reopening and if the facts stated therein are prima facie erroneous then it is clear that the reopening has been made erroneously without application of mind and without even making a basic verification whether the alleged information is correct. Such reasons therefore at the

very initiation cannot hold the test of validity. Hence, in absence of any tangible material on record it cannot be concluded that a certain sum of money has escaped income tax assessment. Therefore, both the jurisdictional requirements for invoking section 147 i.e reason to believe and income escaping assessment have not been satisfied. Hence, such reopening is bad in law and therefore not sustainable.

Further, while interpreting section 147 of the Income Tax Act, the Hon'ble Supreme Court of India in the case of CIT vs. Kelvinator India Ltd reported in [2010J 320 ITR 561 (SC) held that:

“Hence after April 1, 1998, the Assessing Officer has power to reopen in assessment, provided there is tangible material to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief.

In reference to the aforesaid decision of the Apex Court in the case of CIT vs. Kelvinator India Ltd (supra), the reasons recorded provided by the AO falls to establish any link between the alleged information received (being the alleged tangible material) and subsequent formation of belief that the assessee was in-receipt of alleged accommodation entry which has escaped tax assessment. This is evident from the fact that the assessee had no transaction with any of the parties mentioned in the reasons recorded.

I find that in the reasons recorded, wrongly alleged the assessee to be in receipt of accommodation entries through bogus/paper companies i.e. Rose Real Estate Pvt Ltd but fails to specifically denote in what way the AO had reached this conclusion. No such calculation or derivation of the alleged amount has been provided either in the alleged information or in the reasons recorded provided by the AO. The AR submitted that the AO has recorded the reasons and issued the notice u/s. 148 on 31.03.2018. However, before that, the same AO himself has issued notice u/s. 148 in the name of Gourav Rose Real Estate Pvt Ltd for the same assessment year, wherein, in he has not treated the said Gourav Rose Real Estate Pvt Ltd as identified paper company. It appears from the reasons recorded in the case of Gourav Rose Real Estate Pvt Ltd, a copy whereof is enclosed herewith, that the AO also examined their bank statement from which it was clear that M/s. Gourav Rose Real Estate Pvt Ltd has advanced loan to the assessee company. Therefore, even otherwise on 31.03.2018, there was no reason to believe that M/s. Gourav Rose Real Estate Pvt Ltd was identified paper company. Therefore, the fact that the alleged amount had been mentioned arbitrarily without any record or basis on which such amount could be ascertained. The said reasons appear to be more in the nature 'of general allegations without any specification the transactions entered into by the assessee.

Pursuant to the aforesaid facts, it is clear that the assessee's case had been reopened only on the basis of reason to suspect and for verification of the transaction as mentioned in para 5 of reason as. recorded by the AO for reassessment of the case and not on the basis of reason to believe as no tangible material was available on record. There was in fact no material which would even give rise to a reason to suspect let alone reason to believe that the assessee was in receipt of alleged accommodation entries which has escaped income assessment. Mere roving and fishing enquiries cannot be a basis on which reopening of the assessment can be initiated under section 147 of Income Tax Act, 1961.

The Hon'ble Rajasthan High Court in the case of Mukesh Modi & OI'S. reported in (2014) 366 ITR 418 (Raj) held the following:

"Evasion of tax was menace to society but the assessee contributing to the exchequer in form of tax could not be allowed to suffer on mere premise that it had evaded payment of tax. Rowing and fishing enquiry in hands of AO on mere suspicion or change of opinion could not satisfy the expression "reason to believe" exposing assessee for reopening of assessment. Notice for reopening of assessment was not in consonance and in conformity with Section 147 and made specified notice vulnerable.

Thus, in absence of any cogent evidence against the assessee and without satisfying the jurisdictional requirements for invoking section 147 of the Act, arbitrarily reopening of assessment case is not legally sustainable.

As regards to improvement of reason for reopening the case, *I find that the AO while recording the reason has not mentioned that how much amount was concealed by the appellate company or on come has escaped from assessment. It is apparent that from the Assessment Order that the AO had subsequently improved upon the reasons recorded at the stage of passing the Order which is not permissible in law. The reasons recorded being based on the tangible material forming the primary basis of reopening of the assessment for the relevant year cannot be altered or improved upon subsequently as done in the present case while passing the' impugned Assessment Order u/s 143(3)/147 of the Income Tax Act, 1961. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs R.B. Wadkar, ACIT vide order dated 25 February, 2004 reported 268 ITR 332 Born has held as under.-*

"21.The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing' Officer to reach the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submission, otherwise the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches the court, on the strength of the affidavit or oral submissions advanced.

22. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of the proviso to Section 147 of the Act the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under Section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and not set aside.

The Hon'ble Delhi High Court in the case of Sabirwal properties Pvt. Ltd reported in (2006) 382 ITR 547 held that

“Once a query has been raised during the assessment proceedings and the assessee has responded to the query to the satisfaction of AO, it must apply that there is due application of mind by the AO to the issue raised. It is not upon to the AO to improve upon the reasons recorded at the time of issuing the notice either by adding and/ or substituting the reasons by affidavit or otherwise-Reassessment was quashed.”

The reliance is also placed to the Hon'ble Bombay High Court in the case of GKN Slinger Metals Ltd reported in (2015) 371 ITR 225 (Bom.) (HC) and in the case of Prashant S. Joshi reported in [2010] 324 ITR 154 (Bom.)

I further find as it is also apparent from the reasons that the quantum of the alleged escaped income is not stated in the reasons. The AO has mentioned some transactions in the bank account but the said transactions cannot lead to income nor there is any whisper that the said transactions were income of the assessee, Needless to state that only reasons recorded have to be read and no inference can be drawn from the reasons as stated in the judgements cited earlier. Therefore, the reason fails and the assessment is bad in law.

The Hon'ble Kolkata ITAT in the case of Anjan Kumar Naha, Kolkata vs I.T.O., Ward - 44(1), Kolkata, order dated 15 May 2019 under ITA No.2379-2381/Kol/2017 for Assessment Years :2009-10 to 2011-12 has held as under.-

These three appeal(s) for assessment year(s) 2009-10 to 2011-12 arise from the Commissioner of Income Tax (Appeals)-13 Kolkata's order(s) all dated 28.08.2017 passed in case Nos.165, 168 & 167/CII(A)- 13/Kol/2014-15 u/s 147r.w.s. 143(3) of the Act.

It transpires at the outset that the assessee's first and foremost substantive grievance identically pleaded in all the three instant appeal(s) challenge correctness of both the lower authorities action taking recourse to sec. 148 r.w.s. 147 re-opening giving rise to his impugned re-assessment(s). The assessee's case as per its pleadings qua the former issue is that the Assessing Officer had erred in initiated the impugned proceeding without forming any reasonable belief of his taxable “income” having escaped assessment. His latter argument is that the Assessing Officer never supplied copy of the re-opening reasons despite many requests. He quotes Hon'ble apex court's decision in G.K.N Driveshafts (India) Ltd vs. ITO (2003) 259 ITR 19 (SC) that the re-assessments are vitiated quo the instant legal-defect as well.

Learned Departmental Representative submits that the assessee has not raised the instant legal issue before the lower authorities and therefore, the same deserves to be declined on this precise reason alone. Mr. Shah takes us CIT(A)'s discussion in page-S clearly mentioning the assessee to have canvassed his legal plea to this effect. We therefore decline the Revenue's foregoing technical plea.

Coming to the assessee's former arguments that the Assessing Officer had not forming any reasonable belief based on tangible material that there had been a case of his taxable income having escaped assessment, we find that the corresponding detailed re- opening reasons to this effect reads as follows-

The assessee is an Individual submitted his Return of Income for the A. Y 2009-10 in ITR-4 on 30/09/2009 disclosing total income at Rs.1,59,643/-. The case was selected for scrutiny through CASS Assessment was completed u/s. 143(3) of the IT Act on

26/12/2011 on a total income of Rs.1,92,060/- During the course of assessment proceeding of Smt. Shyama Naha, wife of ShriAnjanKumar Nahastatement from Bunk have been taken. On perusal of the Bank Statement it has been gathered that ShriAnjan Kumar Naha is having following Bank Accounts either in his name and jointly with his family members wherein there are huge transactions during the F. Y 2008-09 relevant to AY 2009-10.

<u>Sl. No.</u>	<u>Name of the account holder</u>	<u>A/c No.</u>	<u>& Name of the Bank</u>
1.	Anjan Kumar Naha &AbhijitNaha	118301010103298,	United Bank of India
2.	Anjan Kumar Naha &Vikramjit Naha	118301010102725,	United Bank of India
3.	Anjan Kumar Naha &Shyama Naha	3007854636,	Central Bank of India
4.	Anjan Kumar Naha	100271,	United Bank of India
5.	Anjan Kumar Naha	1183050010271,	United Bank of India

On further perusal, it was gathered that during the course of assessment proceedings for A. Y 2009-10, Bank statement was furnished by tile assessee bearing account no, 32910097287 with Standard Chartered Bank which was for the part period i.e. .01.04.2008 to 22.11.2008 only whereas for the remaining period Bank statement of M/s Himani Enterprise was enclosed bearing account No. 32905029120 for suppression of total receipts as well as payment. On perusal of Return of Income for AY 2009-10, it is found that the above mentioned Bank accounts have not been shown in his Return of income.

I have, therefore, reason to believe that income chargeable to tax has escaped assessment for the year under reference and the case is fit for reopening u/s147 of the I.T Act by issuing notice u/s. 148 of the Income Tax Act.

In this case, approval of Learned JCIT, Range-41, Kolkata is required as assessment has been made for tile relevant assessment year u/s.143(3) and 4 years from the end of the relevant. AY has not been elapsed.

Put up for kind perusal and approval"

The assessee vehemently contends during the course of hearing that the above extracted re-opening reasons make it clear that the Assessing Officer had not been formed any belief of his taxable income having escaped based any tangible material. Our attention is invited to the above extracted portion that the Assessing Officer had merely observed that the assessee had made huge transactions in his bank account(s) not shown In the respective returns. Mr.Choudhury, on the other hand, vehemently supports the above re-opening reasons that the assessee had not disclosed the corresponding bank accounts in the return.

We have given our thoughtful consideration to rival contentions qua the instant former issue There is hardly any dispute that the Assessing Officer has recorded his re-opening reasons on the ground that the assessee's bank accounts allegedly not shown in the return had seen huge transactions. There is admittedly no record of such transactions or sums involved therein which could be taken as the taxpayer's taxable income having escaped assessment. Now comes the question as to whether the Assessing Officer could initiate Impugned proceedings on the account of the mere fact that the assessee had made transactions not disclosed in his return, this tribunal's decision in ITA No. 123 to125/LKW/2017 In RavindraDeoTyagivs Income

Tax Officer decided on 30.11.2018 holds that such reopening reasons In absence of any taxable income having escaped assessment do not withstand the test of law.

The Hon'ble High Court of Gujarat in Special civil application no. 1626 of 2014 with Specialcivil application no. 1627 of 2014 in the case of LalitaAshwin Jain has held as under:-
 "8.2 It is further urged that on completion of few years from the end of relevant assessment year, section 149(9) (b) provides that the notice can be issued only if the income chargeable to tax, which has escaped the assessment or likely to amount to rupees one lakh or more for that year under consideration. In absence of anything in reason recorded to suggest in the reasons recorded that income chargeable to tax, which has escaped assessment is rupees one lakh or more notice itself deserves to be quashed, as held by this Court in case of BakulbhaiRamanlal Patel v. Income Tax Officer, reported in (2011) 56 DTR (Guj.) 212."

Thus in absence of basic requirement of Section 147 of the Act, the assumption of jurisdiction by the Assessing Officer was held to be invalid. The Court in this case also has held and observed that in reassessment proceedings the income escaped must exceed rupees one lakh as per the limitation set out under the provisions of Section 149(1)(b). When the reasons do not reflect that the income having escaped assessment was more than rupees one lakh or likely to be more than rupees one lakh, the assumption of jurisdiction under Section 147 itself would be invalid, as such averment came in the affidavit-in-reply and there was no other material on record to indicate the extent of income which escaped assessment.

Taking firstly the last two grounds raised by the petitioner, it is true that in the reasons recorded, the Assessing Officer has not specifically recorded that income chargeable to tax which had escaped assessment for the year under consideration was rupees one lakh or more. The impugned re-assessment notice issued after four years of the close of the relevant assessment year, since is attacked on the ground of invalidity, it needs to be noted here that in the decision of this Court in case of BakulbhaiRamanlal Patel (supra). the reasons did not reflect that the income having escaped assessment was more than rupees one lakh or likely to be more than rupees one lakh, as is required to be done under the provisions of Section 149 (1)(b). The Court therefore held that while reopening the assessment beyond the period of four years from the end of relevant assessment year, such recordance is inevitable. Since there is a statutory bar against reopening the assessment, in case where the amount of income escaping the assessment does not amount to rupees one lakh or more, The Assessing officer is required to record finding to that effect and when no such finding had been recorded, except for a bare averment made in the affidavit in reply stating therein that income which had escaped assessment was more than rupees one lakh, and thus, in absence of any material on record to indicate that extent of income which had escaped assessment, the Court held that the assumption of Jurisdiction on the part of the Assessing Officer under Section 147 was invalid.

The Hon'ble Gujarat High Court in the case of Bakulbhai Ramanl Patel vs. Income Tax Officer Special Civil Appln. No, 12853 of 2010 4th March, 2011 (2011) S6 DTR (Guj) 212 Section 147,148, 149(1) (b), Asst. Year 2003-04 has held as under:-

For the purpose of invoking the provisions of s. 147 of the Act, formation of requisite belief precedes the initiation of the proceedings. In the circumstances, in the light of the provisions of sub-section (2) of s. 148, before issuing notice under s. 148 of the Act, the AO is required to record reasons for the formation of belief that income

chargeable to tax has escaped assessment In the present case; on a plain reading of the reasons recorded, as noted hereinabove no such belief appears to have been recorded by the AO.

However, in the penultimate para of the reasons recorded, the AO has recorded thus : "In view of tile Expln.2 to S. 147 of the IT Act, the case of the assessee is that where cash transaction made is verified. Therefore, I have reason to believe that deemed income has escaped assessment by not disclosing the true income relating to asst. yr. 2003-04. Hence, it is a fit case for issuance of notice under s. 148 of the IT Act."This in effect and substance is the only satisfaction recorded by tile AO as regards income having escaped assessment.

A bare reading of Expln.2 in s. 147 of the Act shows that the same merely lays down the categories of cases which shall be deemed to be taxes where income chargeable to tax has escaped assessment. The said application explanation nowhere speaks of verification of transactions or of deemed income. Reading the reasons recorded in their entirety, there is nothing whatsoever to indicate as to which is the income that has not been disclosed by the petitioner or that any income chargeable to tax has in fact escaped assessment. The entire tenor of the reasons recorded indicates that on the basis of some unsubstantiated and vague information, the AO has reopened the assessment for the assessment for the purpose of making a roving and fishing inquiry to verify as to whether any income has in fact escaped assessment which fact is borne out from the reasons recorded.

Since the reasons recorded do not reflect the reasons belief that income chargeable to tax has escaped assessment, the basic requirements of s. 147 of the Act have not been satisfied.

Unless the requirements of cl. (a) or cl.(b) of s. 147 are satisfied, the ITO has no jurisdiction to issue a notice under s. 148 of the Act. In the present case also it is apparent that the case of the AO is that investigation is required to be made in relation to the vague transactions referred to in the reason recorded. In the case of CIT vs. Batra Bhatta Company, the Delhi High Court held that the proceedings under s. 147 are not to be invoked at tile mere whim and fancy of an AO and it has to be seen in every case as to whether the invocation is arbitrary or reasonable. In the facts of the said case, the Court held that merely because the AO felt that the issue required 'much deeper scrutiny', was not ground enough for invoking s. 147. The Court held that it is not belief per se that is a pre-condition for invoking s. 147 of the Act but a belief founded on reasons.

The expression used in s. 147 is "If the AO has reason to believe" and not "If the AO believes". There must be some basis upon which the belief can be built It does not matter whether the belief is ultimately proved right or wrong, but, there must be some material upon which such a belief can be founded. In the case of Sheo Nath Singh vs. AAC (supra), the Supreme Court held that there can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section.

As regards the contention that the reasons do not reflect that the income having escaped assessment is more than rupees one lakh or likely to be more than rupees one lakh as laid down under the provisions of s. 149(1)(b) of the Act and as such, the assessment is time barred, a perusal of the reasons recorded indicates that nothing has been recorded by the AO to indicate as to what is the amount of income which is alleged to have escaped assessment. In the light of the provisions of s. 149(1)(b) of the Act, while reopening the assessment beyond a period of four years from the end of the relevant assessment year, since there is a statutory bar against reopening the assessment in case where the amount of income escaping assessment does not amount to rupees one lakh or more, the AO is also required to record a finding to that effect. In the present case, no such finding has been recorded. In fact, as observed hereinabove; there is nothing to indicate that the AO has reason to believe that any income whatsoever has escaped assessment. In the circumstances, on this count also, the assumption of jurisdiction under s. 147 of the Act is invalid.

The Hon'ble Allahabad High Court in the case of Mahesh Kumar Gupta Vs. CIT & ors in Writ No. 1086 of 2007 363 ITR 300 vide judgement dated 17.04.2013 quashed Notice under section 148 which was issued on the basis of reasons recorded where the reopening was beyond 4 years and there was no allegation in the reasons recorded that amount of escapement is of more than prescribed limit.

The Hon'ble Allahabad High Court in the case of Amarnath Agarwal v. CIT & Anr. Reported 371 ITR 0183 has held as under:

Further, from a perusal of Section 149(1)(b) of the Act, it is imperative that the Assessing Officer, in his reasons should also state that the escaped income is likely to be Rs. 1 lac or more, which is an essential ingredient for seeking the approved and satisfaction that is to be recorded by the Competent Authority under the Act.

Consequently, before taking any action, the Assessing Officer is required to substantiate his satisfaction in the reasons recorded by him. If the conditions mentioned are not satisfied, then the issuance of notice would be invalid.

The Hon'ble Supreme Court in the case of K.S Rashid & Sons v. ITO [1964] 52 ITR 355(SC) a Constitutional Bench of the Supreme Court held (Page 363);

"The second point which is very important is that in regard to the cases falling under section 34(1A) action can be taken only where the income which has escaped assessment is likely to amount to Rs. 1 lakh or more. In other words, it is only in regard to cases where the escaped income is of a high magnitude that the restriction of the period of limitation has been removed."

There is a requirement of law and also it has been held by various court including apex court to justify, that it is failure on the part of the assessee full and true disclosure of all material facts necessary for assessment before issuing notice for reopening the case u/s 148 of the act. Keeping in view of above, the AO while recording the reason has mentioned as under:-

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.

It is true that the assessee has filed a copy of annual report and audited P&L Account and balance sheet along with return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited Profit and loss Account "and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

It is evident from the above discussion that in this case the issues under consideration were never examined by the AO during the course of regular assessment/re-assessment. It is important to highlight here that material facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report, audited profit and loss account, balance sheet and books of account. In such a manner, that it would require due diligence by the AO to exact these information. For aforesaid reasons, it is not a case of change of opinion by the AO.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s. 148 has been obtained separately from Pr. CIT as per the provisions of sec. 151 of the I.T Act.

I find that the AO while issuing the notice, the facts were not mentioned in the reason as recorded to justify that there was failure on the part of the assessee to disclose truly and fully material facts in the matter. The AO has further mentioned that in this case the issues under consideration were never examined by the AO during the course of regular assessment / reassessment and for aforesaid reasons. It is not a case of change of opinion by the AO.

The facts are different as the assessee filed return on 13.09.2011 which was taken up for scrutiny and various details including the details of the loans and advances taken From Gourav Rose Real Estate Pvt Ltd., The Ld. AO examined all the details filed including the bank account elaborately, issued notice u/s 133(6)/131 to the loan parties including to M/s. Gour.av Rose Real Estate Pvt Ltd., examined the same and thereafter the assessment was completed u/s. 143(3) on 28.1.2014. The AO himself did not verify from the assessment records that the transactions with M/s. Gourav Rose Real Estate Pvt Ltd were duly examined in the course of assessment proceedings u/s. 143(3) after calling for the evidences, bank statements and other details. Not only that it was also on record that in the course of proceedings U/s. 143(3) the Ld. AO issued notice u/s. 133(6)/131 to which reply was filed vide letter dated 13.12.2013 which was referred in the assessee's reply dated 26.12.2018 filed before the Ld. AO which remains uncontroverted.

The reasons for the formation of the belief must have rational connection with or relevant bearing and on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that 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 sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time, I have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which

would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

In view of the cited judgments, the AO grossly erred in improving upon the reason for making an addition to the total income shown by the assessee in its Return of Income. The AO had not even mentioned the amount of concealment in his reasons recorded let alone alleging it. Therefore while passing the impugned Assessment Order alleging that his much of amount was-concealed income. is nothing but improvement of the reasons for making an addition and therefore, the AO was acting with a predetermined motive of making an addition no matter what documents are submitted or whatever explanation was given by the assessee. Such action of the AO of improving the reasons recorded is thus not permissible in law.

In view of the cited judgements, the AO grossly erred in improving upon the reason for making an addition to the total income shown by the assessee in its Return of Income. The AO had not even mentioned the amount of income which has escaped assessment in his reasons recorded and at the time has mentioned that the transaction need verification let alone alleging it. Therefore, while passing the impugned Assessment Order alleging that the loans are bogus is nothing but improvement of the reasons for making an addition no matter what documents are submitted or whatever explanation was given by the assessee. Such action of the AO of improving the reasons recorded is thus not permissible in law.

In view of above, the reasons recorded by AD does not stand the test as laid by plethora of judicial precedence as discussed above which is necessary to assume jurisdiction u/s 147 of the Act, therefore, in the light of the aforesaid facts and circumstances of the case as discussed, I find that the reasons recorded by the AD to justify reopening the assessment u/s. 147 fails and, therefore, the very assumption of jurisdiction to reassess the assessee fails. Since the AO failed to do so as discussed, the assumption of jurisdiction by him to reopen itself is coram non judice and, therefore, all subsequent action is null in the eyes of law and therefore, I quash the reopening and consequent reassessment order framed by him. In view of above, these grounds of appeal are allowed.”

7. The ld. D.R. while relying heavily on the order of AO submitted that the Ld. CIT(A) has wrongly quashed the reopening u/s 147 of the Act on the wrong appreciation of facts and law. The Ld. D.R submitted that though the assessment in this case was framed u/s 143(3) of the Act and issue was examined during the original assessment proceedings as well and the assessee had also filed all the necessary evidences before the AO. The ld DR undisputedly argued that this transaction of loan received by the assessee was accepted by the AO in the assessment framed u/s 143(3) of the Act. The Ld. D.R submitted that the AO received information from Investigation Wing that the assessee is a beneficiary of accommodation entry from M/s Gaurav Rose Real Estate Pvt. Ltd. which was revealed during the course of search action on Shri Manohar Lal Nangalia who has admitted during the course of search

that he was an accommodation entry provider. The Ld. D.R. submitted that the AO has received information that the assessee is a beneficiary of Rs. 70.00 Lakhs taken from M/s Gaurav Rose Real Estate Pvt. Ltd. and therefore this was the main ground on the basis of which the AO has reopened the case of the assessee u/s 147 of the Act. The Ld. D.R. argued that while recording the reasons it is not necessary that the AO has to record a specific and correct amount which has escaped assessment but it would be enough to initiate the proceedings for doing verification on the basis of substantive reasons. The Ld. D.R. submitted that on the basis of said report, the AO reopened the case of the assessee after recording the reasons u/s 148(2) of the Act and during the course of reassessment proceedings, the AO came to know that the assessee has taken a loan of Rs. 14.11 crores from M/s Gaurav Rose Real Estate Pvt. Ltd. and same was rightly added in the hands of the assessee as the said loan was an accommodation entry provided by M/s Gaurav Rose Real Estate Pvt. Ltd. which a shell company and assessee was final beneficiary of the said amount. The Ld. D.R. submitted that the case of M/s Gaurav Rose Real Estate Pvt. Ltd. was also reopened u/s 147 of the Act and the same amount was added on protected basis in the hand of the said accommodation entry provider. The Ld. D.R. therefore submitted that the order of Ld. CIT(A) is very vague, illogical and contrary to the provisions of law and may kindly be reversed by restoring the order of the AO.

8. The Ld. A.R. submitted that the assessment was opened on the basis of report of Investigation Wing without any incriminating material or without any application of mind and also without forming a reasonable belief that the income of the assessee has escaped assessment which is apparent from the reasons recorded. The Ld. A.R. submitted that in the reason recorded in Para 5, the AO has stated that the assessee company has transactions of minimum of Rs. 70 Lakhs during the financial year with M/s Gaurav Rose Real Estate Pvt. Ltd. which are not genuine and the same needs to be verified to ascertain the identity and creditworthiness. The Ld. A.R. submitted that the reopening u/s 147 of the Act cannot be taken recourse of just for verification but the AO has to form a reasonable belief on the basis of substantive information and

after due application of mind record a finding that the income has escaped assessment. Further the Ld. A.R. submitted that instant assessment year is 2011-12 wherein assessment has been framed u/s 143(3) of the Act vide order dated 28.01.2014. The Ld. A.R argued that the reopening was made by issuing notice u/s 148 of the Act dated 31.03.2018 apparently after a period of four years from the end of relevant assessment year which could not be made without satisfying the conditions as envisaged in the First Proviso to Section 147 of the Act that the escapement has been happened due to non-disclosure of material fact by the assessee in the return of income or in the course of assessment proceedings. The Ld. A.R. submitted that this is not the facts of the present case though the AO has recorded a finding in para 4 the assessee has failed to disclose truly and fully the material facts necessary for assessment of income for the year under consideration and thus justified the reopening u/s 147 of the Act. In defense of his arguments, the Ld. A.R relied on the following decisions:

- a) *Hindusthan Lever Ltd. vs. ACIT- [2004] 268 ITR 332 (Bom)*
- b) *Ajanta Pharma Ltd. vs. ACIT – [2004] 267 ITR 200 (Bom)*
- c) *Pr. CIT vs. G.G. Pharma India Ltd.-(Delhi- HC)*

9. The Ld. A.R. submitted that no verification of facts/information is required to be undertaken as the said loan was verified in depth by issuing notice u/s 133(6)/131 of the Act. The Ld. A.R. submitted that the AO has invalidly re-opened the assessment in mechanical manner based on borrowed satisfaction and by recording vague reasons only and no case specific and transaction specific valid material was brought on record to justify the reopening of assessment. The ld AR also vehemently argued that the re-opening was made in order to carry out the verification to ascertain the genuineness of the transactions which is not permissible. In defense of his argument the Ld. A.R. relied on the following decisions:

1. *PCIT v Manzil Dinesh kumar Shah (406 ITR 326)(Guj)*
2. *SLP dismissed by the Hon'ble Supreme Court against the judgment of the*

Hon'ble Gujrat High Court in the case of PCIT v Manzil Dinesh kumar Shah

3. *Inductotheran (India) P. Ltd. v DCIT (356 ITR 481)(Guj)*
4. *Chhugamal Rajpal v S P Chaliha and Ors. Ltd. (416 ITR 435)(SC)*
5. *Nivi Trading Ltd v Union of India (375 ITR 308)(Bom)*
6. *CIT v ManibenLalji Shah (283 ITR 453)(Bom)*
7. *CIT v Batra Bhatia Company (321 ITR 526)(Delhi)*

10. The Ld. A.R. also submitted that quantum of alleged escapement of income was not stated in the reasons recorded and therefore the reopening is bad in law. It is needless to mention that the reason are required to be read as they were recorded by the AO and no substitution or deletion or addition is permissible. The Ld. A.R. submitted that the AO has to disclose and open his mind through reasons recorded by him and he has to speak through the reasons. The Ld. A.R submitted that the AO has to record the reasons that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year but if reasons are recorded in an ambiguous and vague manner then the reopening is invalid. In defense of his argument he relied on the following decisions:

- a) *Hindusthan Lever Ltd.Vs ACIT 268 ITR 332 (Bom)*
- b) *Inspecting Assistant Commissioner &Anr. Vs. I.B.M World Trade Corporation (216) ITR 0811- Bom(at page 823)*
- c) *Equitable Investment Co. Pvt. Ltd. vs. ITO (1988) 73 CTR (Cal) 236: (1988) 174 ITR 714 (Cal)*
- d) *Gauri Shankar Chaudhury vs. Addl. Commissioner of Income Tax and Ors. 234 ITR 0865- Pat*
- e) *H. Noronaha vs. ITO, Circle-3, Bangalore (133 ITR 0199-Kar)*

The ld counsel for the assessee finally prayed that the order passed by the ld CIT(A) is a reasoned and speaking one which has been passed after taking into account all the

factual as well as legal aspects and deserved to be affirmed by dismissing the ground 1& 2 raised by the revenue.

11. We have heard rival contentions and perused the material on record including the decisions cited before us and the impugned order of Ld. CIT(A). The undisputed facts are that the assessment was framed u/s 143(3) of the Act vide order dated 28.01.2014 in which the issue of taking interest bearing loan from M/s Gaurav Rose Real Estate Pvt. Ltd. amounting to Rs. 14.11 crores was examined by the AO in a comprehensive manner after doing verification and examining the necessary details furnished by the assessee and only thereafter accepted the said loan transaction. Thereafter the AO received information from Investigation Wing that assessee is beneficiary of accommodation entry and thereafter reopened the assessment on the ground that the assessee has entered into transactions of Rs. 70 Lakhs with M/s Gaurav Rose Real Estate Pvt.Ltd. and thus the assessee is beneficiary of accommodation entry which is being managed and controlled by Shri Manohar Lal Nangalia. The AO recorded the reasons and noted that the assessee is a beneficiary of accommodation entry of Rs. 70 Lakhs which needs verification and which is not genuine and reassessment of escaped income u/s 147 of the Act is required and in para 5 of the reasons record he has stated that there was a failure on the part of the assessee to disclose fully and truly the facts qua the said transaction and therefore this income has escaped income. We have perused the reason recorded carefully which has been reproduced above in the Ld. CIT(A)'s findings and observe that reasons recorded are ambiguous and vague which state the escapement of income resulting from the non-disclosure of material fact or information on the part of the assessee as mandated by First proviso to Section 147 which envisaged the necessary condition to be fulfilled after a lapse of four years from the end of relevant assessment year. In the present case the AO has just acted on the borrowed satisfaction without recording his own satisfaction to form a belief that income has escaped assessment by reason of failure on the part of the assessee to disclose any material fact truly and fully. To this extent, we accept the contentions of the Ld. A.R that the AO has failed in his duty. In

our considered view, before reopening the assessment, the AO has to satisfy himself by recording reasons to believe that income has escaped assessment. In the original assessment proceedings the transaction of Rs. 14.11 crores was examined by the AO and accepted whereas reasons recorded just stated Rs. 70 Lakhs transactions with M/s Gaurav Rose Real Estate Pvt. Ltd. which is certainly a case of non-application of mind and when all the material facts were before the AO. In the instant case the AO after examination and verification of the transaction of loan on the basis of details furnished by the assessee in the original assessment proceedings accepted the same and no addition was made in the assessment framed. Thus we can reasonably hold that the AO acted on the borrowed satisfaction without any application of mind. The case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. (supra) wherein the Hon'ble Court has held that reassessment after period of four year from the end of relevant assessment year has to be on the basis of reasons which state that there was failure on the part of the assessee to disclose material facts truly and fully in the return of income or during the assessment proceedings which is not the case before us. The Hon'ble Court has held that the reasons recorded by the AO cannot be supplemented by filing an affidavit or making oral submissions and accordingly held that the notice issued u/s 148 is not valid. In the present case also the AO has not stated as to how there was failure on the part of the assessee to disclose material fact qua the assessment of income and therefore on this count alone the reopening of assessment was rightly held is bad by the Ld. CIT(A). Similar the ratio has been laid down in the other decisions cited by the assessee.

12. We further note that the AO has mentioned in the reasons recorded that the facts and information as regards unsecured loan from Gaurav Raose Real Estate Pvt Ltd. need verification to ascertain the genuineness and in view of the said fact he has reason to believe that income chargeable to tax has escaped assessment and accordingly reopened the assessment under section 147 of the Act. We find merit in the contentions and arguments of the Ld. A.R. that the AO has not formed any

independent belief or recorded a finding that income of the assessee has escaped assessment but merely stated in the reason to believe that these facts and information need proper verification and hence reopened the case in order to carry out the verification of these facts which are not permissible under the Act. The case of the assessee is squarely covered by a series of decisions as referred to during the hearing by the ld counsel of the assessee and are discussed hereunder:

(a) *In the case of PCIT vs Manzil Dinesh kumar Shah (supra), the Hon'ble Gujrat High Court has held that formation of independent opinion by the AO is mandatory condition and mere mentioning of need for deep verification of information received is not a valid ground for reopening. The Hon'ble court has held that reopening of assessment could not be permitted for fishing or robbing enquiry as it would not satisfy the requirement of the AO having reasons to believe that income chargeable to tax has escaped assessment. In this case, the AO has recorded that I have reason to believe that income chargeable to tax has escaped assessment for the assessment year 2009-10 due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and thus the case needs to be reopened as the information received by this office needs deep verification. The Hon'ble Court has held that had the AO on the basis of information made available to him and upon applying his mind to such information formed a belief that income chargeable to tax has escaped assessment, the court would have rightly allowed him to reassess the income but in the present case he recorded that information required deep verification and later reconstitution of mandatory words that he believed that income chargeable to tax has escaped assessment would not cure this fundamental defect. The Hon'ble Supreme Court has dismissed the special leave petition filed by the Revenue in the above case as reported in (2019) 101 taxmann.com 259 (SC) wherein thereby upholding the view taken by the Hon'ble Gujarat High Court in the above case.*

(b) *In the case of Inductotheran (India) P. Ltd. v DCIT (supra) the Hon'ble Gujarat High Court has held that the reassessment notice is not permissible merely for verification of claim made under section 80HHC of the Act. The relevant extract of the decision of the Hon'ble Gujarat High Court is reproduced below:*

“18. Reverting to the facts of the present case, we notice that in two out of the four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he need to verify the claims. In the second ground, he had recorded that the admissibility of the bad debts written off required to be verified. In the fourth ground also, he had recorded that the admissibility of royalty claim was required to be verified. We are in agreement with the contention of the counsel for the petitioner that for a mere] verification of the claim, the power for reopening of assessment could not be exercised. The Assessing Officer in the guise of power to reopen the assessment, cannot seek to undertake a fishing or roving inquiry and see] to verify the claims as if it were a scrutiny assessment.”

(c) *In the case of ChhugamalRajpal v S P Chaliha and Ors. Ltd. (supra), the Hon'ble Supreme Court has held that the AO must have prima facie grounds for issuing notice u/s 148. The operative part is reproduced as under:*

“Held, (i) that the Income-tax Officer had not even come to a prima fade conclusion that the loan transactions to which he referred were not genuine transactions : he appeared to have only a vague feeling that they might be bogus transactions. Such a conclusion did not fulfil the requirements of section 151(2). Under that section he had to give reasons for issuing a notice under section 148. He should have some prima facie grounds before him for taking action under section 148. His conclusion that there was a case for investigating the truth of the alleged transactions was not the same thing as saying that there were reasons for the issue of the notice. The Commissioner had mechanically accorded permission. The important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Income-tax Officer could not have had reason to believe that income had escaped assessment by reason of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore invalid.”

Thus the court observed that AO has recorded in his report that there is a case for investigation as to the truth of the alleged bogus transactions and court held that this does not meet the requirements to issue notice under section 148 of the Act.

(d) *In the case of Nivi Trading Ltd v Union of India (supra) & others (supra) the Hon'ble Bombay High Court has held that if more details are sought or some verification is proposed that cannot be a substitution for reason which led the AO to believe that income chargeable to tax has escaped assessment. The court has held as under:*

“Held, allowing the petition, that the return of income was filed. There was a processing and verification thereof. In the return of income and on the respondents' own showing on its verification, the long-term capital gains and dividend income in the sum came to be disclosed and equally another sum (Rs. 1,21,33,429) as gift. The Revenue proceeded on the footing that these shares were gifted without consideration. It was this fact which it wanted to verify and particularly whether the value of these shares had been computed on the market value. The tax authorities did not state that any income chargeable to tax had escaped assessment: All that the Revenue desired was verification of certain details and pertaining to the gift. That was not founded on the belief that any income which was chargeable to tax had escaped assessment and, hence, such verification was necessary. That belief was not recorded. The notice of reassessment was not valid.”

(e) *In the case of CIT v Maniben Lalji Shah (supra) the Hon'ble Bombay High Court has held that the reopening of assessment under section 147 to scrutinize the investment made in the flat purchased is not valid as the AO only seeks to find out the source of funds and same does not constitute any reason for belief that income has escaped assessment so as to invoke section 148 of the Act and accordingly the appeal of the Revenue was dismissed.*

(f) *In the case of CIT v Batra Bhatia Company (supra) the Hon'ble Delhi High Court has held while dismissing the appeal of the Revenue that Ld. CIT(A) as well as Tribunal had given a concurrent finding that there was no material before the AO on the basis of which the AO would have had a belief that agricultural land sold by the assessee was a capital receipt within the meaning of section 2(14) of the Act and expression of the AO "requires much deeper scrutiny" indicated that he was mere embarking on mere presumptions without any belief much less belief based on reason and material and thus the reassessment was not valid.*

13. In view of the ratio laid down in the various decisions as discussed above vis a vis facts of the assessee's case, we are of the considered view that the AO has not formed a prima facie and independent belief on the reasons recorded that income has escaped assessment but reopened the assessment only for carrying out the verification of facts/information qua the unsecured loans raised by the assessee. Under these facts and circumstances and considering ratio laid down in the various decisions as discussed hereinabove we do not find any infirmity in the order of Ld. CIT(A) on this issue which has passed a speaking and detailed order and accordingly we are inclined to uphold the quashing of reopening of assessment by Ld. CIT(A) by dismissing the ground nos. 1 and 2 of the revenue.

14. Since we have upheld the order of Ld. CIT(A), ground no. 3 is left open to be taken at future date if the need arises for the same. The appeal of the revenue is dismissed.

15. Now we shall take in assessee's Cross-objection in C.O. No. 55/Kol/2019 for AY 2011-12.

16. The assessee has also filed Cross objection in respect of the order of Ld. CIT(A) but since we have upheld the order of Ld. CIT(A), the Cross-objection becomes infructuous and is dismissed.

17. Now we shall adjudicate in revenue's appeal in ITA no. 2407/Kol/2019 for AY 2011-12.

18. The grounds raised by the revenue are as under:

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in nullifying the assessment done u/s 147.*

2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that the addition made by the AO was merely based on suspicion and surmises without any cogent material to controvert the evidence filed by the assessee in support of claim.*

3. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the AO by treating the receipts of Rs. 14,11,00,000/- u/s 68 and cash commission of Rs. 14,11,000/- u/s 69C of the Act.*

4. *That the appellant craves for leave to add, delete and modify any of the grounds of appeal before or at the time of hearing.*

19. The only issue raised in ground nos. 1 and 2 is against the order of Ld. CIT(A) quashing the reopening of assessment u/s 147 of the Act.

20. Facts in brief are that the assessee filed return of income on 27.09.2011 which was processed u/s 143(1) of the Act on 27.01.2012 on the returned income. Subsequently the AO received information from Investigation Wing that the assessee is a beneficiary of accommodation entry and reopened the assessment u/s 147 of the Act. The AO recorded a reason u/s 148(2) of the Act which are reproduced as under:

-Reasons for re-opening of the assessment in case of M/s Gaurav Rose Real Estate Pvt. Ltd. for AY 2011-12 u/s 147 of the I.T Act.

1. *The Assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. is trading in Financial Service Sector. Return of income for AY 2011-12 was filed on 27.09.2011 and Assessment u/s 143(1) of the I. T Act was completed on 27/01/2012 on returned income of Rs. 24,56,780/-.*

2. *Two information have been received in the case of Assessee company from Investigation wing on different occasions. The first information was based on the investigation conducted by them in which it was found that Shri Pawan Kumar and Shri Subrato Roy are proprietors and controllers of various firms viz. Sati Trading Co., Ambika Trading, Mata Rani Traders, Jagdamba Trading, Amby Trading Co., Ganesh Commercial, Bhawani Collections, Narayani Trading, Chamunda Trading, Radha Traders, Vaishno Traders, Mangala Traders etc. It was found that huge cash was deposited in these proprietary concerns like Kali Traders (Rs. 1.58 Crores), Sharda Traders (Rs 1.63 Crores). Sati Trading Co. (Rs. 1.54 Crs.), Ambika Trading (Rs.1.30 Crs.), Ganesh Commercial (Rs. 1.46 Crs.) etc. which were transferred to the bank Account of various beneficiaries, including the assessee company namely M/s Gaurav Rose Real Estate Pvt. Ltd. through the bank accounts of Pukhraj Dealers Pvt. Ltd. & Bhagwati Commotrade Pvt. Ltd. (the accounts being maintained in Dhanlaxmi Bank Ltd). Summons were also issued to various entities and proprietorship*

concerns and their controllers viz. Pawan Kumar b the investigation wing which came back unserved. The efforts were also made by the investigation wing to serve the summons on principal officers of layering companies through departmental inspectors which could not be served as the said entities were not existing on their given addresses. Further, all these concerned entities are either non-filers of IT Return or showing negligible income.

The second information was received from ADIT (INV) UNIT - 3(4) that the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. has availed the benefit of accommodation entries during F.Y. 2010-11 with the help of certain bogus entities. Huge cash was deposited in the bank of account of M/s Mahavir Stores and other proprietorship firms operated by Shri Ajit Kumar Jha which is subsequently transferred to the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. through the intermediary concern M/s Kasi Viswanath Tradecom Pvt. Ltd. It has been found that an amount of Rs. 119.00 Lakh (approx) has been transferred to the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. during F.Y. 2010-11 through the account No. 0515-AA3659-050 of IndusInd Bank of M/s KasiViswanathTradecom Pvt. Ltd. It is also mentioned in the said information that the entity namely M/s Mahavir Stores, in whose accounts huge case deposits have been made to ultimately transferred into the bank account of assessee company M/s Gaurav Rose Real Estate Pvt. Ltd through the bank account of intermediary company M/s Kasi Viswanath Tradecom Pvt. Ltd, has not filed income tax returns of A.Y. 2011-12 and 2012-13. Also, the said intermediary company M/s KasiViswanath Tradecom Pvt. Ltd was not found to exist on its given address during the course of spot enquiry conducted by the investigation wing. The concerned Inspectors report and the relevant portion of Bank statements have also been enclosed along with the information in support with the said transaction.

3. It has been found from the first information that the cash deposit was made in the bank-accounts maintained in Dhanlaxmi Bank Ltd. of the sole proprietorship concerns of the Pawan Kumar. These funds were routed to Pukhraj Dealers Pvt. Ltd., which in turn were transferred to the bank account of the assessee company are not existing on their given addresses as clear from the spot enquiries conducted by the Investigation Wing. The carious entities/persons through whom the funds arc transferred to the assessee company are either non-filers of IT Return or showing negligible income. Thus, the assessee is receiving funds which is ultimately sourced through cash deposits and is rotated through various entities which are lacking the Identity, genuineness and Creditworthiness.

It has also been found from the second information that the funds were transferred to the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. through Indus Ind Panic account (account No. 0515-AA3659-050) of the intermediary concern M/s Kasi Viswanath Tradecom Pvt. Ltd. which were deposited in the Bank accounts M/s Mahavir Stores and other proprietorship firm operated by Shri Ajit Kumar Jha. The concerned entity namely M/s Mahavir Stores, in whose accounts huge case deposits have been made is a non-filer and the intermediary company M/s Kasi Viswanath Tradecom Put. Ltd was not found to exist anywhere on its given address during the course of spot enquiry conducted by the investigation wing. Thus, in this case also the assessee is receiving funds which is ultimately sourced through cash deposits and is rotated through entities which do not quality the test ofIdentity, genuineness and Creditworthiness.

4. As regards first information, the bank statement of Dhanlaxmi Rank Ltd. (A/c No. 020606200001454) of the intermediary company Pukhraj Dealers Put. Ltd. was perused in which it was found that an amount 0/ Rs. 10,00,000/- was transferred to the account of the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. which was transferred vide cheque no. 94197on 25/03/2011. It is further seen from the facts available in public domain that

Pawan Kumar who is controller of various entities through whom funds have been transferred to the assessee company is Director/former Director of other identified paper/bogus/shell companies viz. HARDSOFT DISTRIBUTORS PRIVATE LIMITED, JANARDHAN VINIMAY PRIVATE LIMITED, MANGALSHREE MERCHANDISE PRIVATE LIMITED (controller/entry operator B D Agarwal) and VAJRESHWARI BARTER PRIVATE LIMITED (controller/entry operator Devesh Upadhyay).

Further, with respect to the second information, the bank statement of Indus Ind Bank (A/c No. 0515-AA3659-050) of the intermediary company M/s Kasi Viswanath Tradecom Pvt. Ltd. was perused from which it was found that an amount of Rs. 119.00 Lakh (approx) was transferred to the account of the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd on different dates. Further, it is found from the information available in public domain that Shri Pawan Kumar has been the past director of the intermediary company M/s Kasi Viswanath Tradecom Pvt. Ltd, who is the key person and controller of various entities where cash is deposited and through whom funds are routed to be transferred to the assessee company M/s Gaurav Rose Real Estate Pvt. Ltd., as clear from the earlier information.

5. *It has been found from the information shared in the first case and facts available on record as discussed above that M/s Gaurav Rose Real Estate Pvt. Ltd., has availed the benefit of accommodation entries during F.Y. 2010-11 amounting to Rs. 10,00,000/- with the help of intermediary company. The cash deposit was made in various proprietary concerns whose sole proprietor is Pawan Kumar which were routed through Pukhraj Dealers Pvt. Ltd. whose one of the director is also Pawan Kumar and finally transferred to assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. through the account of M/s Pukhraj Dealers Pvt. Ltd. maintained in Dhanlaxmi Bank Ltd., Brabourne Road Branch Kolkata (A/c No. 020606200001454) on 25/03/2011. It appears that the unaccounted cash/fund generated in the business of assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. has been brought back in the books of account without paying any tax with the help of different paper/bogus/shell entities.*

It has been found from the information shared in the second case and facts available on record as discussed above that huge cash was deposited in the bank of account of various entities viz. Mahavir Stores which are not having any creditworthiness as clear from their being non-filers of ITR, which is transferred through entity namely M/s Kasi Viswanath Tradecom Pvt. Ltd. which is not existing anywhere and being controlled by the same person Sri. Pawan Kumar who is not found on the given address and who is instrumental in facilitating accommodation entry through various entities controlled by him as clear from the earlier information has discussed above which is finally transferred to the bank account of the assessee company. Thus, it appears from the facts stated as above that unaccounted cash/fund generated in the business of assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. has been brought back in the books of account in the form of accommodation entry during F.Y. 2010-11 without paying any tax with the help of various paper/bogus/shell entities.

6. *Based on the above facts, the undersigned has reasons to believe that the income of assessee company M/s Gaurav Rose Real Estate Pvt. Ltd. has escaped assessment as the pre-arranged transaction are made by the assessee company which are ultimately sourced by the cash deposits in order to adjust the income/Losses in their return of income which needs to be included in their income. Hence the undersigned considers the above case fit for issue of Notice u/s 148 of the I. T. Act for assessment year 2011-12. As such , I seek your kind approval for re-opening of the above mentioned case u/s 147 of the I.T.Act, 1961.*

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

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. 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.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of Section 151 of the I. T. Act.”

21. Thereafter the notice u/s 148 was issued which was complied with by the assessee by filing return of income on 23.04.2018 shown income of Rs. 24,56,780/-. The assessee also filed objections to the reopening proceedings vide letter dated 26.11.2018 which were disposed off by the AO on 08.12.2018. The assessment was reopened on the ground that the assessee is beneficiary of accommodation entry from various entities who had deposited cash into their bank accounts as mentioned in the reasons recorded u/s 148 of the Act. Finally the addition was made of Rs. 14.11 crores being the loan advanced to M/s G.K. Ispat pvt. Ltd. of Rs. 14,11,00,000/- by the assessee who acted as entry provider. The AO mentioned that the said amount was also added in the hands of M/s G.K. Ispat Pvt. Ltd. for AY 2011-12 as unexplained cash credit on substantive basis. Since , the assessee has acted as an accommodation entry provider, commission @1% on Rs. 14.11 crores is also added in the hands of the assessee u/s 69C of the Act. Thereafter the AO stated that in order to protect the interest of the revenue , amount of loan advanced to M/S G.K. Ispat Pvt Ltd. of Rs. 14.11 crores is treated as unexplained cash credit and added to the income of the assessee on protective basis in order to safeguard the interest of the revenue and thus framed the assessment vide order dated 30.12.2018 u/s 143(3) read with Section 147 of the Act.

22. In the appellate proceedings, the assessee challenged the order of AO on legal issues as well as on merit. The Ld. CIT(A) allowed the appeal of the assessee on legal ground by quashing the reassessment proceedings and assessment framed by observing and holding as under:

“As regards to whether the income was truly escaped assessment, I find that this issue has been dealt with by the Hon’ble Bombay High Court in the case of DHLF Venture Capital Fund vs. ITO [2013] 358 ITR 471 (Bom) which elucidated that A protective assessment is regarded as being protective because it is an assessment which is made ex abundant cautela where the Department has a ‘doubt as to the person who is or will be deemed to be in receipt of the income’. A departmental practice, which has gained judicial recognition, has emerged where it appears to the Assessing Officer that income has been received during the relevant Assessment year, but where it is not clear or unambiguous as to who has received the income. Such a protective assessment is carried out in order to ensure that income may not escape taxation altogether particularly in cases where the Revenue has to be protected against the bar of limitation. But equally while a protective assessment is permissible a protective recovery is not allowed. However, such an exercise discipline of the Statute where recourse is sought to be taken to the provisions of Section 148. Protective assessments have emerged as a matter of departmental practice which has found judicial recognition. Any practice has to necessarily yield to the rigour of a statutory provision. Hence, when recourse is sought opt be taken to the provisions of Section 148, there has, necessarily to be the fulfillment of the jurisdictional requirement that the Assessing Officer must have reason to believe that income has escaped assessment. To accept the contention of the Revenue in the present case would be to allow a reopening of an assessment under Section 148 on the ground that the Assessing Officer is of the opinion that a contingency may arise in future resulting an escapement of income. That would, in our view, be wholly impermissible and would amount to a rewriting of the statutory provision. It further went on to observe that the entire exercise is only contingent on a future even and a consequence that may ensure upon the decision of the tribunal, that again if the Tribunal were to hold against the Revenue. A reopening of an assessment under Section 148 cannot be justified on such a basis. There has to be a reason to believe that income has escaped assessment. ‘Has escaped assessment’ indicates an event which has taken place. Tax legislation cannot be rewritten by the Revenue or the Court by substituting the words ‘may escape assessment’ in future. Writing legislation is a constitutional function entrusted to the legislature. It is submitted that by making a protective assessment, the Assessing officer has demonstrated that there exists a doubt about the taxability of said amount in the hands of the appellant. Similar view has been taken by Jaipur Bench of ITAT in the case of Vimal Chand Surana (HUF).

I further find that, it is on record that the assessment was reopened by recording the reasons that there were some transactions with Pukhraj Dealers pvt. Ltd., Kashi Viswanath Tradecom Pvt. Ltd. and Bhagwati Commotrade Pvt. Ltd., however, also appears that the AO has not added back the amount of consideration received on sale of shares nor he has added back the quantum of the amount of transaction referred to in the reasons recorded while completing the assessment. The AO has added back Rs. 14.11 crores on account of loan given to M/s G.K. Ispat Pvt. Ltd. that too in protective measure. The AO has summed up his reasoning as under:

‘..... In view of this, it is concluded that the assessee basically has provided accommodation entry of Rs. 14.11 crores (figure taken at assessee’s submission dated

26.12.2018) to M/s G.K. Ispat Pvt. Ltd.) who is the real beneficiary. This amount is being treated as income in the hands of M/s G.K. Ispat Pvt. Ltd. (AADCCFG 5067 A) for assessment year 2011-12 as unexplained cash credit.....’

The above consideration, being the principal contention to protect interest of revenue the amount of Rs. 14,11,00,000/- is added in the hands of assessee as unexplained cash credit u/s 68 of the Act, as a protective measure in the interest of Revenue.....’

It is therefore, apparent that no addition has been made on account of transaction with Pukhraj Dealers Pvt. Ltd., KashiViswanathTradecom Pvt. Ltd. and BhagwatiCommotrade Pvt. Ltd. This is also proved from the fact that the total sale consideration received was Rs. 18,75,00,000/- which was credited in the books of accounts during the year, but the addition was made on account of loan given to G.K. Ispat Ltd. which was treated as not explained. The AO by doing so, has accepted to the credit side of the entries and treated bogus to the debit side of entries.

In view of above, the reasons recorded by AO does not stand the test as laid by plethora of judicial precedence as discussed above which is necessary to assume jurisdiction u/s 147 of the Act, therefore, in the light of the aforesaid facts and circumstances of the case as discussed, I find that the reasons recorded by the AO to justify reopening the assessment u/s 147 fails and, therefore, the very assumption of jurisdiction to reassess the assessee fails. Since the AO failed to do so as discussed, the assumption of jurisdiction by him to reopen itself is corum non judice and, therefore, all subsequent action is null in the eyes of law and therefore, I quash the reopening and consequent reassessment order framed by him. In view of above, these grounds of appeal are allowed.”

The Ld. CIT(A) allowed the appeal of the assessee on the ground that addition can not be made on protective basis in the reopened assessment proceeding as the assessment cannot be reopened for a contingent nature of addition on which department itself is not sure in whose hands the addition is to be made. The Ld. CIT(A) observed and noted that protective addition cannot be made in the present case since the department is not knowing the actual person in whose hands the income has to be assessed. The Ld. CIT(A) observed that the addition is made on precautionary basis so in order to protect the interest of the revenue from the assessment getting time barred. Finally the Ld. CIT(A) allowed the appeal on legal issue considering various case laws and legal propositions.

23. The Ld. D.R. submitted before the Bench that the assessee was engaged in providing bogus accommodation entries and during the year it had advanced loan to various parties including M/s G.K. Ispat Pvt. Ltd. The Ld. D.R submitted that the assessee has advanced the sum of Rs. 14.11 crores to M/s G.K. Ispat Pvt. Ltd. and

therefore the said amount was added on protective basis in the hands of the assessee as this was added in substantive basis in the hands of M/s G.K. Ispat Pvt. Ltd. The Ld. D.R submitted that it is not necessary that specific reason should be recorded as these are the shell companies who are operating in an organized manner and it is also not possible for the investigation agency or for the AO to record the exact reasons. The Ld. A.R. submitted that the reasons recorded are just to form a belief that income of assessee has escaped assessment which required further investigation. The Ld. D.R prayed before the Bench that the order of Ld. CIT(A) may kindly be reversed and the order of AO may be restored.

24. The Ld. A.R vehemently submitted before us that the reopening of assessment is vague as no specific or substantive reasons were recorded u/s 148(2) of the Act. The Ld. A.R. submitted that the reasons recorded state that the assessee is a beneficiary of accommodation entries from certain entities who had deposited cash in to their bank accounts whereas the addition was made on account of protective basis in the hands of assessee in respect of loan granted to M/s G.K. Ispat Pvt. Ltd. of Rs. 14.11 crores. The Ld. A.R. submitted that where the assessment is reopened on a specific reason and in the assessment framed no addition was made on account of that reason as recorded u/s 148(2) of the Act, then the AO has no jurisdiction make any other addition in the assessment framed. The Ld. A.R argued that in the present case also the AO has not made any addition on the reason recorded therefore no addition can be made in respect of any item of income which he has come across during the reassessment proceedings. In defense of his arguments the Ld. A.R relied on series of decisions namely CIT vs. Jet Airways (I) Ltd. in [2011] 331 ITR 236 (Bom). The Ld. A.R. also submitted that no addition can be made on protective basis in the reopened assessment for the reasons that the assessment has to be reopened on a specific reason recorded and not on the basis of contingent nature of issue which the department itself is not sure to whom the said income is belonging. In defense to the arguments the Ld. A.R. relied on the decision of Bombay High Court in the case of DHLF Venture Capital Fund vs. ITO in [2013] 358 ITR 171 (Bom). The Ld. A.R while

relying heavily on the order of Ld. CIT(A) which has considered all the issues and held that the reopening to be bad in law for the aforesaid reasons. The Ld. A.R. also supported and defended the order of Ld. CIT(A) on the ground that reopening was bad in law as the AO cannot be allowed to improve the reasons by substitutions/deletion or additions as recorded u/s 148(2) of the Act which according to Ld. A.R has been dealt with great length by Ld. CIT(A) in the appellate order while relying on the various decisions as relied by A.R and discussed in appellate order and thus prayed before the Bench the order of Ld. CIT(A) may kindly be affirmed by dismissing the appeal of the revenue.

25. We have heard rival submissions and perused the records as placed before us. We observe that no addition was made for the items which were stated to have escaped the income in the reasons recorded and consequently no other addition can be made in the assessment order in respect of an item of income which has come to the notice of the AO during the assessment proceedings which purported to have escaped the assessment . In other words, no addition was made on account of reason recorded whereas the addition was made in respect of loan advanced to M/s G.K. Ispat Pvt. Ltd. of Rs. 14.11 crores on protective basis on the ground that the assessee has improved the said accommodation entry. The addition was made on substantive basis in the hands of M/s G.K Ispat Pvt. Ltd. which has been dealt with in the first part of this order wherein we have dismissed the appeal of the revenue by upholding the order of Ld. CIT(A) on quashing the reopening u/s 147 of the Act. In this case also we find that the no addition was made for the reason recorded u/s 148(2) and protective addition was made in order to save the interest of revenue which is not permissible under Act as the assessment cannot be reopened on the basis of contingent reasons. The protective addition is made in order to safeguard the interest of revenue where the revenue itself is not sure to whom the said income belongs to and therefore, the protective addition is made to overcome the provisions of time barring where the substantive addition is made in the hands of the some other person. But in the present case only protective amount is added in the assessment framed by the AO along with

commission of 1@ on the accommodation entry of Rs. 14.11 crores. In our considered view, the Ld. CIT(A) has correctly held that no protective addition can be made in the hands of the assessee in the assessment proceedings by following the decision of Hon'ble Bombay High Court in the case of DHLF Venture Capital Fund vs. ITO (supra). The case of the assessee is also squarely covered by the decision in the case of CIT vs. Jet Airways (I) Ltd.(supra) wherein the Hon'ble Court has held that where there was no addition in the assessment framed u/s 143(3) read with Section 147 of the Act on the issues in respect of which the reasons were recorded, then no other addition can be made in the hands of the assessee in the said order. On this count also, the Ld. CIT(A)'s order is faultless and cannot be questioned. We also note that the Ld. CIT(A) has quashed the reopening of assessment on the ground that there cannot be any improvement in the reasons recorded. The said issue has been dealt with in detail in the case of M/s G.K. Ispat Pvt. Ltd. and has been decided in favour of the assessee. In view of these facts and circumstances, we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue. The issue on merit is not adjudicated and is left open to be decided at future if need arises for the same.

26. The assessee has also filed Cross objection in respect of the order of Ld.CIT(A) but since we uphold the order of Ld. CIT(A), the Cross-objection becomes infructuous and dismissed.

27. In the result, the appeals of the revenue are dismissed and the cross objection of the different assesseees are also dismissed.

Order is pronounced in the open court on 21st November, 2022

Sd/-
(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 21st November, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-6(1), Kolkata
2. Respondent – i) M/s G.K. Ispat Pvt. Ltd., 4th Floor, Unit-3, Sagar Estates, 2, N.C. Dutta Sarani, Clive Row, Kolkata-700001ii) M/s Gaurav Rose Real Estate Pvt. Ltd., c/o, G.K. Steels, Sagar Estates, 2, N.C. Dutta Sarani, 4th Floor, Unit-3, Dalhousie, Kolkata
3. Ld. CIT(A)- 2, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata