Pr.Commissioner Of Income Tax Delhi-04 vs M/S Ganesh Ganga Insvestments Pvt Ltd on 28 February, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ITA 25/2022
PR.COMMISSIONER OF INCOME TAX DELHI-04
.....Appellant
Through: Mr. Indruj Singh Rai, SSC
Mr. Sanjeev Menon and Mr.
Rahul Singh, JSCs.

versus

M/S GANESH GANGA INSVESTMENTS PVT LTD
.....Responden
Through: Mr. Rajeev Ahuja, Advocate

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR
ORDER

% 28.02.2025

1. The Principal Commissioner of Income Tax1 seeks to impugn the order of the Income Tax Appellate Tribunal2 dated 07 November 2019. We had, after hearing learned counsels for the respective parties, admitted this appeal by our order dated 30 January 2024 on the following questions of law:-

> "(a) Whether examination and analysis of information received from Investigation Wing and co-relating it with the record available with the Assessing Officer [„AO'] is not sufficient application of mind by the AO to issue notice under Section 148 of the Income Tax Act, 1961 ["Act"]?
>
> (b) Whether the remark of the Principal Commission of Income Tax |"PCIT"| "Yes, I am satisfied that it is a fit case for issue of notice under Section 148 of the Act" shows that the PCIT has not PCIT Tribunal This is a digitally signed order.

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applied his mind while according sanction for issue of notice under Section 148 of the Act when all relevant material was before him?"

2. The principal question which stands posited for our consideration is whether the Assessing Officer3 was justified in invoking Section 148 of the Income Tax Act, 19614 basis the report which had been received from the Investigation Wing. The assessee appears to have principally asserted that this was clearly a case of "borrowed satisfaction" since full and true disclosures had been made in the Return of Income5 itself. According to learned counsel for the assessee, the inclusion of share capital in Assessment Year6 2010-11 had been disclosed by the assessee itself at approximately INR 11 Crores. In view of the aforesaid, it was contended that the estimation of the income liable to tax which had escaped assessment was wholly incorrect.

3. It was further averred that the AO had proceeded solely on the basis of borrowed satisfaction. Learned counsel for the respondent- assessee submitted that on a plain reading of the reasons which were recorded, it becomes apparent that the reassessment action was based solely on the report of the Investigation Wing and absent any independent application of mind by the AO.

4. Controverting the aforesaid submissions, Mr. Menon, learned counsel appearing for the appellant, had taken us in detail through the reasons which were recorded by the AO and which have also been noticed by the Tribunal while passing the order impugned. According to Mr. Menon, it would be wholly incorrect for the satisfaction which constituted the basis for initiating reassessment in the facts of the AO Act ROI This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:50 present case as being labelled or viewed as resting on "borrowed satisfaction" since the report of the Investigation Wing only constituted material on the basis of which the AO proceeded to scrutinize the ROI which had been filed.

5. We note that undisputedly this was not a case emanating from a scrutiny assessment that may have been undertaken by virtue of Section 143(3) of the Act. The AO, while invoking Section 148, had recorded the following reasons for reopening:

"M/s. Ganesh Ganga Investments Pvt. Ltd., PAN AAACG2710J A.Y. 2010-11 The assessee filed return of income for the A.Y. 2010- 11 on 04.02.2011 declaring loss of Rs.(-) 14,162/-.The return was processed u/s 143(1).

Information was forwarded to this office through the Addl. CIT, Range-10, New Delhi that search & seizure action was conducted by Inv. Wing at the office of Sh. Himanshu Verma where various incriminating documents/ materials were seized

during the course of search. During the post search investigation and perusal of seized documents it was observed that Sh. Himanshu Verma was engaged in the business of providing accommodation entries by providing cheques/PO/DD in lieu of cash to a large number of beneficiary companies thorough various paper and dummy companies floated and controlled by them. It was also evidently established by the Investigation Wing that Sh Himanshu Verma is known entry providers and is the actual controller of more than 100 companies/ proprietary firms/ partnership firms. They control these entities through various persons by appointing them as directors/partners/proprietors apart from nominating them as authorized signatories for maintaining the bank accounts of these entities but in fact all these persons act only as their stooges. The cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/ companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash AY This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:50 was transferred to the different paper companies floated by Sh. Himanshu Verma through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Himanshu Verma.

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Himanshu Verma, which is routed to these companies through their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through RTGS/Cheques in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient clients were provided to them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

It is noticed from the list of entries that the assessee M/s Ganesh Ganga Investment P. Ltd. has taken following accommodation entries during the financial year 2009-10 :-

S.No. Amount Conduit companies through which cheque issued.

1. 4000000 Shubh Propbuild P Ltd.,

2. 4000000 Jaguar Softech P. Ltd.,

3. 4000000 Join Fashion P. Ltd.,

4. 4000000 Management Services P. Ltd.,

5. 4000000 Greenvision Construction P. Ltd.,

6. 4000000 USK Exim P. Ltd., TOTAL 2,45,00,000/-

On the basis of the reports received from the Investigation Wing, I have downloaded the return from the ITD portal and verified the records and it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration as it emerges that transactions shown in the return are not genuine. Apart from the above the assessee company is not doing any real business and keeping in view the huge investments, disallowances u/ s 14A read with rule 8D also applicable in the case. The statement given by Shri Himanshu Verma also establishes the link with the self-confessed "accommodation entry providers" whose business is to help assessees bring back their unaccounted money into This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:50 their books of account. Thus, there is a direct link between the information/ available with the department and the income escaping assessment.

I have, therefore, reasons to believe that income to the extent of Rs.2,45,00,000/- has escaped assessment relevant to A.Y.2010-11. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment year, for issuing the notice u/s 148, necessary approval/sanction may kindly be accorded by the Pr. Commissioner of Income Tax, Delhi-4, New Deli in view of the amended provision of section 151 w.e.f 01.06.2015. "

6. As is manifest from the above, quite apart from the material which had been gathered by the Investigation Wing, the AO also appears to have independently scrutinized the ROI and verified the disclosures made therein against the record which was available. This clearly appears from the listing of entities who were stated to have made investments in the respondent-assessee in the year in question and whose particulars stand captured in the table which forms part of the „reasons to believe . The AO had also alluded to the statement of one Mr. Himanshu Verma, which is stated to have been recorded by the Investigation Wing and had ultimately come to conclude that there was a direct link between the information available with the Department and income having escaped assessment. This is therefore not a case where the AO has proceeded merely by treating the report of the Investigating Wing as constituting an ipse dixit and on the basis of which the requisite opinion was formed. The recordal of reasons in support of the formation of opinion is clearly demonstrative of due application of mind.

7. The Tribunal, however, has doubted the invocation of Section 148 of the Act by observing as follows:

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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:50 "8.5. The statement of Shri Himanshu Verma is also filed on record which did not find mention if M/s. Shubh Propbuild Pvt. Ltd., as mentioned in the reasons belong to Shri Himanshu Verma. There is no investor exist in the name of M/s. Management Services Pvt.

Ltd., and no addition in respect of the same company have been made by the A.O. The A.O, therefore, recorded incorrect facts in the reasons for reopening of the assessment. Thus the same cannot be approved under the Law. It is well settled Law if wrong facts and wrong reasons are recorded for reopening of the assessment, reopening of the assessment would be invalid and bad in Law. We rely upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries 180 ITR 319 (P&H). It is well settled Law that note already filed with return disclosing nature of capital receipt and no other tangible material found, therefore, reopening of the assessment under section 148 was quashed. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., Atul Kumar Swami [2014) 362 ITR 693 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Kanpur Texel P. Ltd., 406 ITR 353 (Alld.). Similarly, in the case of CIT vs., Vardhaman Industries [2014] 363 ITR 625 (Raj.), the Hon'ble Rajasthan High Court has held that "reasons must be based on new and tangible materials. Notice based on documents already on record, 148 not valid." In the instant case under appeal, the A.O. has reproduced the information received from Investigation Wing and reproduced the same in the reasons recorded under section 148 of the IT. Act. This information shows that assessee has received the amount of credit from 06 parties, but one of the party i.e., M/s. Management Services Pvt. Ltd. do not exist and that M/s Shubh Propbuild Pvt. Ltd., do not belong to Shri Himanshu Verma. It, therefore, appears that A.O. has not gone through the details of the information and has not even applied his mind and merely concluded that he has reason to believe that income chargeable to tax has escaped assessment. In the reasons A.O. has recorded that assessee has received accommodation entry of Rs.2.45 crores, but, ultimately made an addition of Rs.11.05 crores without bringing any material against the assessee. The reasons to believe are, therefore, not in fact reasons, but, only conclusion of the A.O. In the case of Meenakshi Overseas Pvt. Ltd., (supra), the A.O. in the reasons has even mentioned that he has gone through the information received which is lacking in the present case. The A.O. being a quasi-judicial authority is expected to arrive at subjective satisfaction independently on his own. The A.O. however, merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment without arriving at his satisfaction. Thus, there is no independent application of mind by the A.O. to the report of Investigation Wing to form the basis for recording the reasons. The reasons recorded by the A.O. are also incorrect as noted above. The This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:50 reasons failed to demonstrate the link between the alleged tangible material and the formation of reasons to believe that income chargeable to tax has escaped assessment. The decisions relied upon by the Learned Counsel for the Assessee in the cases of Pr. Commissioner of Income Tax vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.), Pr. Commissioner of Income Tax vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), Pr. Commissioner of Income Tax vs., G and G Pharma India Ltd., 384 ITR 147 (Del.) and Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), clearly apply to the facts and circumstances of the case. Learned Counsel for the Assessee also relied upon Order of ITAT, Delhi Bench in the case of Pioneer Town Planners Pvt. Ltd., (supra) in which on identical facts reopening of the assessment have been quashed. The Ld. D.R. relied upon certain decisions in support of the contention that reopening of the assessment is justified, but, the same are distinguishable on facts of the present case. Considering the facts and circumstances of the case in cases in the light of above discussion and decisions referred to in the Order, we are of the view that reopening of the assessment is bad in law and that sanction/approval granted by Pr.Commissioner of Income Tax is also invalid. We may also note that vide Order sheet Dated 23.08.2019 the case was re-fixed for hearing because the Ld. D.R. argued that approval have been granted by Commissioner of Income Tax after due discussion of the matter and perusal of the relevant information and thereafter approval in prescribed proforma sent to the A.O. and he has mentioned that I am satisfied. However, no record was produced. Therefore, this case was re- fixed for fresh hearing. However, on the date of hearing no such record have been produced for the inspection of the Bench. Therefore, satisfaction recorded by the Pr. Commissioner of Income Tax is invalid and without application of mind. Therefore, the reopening of the assessment is invalid and bad in Law and cannot be sustained in Law. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act, 1961. Resultantly, all additions stands deleted. Since we have quashed the reopening of the assessment, therefore, there is no need to decide the addition on merit which is left with academic discussion only."

8. As is apparent from the above, what appears to have weighed upon the Tribunal was the fact that there was no investor by the name of M/s Management Services Pvt. Ltd. and which found mention in the statement of Mr. Himanshu Verma and that ultimately no addition in respect of the said entity had been made by the AO.

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9. In our considered opinion, the reasoning as assigned by the Tribunal is clearly untenable. Firstly, the question of whether the power to reassess was rightly and justifiably invoked, could not have been tested basis the ultimate order of assessment that came to be drawn. What the Tribunal needed to principally bear in consideration was whether the AO had merely adopted and blindly followed the report of the Investigation Wing or whether it had treated the same as constituting relevant information for the purpose of formation of opinion that income chargeable to tax had escaped

assessment. As we view the reasons which were recorded by the AO, we come to the firm conclusion that this could not have justifiably been characterized as a case of borrowed satisfaction. As is ex facie manifest from a reading of the reasons so recorded, it is apparent that the report of the Investigation Wing only prompted the AO to scrutinize the ROI and the reassessment power was thereafter exercised basis the commonality of entities which were found in the return as submitted and the report of the Investigation Wing. The AO also appears to have borne in consideration the statement of Mr. Himanshu Verma which was recorded in the course of investigation and the fact that some of the accommodation entry providers whose particulars were disclosed in that statement, were also found to be investors in the respondent. On an overall conspectus of the aforesaid, we are of the considered opinion that the Tribunal clearly erred in interfering with the exercise of power conferred by Section 148 by the AO.

10. Insofar as the issue of borrowed satisfaction is concerned and when the invocation of the reassessment power could be said to be unjustified, we deem it apposite to allude to the following observations as appearing in Pr. Commissioner of Income Tax v.

Meenakshi Overseas Pvt. Ltd.7:-

> "24. The reopening of assessment under section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the Assessing Officer that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of section 147(1) of the Act.
>
> xxxx xxxx xxxx
>
> 26. The first part of section 147(1) of the Act requires the Assessing Officer to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The Assessing Officer being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income

has escaped assessment.

27. Each case obviously turns on its own facts and no two cases are identical. However, there have been a large number of cases explaining the legal requirement that requires to be satisfied by the Assessing Officer for a valid assumption of jurisdiction under section 147 of the Act to reopen a past assessment.

28. 28.1 In Signature Hotels Pvt. Ltd. v. ITO (supra), the reasons for reopening as recorded by the Assessing Officer in a pro forma and placed before the Commissioner of Income-tax for approval read thus (page 56 of 338 ITR):

"11. Reasons for the belief that income has escaped assessment.-- Information is received from the DIT (Inv.- I), New Delhi that the assessee has introduced money 2017 SCC OnLine Del 8691 This is a digitally signed order.

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Details are contained in annexure. As per the information amount received is nothing but accommodation entry and assessee is a beneficiary." 28.2 The annexure to the said pro forma gave the name of the beneficiary, the value of entry taken, the number of the instrument by which entry was taken, the date on which the entry was taken, name of the account holder of the bank from which the cheque was issued, the account number and so on.

28.3 Analysing the above reasons together with the annexure, the court observed (page 59 of 338 ITR):

"The first sentence of the reasons states that information had been received from Director of Income- tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during the financial year 2002-03 as per the details given in the annexure. The said annexure, reproduced above, relates to a cheque received by the petitioner on October 9, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.

The aforesaid reasons do not satisfy the requirements of section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except the annexure, which has been quoted above. The annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. The annexure is not a pointer and does not indicate escapement of income. Further, it is

> apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

28.4 The court in Signature Hotels Pvt. Ltd. v. ITO (supra) quashed the proceedings under section 148 of the Act. The facts in the This is a digitally signed order.

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29. 29.1 The above decision can be contrasted with the decision in AGR Investment Ltd. v. Asst. CIT (supra), where the "reasons to believe" read as under (page 151 of 333 ITR):

> "Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/ accommodation entries provided by certain individuals/companies. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. In the said information, it has been inter alia reported as under:
>
> Entries are broadly taken for two purposes:
>
> 1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans, etc.
>
> 2. To inflate expense in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

It has been revealed that the following entries have been received by the assessee : . .. ."

29.2 The details of six entries were then set out in the above "reasons". These included name of the beneficiary, the beneficiary's bank, value of the entry taken, instrument number, date, name of the account in which entry was taken and the account from where the entry was given the details of those banks. The reasons then recorded:

> "The transactions involving Rs. 27,00,000, mentioned in the manner above, constitutes fresh information in respect of the assessee as a beneficiary of bogus

> accommodation entries provided to it and represents the undisclosed income/income from other sources of the assessee-company, which has not been offered to tax by the assessee till its return filed.
>
> On the basis of this new information, I have reason to believe that the income of Rs. 27,00,000 has escaped assessment as defined by section 147 of the Income-tax Act. Therefore, this is a fit case for the issuance of the notice under section 148."

29.3 The court was not inclined to interfere in the above circumstances in exercise of its writ jurisdiction to quash the proceedings. A careful perusal of the above reasons reveals that the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:51 Assessing Officer does not merely reproduce the information but takes the effort of revealing what is contained in the investigation report specific to the assessee. Importantly he notes that the information obtained was "fresh" and had not been offered by the assessee till its return pursuant to the notice issued to it was filed. This is a crucial factor that went into the formation of the belief. In the present case, however, the Assessing Officer has made no effort to set out the portion of the investigation report which contains the information specific to the assessee. He does not also examine the return already filed to ascertain if the entry has been disclosed therein.

30. 30.1 In CIT v. Highgain Finvest (P.) Ltd. (2008) 304 ITR 325 (Delhi) ; (2007) 164 Taxman 142 (Delhi) relied upon by Mr. Chaudhary, the reasons to believe read as under (page 327 of 304 ITR):

> "It has been informed by the Additional Director of Income-tax (Investigation), Unit VII, New Delhi, vide letter No. 138 dated April 8, 2003 that this company was involved in the giving and taking bogus entries/transactions during the financial year 1996-97, as per the deposition made before them by Shri Sanjay Rastogi, CA during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transaction of this nature are as under:
>
> Date Particulars of cheque Debit amount Credit Amount 18-11-96 305002 5,00,000 Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the PNB, New Rohtak Road, New Delhi.
>
> Note : It is noted that there might be more such entries apart from the above.
>
> The return of income for the assessment year 1997-98 was filed by the assessee on March 4, 1998 which was accepted under section 143(1) at the declared income of Rs. 4,200. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs. 5,00,000 (as mentioned above) has escaped the assessment within the meaning of the proviso to section 147 and clause (b) to Explanation 2 of this section.

Submitted to the Additional Commissioner of Income- tax, Range- 12, New Delhi for approval to issue notice under section 148 for the assessment year 1997-98, if approved."

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31. In Principal CIT v. G and G. Pharma India Ltd. (supra) there was a similar instance of reopening of assessment by the Assessing Officer based on the information received from the DIT (I). There again the details of the entry provided were set out in the "reasons to believe". However, the court found that the Assessing Officer had not made any effort to discuss the material on the basis of which he formed prima facie view that income had escaped assessment. The court held that the basic requirement of section 147 of the Act that the Assessing Officer should apply his mind in order to form reasons to believe that income had escaped assessment had not been fulfilled. Likewise in CIT v. Independent Media P. Limited (supra) the court in similar circumstances invalidated the initiation of the proceedings to reopen the assessment under section 147 of the Act.

32. In Oriental Insurance Co. v. CIT (2015) 378 ITR 421 (Delhi) it was held that "therefore, even if it is assumed that, in fact, the assessee's income has escaped assessment, the Assessing Officer would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the assessment, the question of assessing or reassessing the income under section 147 of the Act would not arise".

33. In Rustagi Engineering Udyog (P.) Limited (supra), it was held that ".. . the impugned notices must also be set aside as the Assessing Officer had no reason to believe that the income of the assessee for the relevant assessment years had escaped assessment. Concededly, the Assessing Officer had no tangible material in regard to any of the transactions pertaining to the relevant assessment years. Although the Assessing Officer may have entertained a suspicion that the assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under section 147 of the Act. A reason to believe--not This is a digitally signed order.

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34. Recently in Agya Ram v. CIT (supra), it was emphasised that the reasons to believe "should have a link with an objective fact in the form of information or materials on record. . ." It was further emphasised that "mere allegation in reasons cannot be treated equivalent to material in eyes of law. Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessments".

35. In the decision of this court dated March 16, 2016, in W. P. (C) No. 9659 of 2015 (Rajiv Agarwal v. Asst. CIT (2017) 395 ITR 255 (Delhi)) it was emphasised that "even in cases where the Assessing Officer comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an assessee has escaped assessment, form a belief that income of the assessee has escaped assessment".

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the Assessing Officer one after the other. There is no independent application of mind by the Assessing Officer to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the Assessing Officer are at best a reproduction of the conclusion in the investigation report. Indeed it is a "borrowed satisfaction". The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."

11. That only leaves us to examine whether the approval as granted would satisfy the requirements of Section 151 of the Act. Learned counsel for the respondent has commended for our consideration the decision of the Court in Capital Broadways (P) Ltd. v. Income Tax Officer Ward 5(3) Delhi8 to contend that the reasons as recorded by the PCIT, while according approval, would clearly establish that the same lacked an independent evaluation of whether reassessment was warranted. We find ourselves unable to sustain that submission for the 2024 SCC OnLine Del 7059 This is a digitally signed order.

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12. It would be appropriate to firstly notice what the PCIT had come to record while conferring approval to the proposed action of the AO. This has been duly captured by the Tribunal in para 8.1 of its order and which is reproduced hereinbelow:

> "8.1 PB-29 is the sanction granted by Pr. Commissioner of Income Tax for reopening of the assessment in which it is mentioned as under:
>
> | | | |
> |---|---|---|
> | 13. | Whether the Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue notice u/s.148. | P |

13. It is relevant to note that Capital Broadways was concerned with a case where all that the PCIT had chosen to pen was "Yes, I am satisfied". That is clearly not the position which obtains here. Regard must also be had to the consistent position that our Court has taken in this respect and where it has held that it is only where the approving authority merely appends its signature or accords approval treating that exercise to be an empty formality or where it may have failed to discharge the salutary obligation placed upon it and acted as a mere rubber stamp that courts have struck down the approval accorded. Regard must also be had to the fact that while according approval, the PCIT is neither obliged nor expected to pen a detailed order in support of the view expressed by the AO. An approval even if succinctly expressed would suffice provided it is demonstrative of due This is a digitally signed order.

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14. We would thus answer question (a) as posited by holding that the formation of opinion by the AO was demonstrative of due application of mind and cannot be characterized as based on "borrowed satisfaction". We answer question (b) holding that the approval accorded was compliant with the requirement of Section 151 of the Act.

15. The appeal shall consequently stand allowed. The impugned order of the Tribunal dated 07 November 2019 is hereby set aside. The original assessment, in consequence, shall stand restored.

YASHWANT VARMA, J HARISH VAIDYANATHAN SHANKAR, J FEBRUARY 28, 2025/akc This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 23:52:51