

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 922 of 2022****With****R/SPECIAL CIVIL APPLICATION NO. 19280 of 2021****With****CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2022****In****R/SPECIAL CIVIL APPLICATION NO. 19280 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

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

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**PARESH BABUBHAI BAHALANI****Versus****INCOME TAX OFFICER WARD 1(1), BHAVNAGAR**

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**Appearance:****MR TUSHAR HEMANI, SENIOR ADVOCATE WITH MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1****MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1,2**

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**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**

and  
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 20/10/2023**

**CAV JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr.Tushar Hemani with learned advocate Ms.Vaibhavi K. Parikh for the petitioners and learned Senior Standing Counsel Mr.Varun K. Patel with learned advocate Mr.Dev Patel for the respondents.

2. These petitions are filed under Article 226 of the Constitution of India with a prayer to quash and set aside the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (for short 'the Act') for the Assessment Year 2017-18. The petitioner of Special Civil Application No.922 of 2022 is

husband of petitioner of Special Civil Application No.19280 of 2021.

3. Rule, returnable forthwith. Learned Senior Standing Counsel Mr.Varun K. Patel waives service of notice of rule for and on behalf of the respondents.

4. With regard to the controversy in these petition is in narrow compass, with the consent of learned advocates of both the sides, these petitions are heard analogously and are being disposed of by this common judgment and order.

5. For sake of convenience, Special Civil Application No.922 of 2022 is treated as a lead matter.

6. Brief facts of the case are as under:

6.1. The petitioner who is an individual filed his return of income for the Assessment Year 2017-18 on 21.06.2017 declaring total income of Rs.7,67,190/- including the income under the head "Profit and Gains from business or profession" in accordance with the provisions of Section 44AD of the Act.

6.2. The respondent-Assessing Officer issued impugned notice dated 31.03.2021 under Section 148 of the Act for reopening the assessment. The petitioner filed return of income in response to the impugned notice issued on 13.04.2021 and requested for providing reasons for reopening.

6.3. The respondent supplied copy of reasons for reopening along with the notice dated 03.08.2021 issued under Section 143(2) read with Section 147 of the Act. According to the

reasons for reopening recorded by the Assessing Officer, the petitioner has entered into unaccounted transactions during the year under consideration as per the information made available through Insight Portal along with the report of the Deputy Commissioner of Income Tax, Central Circle, Surat which reveals that the petitioner has entered into unaccounted transaction of Rs.44,34,265/- during the year under consideration. The respondent was therefore of the view that such unaccounted transaction represents income of the petitioner which has escaped assessment. The petitioner filed objections on 09.10.2021 contending that no escapement of income chargeable to tax emanates from the reasons for reopening as the same are vague and non-specific.

6.4. The respondent by order dated 08.12.2021

disposed of the objections holding that the reopening is justified. Being aggrieved, the petitioner has preferred this petition.

7.1. Learned Senior Advocate Mr. Tushar Hemani for the petitioners submitted that in the case of the petitioner of Special Civil Application No.19280 of 2021, the respondents-Assessing Officers on the similar facts reopened the assessment relying upon the information made available through Insight Portal along with report of the Deputy Commissioner of Income Tax, Central Circle, Surat which reveal that the assessee has done unaccounted transactions of Rs.44,41,360/- which represents the income of the assessee which has escaped assessment.

7.2. It was submitted that the reasons recorded by the Assessing Officer are absolutely vague, scanty and non-specific as

Assessing Officer has failed to disclose the nature of transaction, date of transaction, name of party with whom the transactions allegedly have been entered into and whether such transaction relates to balance-sheet item or profit and loss item of either of the petitioner. It was submitted that in absence of such details, it is not possible to understand as to how the respondents could have formed reason to believe that income in relation to transactions referred to in the reasons for reopening would have escaped the assessment.

7.3. Learned Senior Advocate Mr. Hemani would submit that even though the petitioners have categorically pointed out in the objections against the reopening that the nature of transaction is not mentioned in the reasons recorded and hence, such reasons are vague and

not definite or relevant, however, while passing the order disposing of such objections, respondent has not put in any effort to provide clarity on the nature of the transaction referred to in the reasons recorded for reopening. It was therefore submitted that the respondent assessing officer is not having any detail in relation to the so-called unaccounted transactions and therefore, the respondent would not have any reason to believe that income chargeable to tax has escaped the assessment. Learned Senior Advocate Mr. Hemani would therefore submit that on this short ground only, the impugned notices deserve to be quashed.

7.4. In support of such submissions, reliance is placed on the decision of this Court in case of ***Bharatkumar Nihalchand Shah versus Income Tax Officer*** dated 07.03.2023 in Special



Civil Application No.5353 of 2022 wherein, it is held that non-specific and general reasons without establishing rational nexus between transaction and escapement of income are not valid for assumption of jurisdiction to reopen the assessment.

7.5. Learned Senior Advocate Mr. Hemani would further submit that as per the scheme of the Act, the Assessing Officer can reopen the case of an assessee within prescribed time limit provided he has reason to believe that income chargeable to tax has escaped assessment in the hands of the assessee. It was therefore submitted that prerequisite for the purpose of reopening the assessment is "reason to believe" based on some tangible material so as to prima-facie establish that there is escapement of any income chargeable to tax. It was pointed out that law is well settled that

condition prescribed for the purpose of reopening under Section 147 of the Act is "escapement of any income chargeable to tax" and in absence of escapement of any income chargeable to tax, it is not open for the respondents to initiate the proceedings for reopening of the assessment.

7.6. It was therefore submitted that in absence of the basic details emanating from the reasons recorded, no reasonable person would reach to the reasonable belief as regards escapement of any income and therefore, such reasons must fail.

7.7. Learned Senior Advocate Mr. Hemani would submit that the foundational facts as regard escapement of so-called unaccounted transactions are absent and therefore, merely on such assumption, the respondent cannot have

the jurisdiction for re-opening. In support of his submissions, reliance was placed on the decision in case of ***Sheth Brothers Versus JCIT [2003] 251 ITR 270 (Gujarat)***.

7.8. Learned Senior Advocate Mr. Hemani submitted that the respondents have acted illegally and without jurisdiction in issuing the impugned notice without there being any satisfaction of the Assessing Officer to have reason to believe that any income chargeable to tax has escaped assessment. It was therefore submitted that such satisfaction must be of the concerned Assessing Officer himself whereas, in the facts of the case, no such satisfaction has been recorded by the respondent as respondent merely relied upon the information received from an external source i.e. Insight Portal and report of the Deputy Commissioner for reopening the

assessment of the petitioner.

7.9. Learned advocate Mr. Hemani would submit that respondent has not applied mind independently so as to reach to have reason to believe that any income has escaped the assessment and in absence of any such exercise to have the satisfaction to form the reason to believe by the respondent, it is apparent that the respondent has issued the impugned notice merely based on "borrowed satisfaction" as against statutory requirement of "independent satisfaction" and therefore the impugned notice deserves to be set aside as such action is not tenable in the eye of law.

7.10. Learned Senior Advocate Mr. Hemani would submit that it is a settled law that an Assessing Officer would not assume jurisdiction to reopen an assessment unless he

records his own independent satisfaction to the effect that he has reason to believe that any income chargeable to tax has escaped the assessment after application of mind. It was therefore submitted that such satisfaction cannot be based on application of mind by third person which is emerging from the facts of the case on perusal of the reasons recorded. In support of his submissions, learned Senior Advocate Mr. Hemani relied upon the decision in case of **Harikishan Sunderlal Virmani Versus DCIT reported in 394 ITR 146 (Gujarat)**.

7.11. It was further submitted that on bare perusal of reasons recorded there is non-application of mind by the respondents as the respondent has failed to record as to the nature of transaction and other allied details in case of the petitioner. Though the

petitioner is an individual, respondents have mentioned in paragraph No.1 of the reasons for reopening that the petitioner is HUF. No inquiry was conducted after receipt of the information from Insight Portal and the report of the Deputy Commissioner which is evident in paragraph No.4 of the reasons recorded.

7.12. It was submitted that the Assessing Officer has not even verified the return filed by the petitioner wherein the petitioner has disclosed income in accordance with the provisions of Section 44AD of the Act under the head "profit and gains from business or profession" which shows that there is sheer non-application of mind of the respondents prior to reopening of the case of the petitioner.

7.13. It was submitted that it is settled law

that no new ground or argument can be taken into consideration so as to enlarge the scope of the reasons recorded for reopening. Reliance was placed on the decision in case of ***Kantibhai D. Narola Versus ACIT reported in 436 ITR 302 (Gujarat)*** wherein it is held that for assumption of jurisdiction, reasons are the foundation and therefore, the reasons alone need to be taken into consideration while testing the validity of reopening and later explanations, affidavit or any material would not help the respondent in expanding the scope of reopening if the reasons lack in establishing that any income chargeable to tax has escaped the assessment while recording the same.

8.1. On the other hand, learned Senior Standing Counsel Mr. Varun Patel for the respondents submitted that the Assessing

Officer has issued the impugned notice under Section 148 of the Act on the basis of the information received from the Insight Portal as well as report received from the Deputy Commissioner, Income Tax, Central Circle, Surat because initially no scrutiny assessment has taken place and the return filed by the assessee was accepted under Section 143(1) of the Act. It was submitted that the information received by the respondent reveals that the petitioner has unaccounted transactions of more than Rs.44 Lacks in each case. Learned Senior Standing Counsel Mr. Patel referred to and relied upon the copy of the information received by the respondents placed on record along with the affidavit-in-reply at Annexure R1. It was submitted that the respondent is not enlarging the scope of the reasons recorded by placing such information but it is



only to demonstrate of what has already been considered for the reasons recorded. It was submitted that the basis for formation of the reasons was specifically noted in the reasons record which in turn based on the case specific information and therefore, it cannot be said that the reasons are vague as sought to be contended by the petitioner.

8.2. It was submitted that the petitioner has not made out any case in view of the fact that the petitioner failed to disclose all the material facts and in absence of the scrutiny assessment conducted by the Assessing Officer, the impugned notice may not be quashed because what is to be seen at the stage of recording the reasons is existence of the belief based on faithful appreciation of the material which has live link to income escaping assessment. It was submitted that the respondent-Assessing

Officer is not required to establish the truth of escapement of income by detail investigation or legal analysis and as per the settled legal position at the point of time of initiating the reopening proceedings, existence and not the adequacy of the reasons is material.

8.3. In support of his submissions, reliance was placed on the decision in the case of **Assistant Commissioner of Income Tax versus Rajesh Zaveri Stock Brokers Private Limited** reported in **291 ITR 500** and **Raymond Woollen Mills Limited versus Income-Tax Officer and others** reported in **236 ITR 34** wherein, the Hon'ble Supreme Court held that at stage of initiation of reassessment, the only thing required to be seen is that whether there is a prima-facie material on the basis of which the case can be reopened or not and sufficiency

and correctness of the material are not the things to be considered at this stage.

8.4. Learned Senior Standing Counsel Mr. Patel referred to and relied upon the decision of this Court in case of ***Dishman Pharmaceuticals and Chemicals Limited Versus Deputy Commissioner of Income Tax*** reported in ***2012 346 ITR 228*** wherein, it is held as under:

*"15. We have taken note of reasons recorded by the Assessing Officer for re-opening of the assessment. The Assessing Officer may not have stated in so many words that "income escaped assessment on account of the assessee not truly and fully disclosing all material facts." Suffice it to say, the reasons recorded clearly envisages escapement of income on account of non-disclosure by the assessee; its holding in SDBL for the relevant Assessment Year. Such discrepancy came to light only while framing the assessment of the subsequent year i.e., 2006-07, while during the course of inquiry, the assessee was asked to submit such*

*details, through which, it was found that the assessee holds 22.3% of the shares of SDBL."*

8.5. Referring the aforesaid observation made by this Court it was submitted that the Assessing Officer is not required to state that "income escaped assessment on account of the assessee not truly and fully disclosing all material facts" but it is sufficient if the reasons recorded clearly envisage escapement of income on account of non-disclosure by the assessee. It was submitted that in the facts of the case, assessee has not disclosed all material facts and on the basis of the information received by the respondent-Assessing Officer, it was sufficient to record that the assessee has entered into unaccounted transactions so as to assume jurisdiction to re-open the assessment.

9. Having heard the learned advocates for the respective parties and having considered the rival submissions, it would be germane to refer to the relevant extract of the reasons recorded for reopening of the assessment which reads as under :

***"ANNEXURE***

***1. Brief details of the Assessee:***

*The assessee is an HUF and the address of the assessee as per ITBA/ITD is Plot No.510, Adarsh Society, Vijaynagar, Bhavnagar. The PAN of assessee is ALSPB7684E and assessee has filed return of income for A.Y. 2017-18 on 21.06.2017 showing total income at Rs.7,67,190.*

***(a) Nature of business activity:***

***Not known.***

***(b) Details of previous filing of ROliprocessing and scrutiny:***

*Sr.No A.Y. Date of filling ROI Whether selected for scrutiny/re-open*

1. 2015-16 14/07/2015 No

2. 2016-17 07/06/2016 No

3. 2017-18 21/06/2017 No

**2 Brief details of information collected/ received by the AO:**

Information made available with this office through Insight Portal along with Report of Dy. Commissioner of income-tax, Central Circle, Surat reveals that assessee has done unaccounted transaction of Rs.44,34,265/during the year.

**3 Analysis of information collected/ received:**

In this case, on verification of ITD/ITBA, it is noticed that assessee has filed return of income for A.Y. 2017-18 on 21.06.2017. No assessment has been completed in this case for A.Y. 2017-18. Information made available with this office through insight Portal along with Report of Dy. Commissioner of income-tax, Central Circle, Surat reveals that assessee has done unaccounted transaction of Rs.44,34,265/- during the year. The

assessee has filed the return, however, the unaccounted transaction has to be disallowed.

**4 Enquiries made by the AO as sequel to information collected/ received:**

In this case, necessary enquiries/verification were conducted by the Investigation Wing. On going through the return file profile and assessment particulars, it is noticed that such unaccounted transaction needs to be considered for the year under consideration.

**5 Findings of the AO:**

Information made available with this office through Insight Portal along with Report of Dy. Commissioner of Income-tax, Central Circle, Surat reveals that assessee has done unaccounted transaction of Rs.44,34,265/during the year. Thus, it represents income of the assessee which has escaped assessment. Thus I have reason to belief that income to the tune of Rs.44,34,265/- has escaped assessment within the meaning of section 147 of the I.T. Act.

**6 Basis of forming reason to believe and details of escapement of income:**

*In this case, the assessee has filed return of income for A.Y. 2017-18 on 21.06.2017. No assessment in Anis case was completed U/s.143(3). Information made available with this office through insight Portal along with Report of Dy. Commissioner of Income-tax, Central Circle, Surat reveals that assessee has done unaccounted transaction of Rs.44,34,265/- during the year. Thus, it represents income of the assessee which has escaped assessment."*

10. On perusal of the reasons recorded by the respondents, it is clear that no information is revealed with regard to the nature of transaction, date of transaction and name of party with whom such transaction has been entered into.

11. This Court in case of **Bharatkumar Nihalchand Shah (Supra)** in similar facts has



held as under :

"5. Without going into any aspect on the merits of reopening, the ground of assailment by the petitioner-assessee that the reasons are cryptic and that they did not furnish details, on the basis of which the petitioner could defend his case, merited acceptance. Looking at the reasons again, what is only stated by the Assessing Officer is that, "From the data made available under Project Falcon, it is seen that the assessee has created a profit/loss of Rs. 74,62,860/-". Both buying and selling of trades have been executed at the Bombay Stock Exchange". This statement is a non-detailed and completely escapist. It does not give any fact regarding the transactions or other attendant facts except saying that assessee had engaged in the trading at the Bombay Stock Exchange to create profit or loss. Though styled as reasons, the ground of reopening is unreasoned.

6. The necessity to incorporate reasons in the administrative, quasi judicial or judicial orders are repeatedly emphasised by the supreme court. In Assistant Commissioner, Commercial Tax

*Department, Works Contract and Leasing, Kota vs. Shukla and Brothers [(2010) 4 SCC 785], it was stated that the requirement of providing reasons can never be disposed with,*

*“The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply*

*its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.” (para 10)*

6.1 In *S. N. Mukherjee vs. Union of India* [(1990) 4 SCC 594], the insistence of and importance of recording reasons for decision by the administrative authorities and Tribunals was justified by observing that, “administrative process will best be vindicated by clarity in its exercise”. It was stated in *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota* (supra) that in exercise of powers of judicial review, the concept of reasoned order has been equally enforced by the courts in India. Absence of reasons by the administrative authorities and the Tribunals, would render the order liable to judicial chastisement. The reasons are necessary to enable the appellate or higher courts to exercise their jurisdiction appropriately.

6.2 It was then observed in *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing,*

*Kota (supra),*

*"...It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions..." (para 12)*

*6.3 Recording of reasons in order is essential feature of dispensation of justice. In Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others [(2010) 9 SCC 496], the supreme court stated that order passed by the quasi judicial authority or even administrative authority affecting the rights of the parties must speak and that is must not be like the "inscrutable face of a sphinx".*

*6.4 The principles for recording reasons came to be summarised by supreme court in Kranti Associates Private Limited (supra),*

*"a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

*b. A quasi-judicial authority must record reasons in support of its conclusions.*

*c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

*d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

*e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*

*f. Reasons have virtually become as indispensable a component of a decision making process as observing*

*principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

*g. Reasons facilitate the process of judicial review by superior Courts.*

*h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

*i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

*j. Insistence on reason is a requirement for both judicial accountability and transparency.*

*k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

*l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*

*m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).*

*n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of*

*Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions.*

*o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process." ( para 47)*

*6.5 In Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others [(2010) 13 SCC 336], the supreme court stated importance of reasons referring to other decisions on the point thus,*

*"The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons*



*renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.” (par a 27)*

*6.6 On the basis of the propositions laid down in different decisions by the supreme court above referred and others, the following legal principles on the point in issue may be enlisted,*

*(i) “Reasons” are of paramount importance. “Reasons” are heartbeat of every conclusion. It introduces clarity in any order. Without the reasons, the order is lifeless.*

*(ii) The concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of procedural law.*

*(iii) It is only clarity of thoughts that leads to proper reasoning, which becomes a foundation of a just and fair decision.*

*(iv) Insistence for recording of reasons is intended to subserve the wider principle that justice must not only be done but it must also seem to have been done. The reasons are requirement for ensuring judicial accountability.*

*(v) Reasons reflect candidness on part of decision maker. The decision making process becomes transparent by virtue of reasons. In absence,, it is impossible to know whether the person deciding the issue is faithful to the doctrine of precedent or to the principles of incrementalism.*

*(vi) Reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or "rubber-stamp reasons" cannot be equated with a valid decision-making process.*

*(vii) Reasons also facilitate the process of judicial review by*

*superior courts.*

*7. In light of the above discussion highlighting the indispensability of reasons in the order passed by any authority administrative, quasi judicial or judicial, when it comes to exercise of powers under sections 147 and 148 of the Income Tax Act, 1961, there has to be a greater thrust for necessity of recording reasons. The entire exercise of reopening hinges on the reasons recorded by the Assessing Officer. It is the 'reasons' which weigh with him.*

*7.1 When the concluded assessment is to be revisited with by the Assessing Officer, recording of reasons for exercise of such powers has to be viewed as vested rights for the assessee. While exercising powers under the Act to reopen the assessment, the Assessing Officer would harbour reasons to believe that on particular set of facts, the income had escaped assessment and tax was not paid in relation to the year under consideration.*

*7.2 All the reasons which hold good in the eye of and with the Assessing Officer must be made known to the assessee. Assessee has right to refute*

*the reasons for reassessment by filling objections. Unless the Assessing Officer appropriately delineates and communicates the reasons for reassessment, right of the assessee to file objections would remain an eye-wash.*

*7.3 Whether the reassessment powers are adverted to on objective basis, whether the element of assessment of income is noticed from the facts and whether formation of opinion by the Assessing Officer is based on some relevant facts or not, could be judged provided the reasons are properly recorded and the details are given with regard to reopening of assessment that the reasons to believe with the Assessing Officer must be reflected in recording of such reasons to be communicated to the assessee.*

*7.4 The cryptic way of recording of reasons like found in the instant case, would render the exercise of powers vitiated. With such vague reasons the respondent could be said to have failed to demonstrate that there was any escapement of income chargeable to tax. He could demonstrate such element, if he gives reasons for the same."*

12. In case of **Harikishan Sunderlal Virmani (Supra)** this Court held that from the reasons recorded, if the same are on borrowed satisfaction without forming an independent opinion, the assumption of the jurisdiction to re-open the assessment under Section 147 was bad in law.

13. In view of the above conspectus of law, the entire exercise of re-opening would depend upon the reasons recorded by the Assessing Officer and therefore the reasons recorded to re-open the assessment by the Assessing Officer must disclose all relevant facts to the assessee so as to refute the reasons by filing objections. Unless the Assessing Officer records his independent satisfaction in the reasons recorded on the basis of the

information received and communicates the same to the assessee, right of the assessee to file objections would remain an empty formality.

14. Therefore, recording of reasons in the facts of the case not disclosing the nature of the transactions, date of transactions and other relevant details would render the entire exercise of reopening vitiated as the respondent-assessing officer has failed to record independent reason to believe that income chargeable to tax has escaped the assessment.

15. In view of the foregoing reasons, the impugned notice issued under Section 148 of the Act for Assessment Year 2017-18 is liable to set aside on the aforesaid ground alone. The petitions accordingly succeed. The Notice

dated 31st March, 2021 issued by the respondent under Section 147 of the Act for Assessment Year 2017-18 for reopening of the assessment of the petitioners in both the cases are set aside. Rule is made absolute to the aforesaid extent. No orders as to cost.

In view of the disposal of the Special Civil Application No.19280 of 2021, Civil Application (For Orders) No. 1 of 2022 in Special Civil Application No.19280 of 2021 also stands disposed of.

**(BIREN VAISHNAV, J)**

**(BHARGAV D. KARIA, J)**

PALAK BRAHMBHATT