Income Tax Appellate Tribunal - Delhi
Arun Duggal, Faridabad vs Dcit, Central Circle- 1, ... on 4 January, 2022

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI
Before Sh. Amit Shukla, Judicial Member
Dr. B. R. R. Kumar, Accountant Member
ITA No. 3075/Del/2018 : Asstt. Year : 2009-10

Arun Duggal,	Vs	DCIT,
3E-42, NIT,		Central Circle-1,
Faridabad, Haryana-121001		Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AGUPD5708Q		

Assessee by : Sh. Kapil Goel, Adv.
Revenue by : Ms. Paramita M. Biswas, CIT DR
Date of Hearing: 06.10.2021 Date of Pronouncement: 04.01.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal has been filed by the assessee against the order of ld. CIT(A)-3, Gurgaon 26.02.2018.

2. Following grounds have been raised by the assessee:

> "1. That on the facts and in the circumstances of the case and in law, Ld CIT- A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld AO was in violation of jurisdictional conditions stipulated under the Act;
>
> 1.1 That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that "rubber stamp" reasons in present case are based on borrowed satisfaction and are without independent application of mind;

1.2 That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that no back material, repeatedly asked Arun Duggal was confronted/provided to assessee thus invalidating entire reopening;

1.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assessment u/s 147/148 cannot be made when search was cond ucted u/s 132, as strictly excluded u/s 153A/153B/153C of the Income Tax Act, 1961;

1.4 That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that none of the assessee

submission is appreciated while ad judicating the appeal;

1.5 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that objection filed in response to reasons recorded were never disposed off by a speaking order b efore passing the final assessment order, which has invalidated the entire proceedings;

1.6 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that notice u/s 143(2) issued without waiting for GKN Driveshaft procedure to be exhausted is invalid. Further the Ld AO after assuming the jurisd iction transferring records from ITO Ward 1(1) to DCIT-CC-1, Faridabad, no notice u/s 143(2) was issued, which invalidated the entire proceedings;

1.7 That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that the reasons recorded for issuance of notice u/ s 148, are just conclusions over conclusions, without any factual enquiry / back material on record.

1.8 That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciati ng that t he mec hanical and rubber stamp approval has been given by the Pr C IT, Fa ridabad-121001 Arun Duggal

2. That on the facts and in the circumstances of the case and in law, Id CIT- A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that on basis of surfeit and inund ated evidences on records burden u/s 68 lying on assessee has been fully discharged and met so addition made by Ld AO (Rs.12,81,75,000.00) and confirmed by CIT-A in imp ugned order deserves to be deleted.

2.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that there is no valid basis of any of the addition of Rs. 12,81,75,000.00 2.2 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that all the additions made are without bringing any case specific and transaction specific material on records;

2.3 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that no meaningful enquiry was mad e by Ld AO which is sufficient to strike down the additions made;

2.4 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that no bank statements on the basis of which additions has been made were never provided to the assesse;

2.5 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that while making addition u/s 68 Ld AO has not issued any formal and required show cause notice nor Ld AO has considered detailed reply-filed by the assessee;

2.6 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without Arun Duggal appreciating that none of evidence filed by assessee is overruled in accordance with law;

4. That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in sustaining the order passed by the Ld AO u/s 147/143(3) without appreciating that the assesse was never provided with an opportunity of cross examination of any of officers of M/s Jagatjit Industries Ltd / other associates on the statement of Revenue / Investigation wing has relied upon and the Ld AO has passed the impugned assessment order.

5. The on the facts and in the circumstances of the case in law, Ld CIT(A) erred in sustaining the orders passed by the Ld AO u/s 147/143(3) without appreciating that the no addition u/s 68 can be made merely relying upon the bank statements, which was never books of accounts of the assesse.

6. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in not restoring the returned income declared by assessee in its return of income.

7. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in not deleting the addition made by Ld AO which was also unlawful and made in violation of principles of natural justice, as no show cause notice has been issued, the bare minimum requirement for making additions under Income Tax Act, 1961 and making the assesse liable for enhanced taxation.

8. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) in bare violation of principles of natural justice."

3. Brief facts of the case are that information has been received from investigation division of the Income Tax department with regard to the two bank accounts maintained by the assessee which have not been disclosed to the Income Tax Department. Based on the information received, the Assessing Officer having satisfied himself has initiated reopening Arun Duggal proceedings u/ s 148 of the Income Tax Act, 1961 and issued notice as per the provisions of the Act after tak ing due approval from the competent authorities u/s 151. In response to the notices issued, the assessee availed inspection of the file and records on 19.04.2016 and certified copies were given by the revenue authorities. Owing to the credits in the b ank account, addition of Rs.12.81 Crores has been made by the Assessing Officer u/s 68 of the Act.

4. Aggrieved the assessee filed appeal before the ld. C IT(A) who confirmed the order of the Assessing Authorities.

5. Hence, the appeal before the ITAT.

6. During the arguments, the ld . AR mainly argued on two issues viz., reop ening u/s 148 and merits of the addition with regard to the income assessab le in the hands of the assessee.

7. For the sake of completeness and ready reference, the arguments taken by the ld. AR and the rebuttal g iven by the ld. DR are placed hereunder:

Arguments of ld. AR:

8. The chronology of events are as under:

D at e E v e nt 14 .0 7 .20 0 9 I TR f or s ubj ec t p er iod f ile d w it h t ot a l inc om e of Rs 4 94 ,55 0 29 .1 2 .20 1 5 S ea rc h a nd s e iz ure op er at ion u/s 13 2 of t he Ac t wa s c a rr ied o ut o n as s es s e e (a ll s ea rc h as s t q ua s h ed v id e o rd er of I T AT d at ed 1 9. 01 .20 21) 31 .0 3 .20 1 6 L ett er da t e d 3 0 .03 . 20 16 r ec d b y as s es se e's AO fr om o ffic e o f AD I T I nv I I F ar id a b a d (p a p e r boo k pa g es 10 t o 1 3) -k ey e xt ra c t rep r od uc ed b elo w 31 .0 3 .20 1 6 D ra f t r ea s ons u /s 1 48 (2) rec o rd ed b y a s s es s e e's AO P ag e 14 /15 of p ap er b ook = rep r od uc ed b elo w Arun Duggal 31 .0 3 .20 1 6 S o c a ll ed a pp rov a l from P CI T F ari da b a d ac c or d ed to r ea s ons d ra ft ed b y AO p a g e 14 /1 5 of pa p e r b o ok r ep rod uc ed b e low 31 .0 3 .20 1 6 N ot ic e u/s 14 8 is s ued b y AO t o a s s es s ee (rec d on 0 2. 04 .20 16 a t 12 PM) 23 .1 2 .20 1 6 S ec t i on 6 8 ap p lie d to b a nk c r ed it a dd it io nof Rs 1 2, 01 ,75 ,0 0 0 a s ses s me nt c om p le t ed on 2 3 .1 2. 20 16 (no b o ok s of ac c o unt m a i nta ine d by a s s es s ee admittedly) 26.02.2018 Ld CIT-A dismissed assessee's appeal

---------- Hence this appeal before Hon'ble ITAT

9. Whether revenue can use section 148 of the Act for the period under consideration (AY 2009-2010) when provisions of section 153A as it stood at relevant time only enabled assessment for six specified years u/s 153A and one year in which search is conducted for mandatory scrutiny assessment in section 143(3), which revenue action plainly operates contrarily to legislative intent as evident and manifest from i) strong non obstante operating clause in section 153A and ii) subsequent amendment in section 153A by finance act 2017 enlarging scope of years which can be assessed after search operation?

10. Whether in light of collective read ing of final paragraph of forwarding letter of investigation wing (recd in office of AO on 31.03.2016), reasons drafted on 31.03.2016 and approval of PCIT (I AM SATISFIED) d ated 31.03.201, is it not a case of reopening/reasons recorded and approval both given as per rubber stamp /borrowed satisfaction and without independent application of mind on part of Ld AO and Ld PCIT?

11. Whether from order sheet noting dated 21/04/2016 (copy placed on case records) stating that "Present Sh Vijay Singla CA and filed a letter seek ing insp ection of the record and filed Arun Duggal a challan of Rs. 400 for the same. Copy of reason has also been supplied to him. Inspection of case record has also been made by the counsel. Notice u/s 143(2) issued and served upon the counsel. Asked to file copy of bank statement and other information as p er notice u/s 142(1) issued

and served upon the counsel. And also asked to file source of cash amounting to Rs. 12,81,75,000 deposited in the bank account maintained by the assessee. C ase adjourned to 3/05/2016 where return u/s 148 was promptly filed on 03.04.2016, on same day request made for supply of reasons recorded u/s 148 from assessee side (refer order sheet entry dated 03.04.2016), it further confirms that reopening in present case is purely as per dictate and direction of investigation wing on borrowed satisfaction as AO never allowed or gave assessee any time/room to p lace its objections on reasons supplied on 21.04.2016 as per dictum of Hon'ble apex court in GKN driv e shaft case 259 ITR 19 and hurriedly started assessment proceedings in extreme haste by issuing notice u/ s 143(2) and sec 142(1) questionnaire on very same day (21.04.2016), when reasons were first supplied to assessee, thus display ing i) dictated action of reopening and ii) strangulation of sacred proced ure of GKN Driiveshaft case?

12. Whether addition made in imp ugned assessment dated 23.12.2016 immediately after issue of q uestionnaire u/s 142(1) dated 29.11.2016 after assesssee rep ly on same dated 16.12.2016 is valid where admittedly no where assessee was issued mandatory Show cause notice (SC N) as per CBDT instruction and H on'ble SC/HC/ITAT decisions on the subject ?

13. Whether invocation of section 68 in final assessment to bank credit treating bank statement as assessee's books of accounts u/s 68 of the Act read with sec 2(12A) of the Act Arun Duggal which was also the final direction in forwarding letter of investigation wing dated 30.03.2016 is in accordance with applicable legal norms in peculiar facts as highlighted above?

14. Whether recent order of Delhi ITAT dated 19.01.2021 in assessee's own case (covering/dealing identical /same issue of addition based on same bank credit) invalidates the stand of revenue in extant case on merits of the matter?

15. On above framed six issues, we humbly submit our arguments on each of the above issue in chronological sequence.

16. First primordial issue which requires ad judication here is invocation of section 148 to subject period AY 2009-2010, where already search action on assessee u/ s 132 of the Act took place on 29.12.2015 as admitted at very first page of impugned assessment order. As the provisions of section 153A which as stood at relevant time only six specified years which could fall u/s 153A for assessment based on assessee's own search could be AY 2010-2011 to AY 2015-2016, preceding to AY 2016-2017 being search year. Now as evident from cursory look to subsequent amendment made in section 153A by legislature vide finance act 2017 (applicable to searches made on/after 1.04.2017) inserting enlarged scope of assessment u/s 153A covering ten assessment years (refer forth proviso and expl1 and Expl. 2 to section 153A of the Act), it is clear that that prior to said amend ment leg islative intent was to cover six specified years and there was no space for additional reopening u/s 148 as sought to be done in this extant case. This gets further confirmed from very strong non obstante clause used in section 153A of the Act (notwithstanding anything contained in section 139, 147, 148, 149, 151, and section 153). Further we Arun Duggal rely on Hon'b le Delhi high court ruling in Neeraj Jindal case 393 ITR Page 1 which supports assessee's contention. Relevant portion referred below (his lordship justice S. Ravindra Bhatt as his lordship then was):

"....19. The whole matter can be examined from a different perspective as well. Section 153A provides the procedure for completion of assessment where a search is initiated under Section 132 or books of account, or other documents or any assets are requisitioned under Section 132A after 31.05.2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under Section 132 or requisition was made under Section 132A. The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment y ears pending on the date of initiation of the search under Section 132 or requisition under Section 132A, as the case may be, shall abate. [Ref to Memorand um accompanying the Finance Bill, 2003] Section 153A opens with a non-obstante clause relating to normal assessment procedure covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after May 31, 2003. The sections, so excluded, relate to returns, assessment and reassessment provisions.

However, the provisions that are saved are those under Section 153B and 153C, so that these three Sections 153A, 153B and Arun Duggal 153C are intended to be a complete code for post-search assessments...."

17. We humb ly rely on schematic interpretation princip le (refer Hon'ble Apex court ruling in and Laksmi Machine works 290 ITR 667) and treating the entire law as integ rated code of taxation (Held in case of Eli Lily 312 ITR 225: "....that the 1961 Act is an integrated code in which one cannot segregate the computation machinery from the collection and recovery machinery ."), to support our above submission. Even we humbly rely on Hon'ble Supreme court observations in lead ing case of Manish Maheshwari 289 ITR 341 in context of erstwhile block assessment scheme (u/s 158BD/158BC) as to applicable rule of interpretation to be used while interpreting provisions of post search block assessment:

"A taxing statute, as is well-known, must be construed strictly. In Sneh Enterprises v. Commissioner of Customs, New Delhi [(2006) 7 SCC 714], it was held: "While dealing with a taxing provision, the p rinciple of 'Strict Interpretation' should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be d one by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue." Yet again in J. Srinivasa Rao vs. Govt. of A.P . & Another [2006 (13) SCALE 27], it was held: "In a case of doubt or dispute, it is well-settled , construction has to be made in favour of the taxpayer and against the Revenue." In M/s. Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai [JT 2006 (12) SC 379 : 2006 (9) SCALE 652], this C ourt opined:

Arun Duggal "In our opinion if there are two possible interpretations of a rule, one which sub-serves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act." .....The provisions contained in Chapter XIVB are drastic in nature. It has draconian consequences. Such a proceeding

can be initiated, it would bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden shifts on the assessee. Audited accounts for a period of ten years may have to be reopened...."

18. Now the second issue which arises in extant case for your lordships adjud ication is validity of i) reasons recorded u/s 148(2) of the Act and ii) valid ity of sanction u/s 151 of the Act. Relevant reasons recorded u/s 148(2) in the ex tant case.

19. Our important contentions of validity of assumption of jurisdiction u/s 148 of the Act:

20. Firstly since it is admitted fact that four important events of receipt of information from investigation wing , recording of draft reasons, approval /sanction granting and final issuance of notice u/s 148 of the Act have happened on time barring last day of the limitation period that is 31.03.2016 as mentioned elsewhere in this write up , it manifestly displays thorough non application of mind and classical case of borrowed satisfaction without independent application of mind on part of reasons recording authority (AO) and approving authority (PCIT) ergo we plead for quashing of impugned orders of Ld AO and Ld CIT- A being patently ultra vires to p rovisions of section 148(2) of the Act:

Arun Duggal

21. To support above proposition we place reliance on following jurisprudence:

IN THE INCOME TAX APPELLATE TRIBUNAL PUNE BENCH "B", PUNE ITA Nos.725 to 728/PUN/2015 Shri Tushar R. Jagtap Date of Pronouncement: 09.02.2018

28. Further, the second connected aspect is that after approval being granted , notice issued und er section 148 of the Act and service upon assessee on 30.03.2012. It may be pointed out herein itself that in all the assessment orders for different assessment years in the case of different assessees, there is mention of service of notice und er section 148 of the Act on 29.03.2012. We may keep the said fact on the side since the Revenue has furnished on record the evidences of recording of reasons, seeking of approval, ap proval being granted and the issue of notice under section 148 of the Act and its service upon the assessee. We may start with the fact that for assessment years 2005-06 and 2006-07, the said reasons were recorded on 30.03.2012, approval was sought and granted on 30.03.2012; and notice under section 148 of the Act was issued on 30.03.2012 and served upon the assessee on 30.03.2012. The approval having been granted in a routine manner and in view of the ratio down by the Hon'ble High Court of Madhya Pradesh in CIT Vs. S. Goyanka Lime & Chemicals Ltd. (supra), where SLP has b een dismissed by the Hon'ble Supreme Court, we hold that in the absence of any independent application of mind by the JCIT, the approval so granted is in a routine manner and the reopening of assessment under section 147 / 148 of the Act was thus, invalid and assessment completed under section 143(3) r.w.s. 147 of the Act does not stand.

Arun Duggal Accordingly, consequent penalty proceedings initiated and completed against the assessee under section 271(1)(c) of the Act are without jurisdiction and held to be invalid and bad in

law."

22. Our next set of argument is propelled from forwarding letter of investigation wing dated 30.03.2016 recd in office of AO on 31.03.2016 wherefrom it is manifestly clear that said letter is dictatorial in nature and is based on inchoate and half baked information which v itiates formation of p urported belief by AO so we plead for quashing of impugned orders of Ld AO and Ld C IT-A being patently ultra vires to provisions of section 148(2) of the Act.

23. As observed by Wade and Forsyth in Tenth Ed ition of Administrative Law:

"if the minister's intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power". The observations b y the learned authors to the same effect in the Seventh Edition were relied upon by a bench of three judges of this Court in Anirudh Sinhji Karansinhji Jadega and Anr. vs. State of Gujarat reported in 1995 (5) SCC 302. In this matter the appellant was produced before the Executive Magistrate, Gondal, on the allegation that certain weapons were recovered from him. The provisions of TADA had been invoked. The appellant's application for bail was rejected. A specific point was taken that the DSP had not given prior approval and the invocation of TADA was non-est. The DSP, instead of granting prior approval, made a report to the Additional C hief Secretary, and asked for permission to proceed Arun Duggal under TADA. The Court in para 13, 14, 15 has held this to be a clear case of 'dictation', and has referred to Wade and Forsyth on 'Surrender Ab dications and Dictation'."

24. On issue of reop ening on basis of half baked information and external d ictation of investigation wing we draw support from the following judgments.

25. The Hon'ble Sup reme Court in the case of Anirudh Sinhji Karan Sinhji Jad eja vs. State of Gujarat reported in [1995] 5 SCC 302 as well has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in comp liance with some hig her authorities instruction, then it will be a case of failure to exercise discretion altog ether IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION WRIT PETITION (CIVIL) No. 89 of 2018 CHINTPURNI MEDICAL COLLEGE AND HOSPITAL & ANR JULY 03, 2018

8. Before going into the merits of the submission, it is important to note that the State Government ap pears to have This is obvious from the letter dated 13.07.2017 referred to above. This by itself would vitiate the withdrawal of the Essentiality Certificate by the State, vide Anirudhsinhji Karansinhji Jadeja v. State of Gujarat and Dipak Babaria v. State of Gujarat.3 The following passage from Wade and Forsyth in Administrative Law, 10th Edition at p. 269 succinctly states the vice in such an action:

Arun Duggal "Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate

to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them."

26. In the Indian National Congress (I) case (supra), this Court held that where the law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi judicial authority. Also when the authority is required to act according to rules and not dictated by policy or expediency, the authority performs the quasi judicial function and not an administrative function.

26. Further, we humbly submit that reasons recorded in instant case along with accompanying approval are both bad in law as former (reasons) are recorded only on basis of suspect and borrowed satisfaction and latter (approval) is given in mechanical fashion as if it is deemed/auto/default approval , notably after the receipt of investigation wing information on 31st march 2016 time barring date there is little precious done at end of AO to examine the veracity of information from investigation wing, as both AO and ld C IT-A hav e chosen to abdicate their solemn and salutary duty to letter recd. From Arun Duggal investigation wing which is mechanically relied to reopen the case, so we p lead for quashing of impugned orders of AO and Ld C IT-A being patently ultra v ires to provisions of section 148(2) of the Act.

27. We draw support from following jurisprudence:

Hon'ble Delhi high court in Synfonia Tradelinks Pvt. Ltd . vs. ITO Ward 22(4) New Delhi order dated 26.03.2021

- Section 148 applicable principles culled out (reopening of assessment)

- valid approval /sanction ingredient

- validity of reopening to be seen only with reference to reasons recorded

- writ scope under article 226 of Indian constitution

28. Rebutting the contentions of the revenue, the ld. AR submitted as und er:

"T o d em ons t ra t e t hat t he fo rm at io n o f t he b e lie f, as d is c e rnib le from t h e ord e r r ec ord in g r ea so ns , wa s ne it h er a rb it ra ry n or irrat ion a l, a ref e re nc e wa s m ad e t o t h e f o llow ing p o rt ion of t he s a i d o rd e r: "F urt he r, o n p er us a l of ret u rn o f inc o me fi led b y t h e a ss es s ee f or A .Y 20 10 -11 a nd A .Y 2 01 1 -1 2 it ha s b ee n obs e rv e d t hat t he as s ess e e ha s s how n uns ec ured loa ns of Rs . 38 ,0 71 / - a nd Rs . 25, 57 ,2 0 6 /- res p ec tiv ely . T h us t he re is s ub s ta nt ia l inc r ea s e in t h e uns e c ured loa ns d ur ing A .Y . 2 01 1 -12 . A ca re f ul s cr ut iny o f in fo rm at ion r ec ei v e d fr om t he in v es t ig at ion w i ng a nd rep ort rec eiv ed f ro m In v es t ig

at ion W i ng. N ew D el hi s ub s eq ue nt a n a ly s is of r ep ort of in v est iga t ion w in g, da ta of t ra ns a c t io ns a nd v eri fic a t io n of I T R le ad t o a n ir res is t ib l e c o nc lus io n t ha t t he a ss es s ee c om pa ny ha s ta k en a cc om m odat io n ent ry at l ea s t up to t he a m o unt of Rs .2 6 ,9 3, 50 0 /- Co ns id e rin g t he a b ov e ref e rred c red ib le info rm at ion , a nd e nq u iries a nd a na ly s is s ub s eq u en t t o t he inf orm a t i on. I hav e r ea s on t o b e liev e t ha t a n a m o unt a t le as t o f Rs .2 6 ,9 3, 50 0 /- & C om m is s io n @ 2 .5 % am ou nt i ng t o R s 67 ,3 38 / - (T ota l Rs . 27, 60 ,8 3 8 / -) ha s es c a ped as s es s men t in c as e t he o f Arun Duggal M /s SY NF ONI A T R A D ELI NK S P V T . LTD . fo r t he A . Y 2 01 1-1 2 w it hin t h e m ea ning of Sec t ion 1 47 /1 48 of I nc om e-ta x Ac t , 19 6 1. "

7.2 . The s ub m is s io n ad va nc ed wa s t ha t t he a s s es s ee ha d taken a cc om m odat io n e nt ries fr om , on e, M r . Pra d e ep K um a r Ji nd a l in lie u o f c as h v ia d um m y c o mp a n ies /e nt it ies w hic h w a s reflec t e d in t he b a la nc e s he et s of t he a s s es s e es as uns ec ure d lo a ns . It w as c on te nd e d t hat t his fac t wa s d is c ov er ed up o n s e a rc h b ei ng c o nd uc t ed a t t he p re m is es of M r. P rad eep K um a r Jind a l on 18 .1 1 .2 01 5 .

7.3 . M r. Si ngh a tt em pt ed t o ex p la in a wa y t h e as s e rti on m ad e i n t he o rd e r rec or d ing re as o ns "T hus t he as s es s ee c om pa ny ha s tak e n b ogus s ha r e c ap it a l/s h a re p r em ium ac c o unt fr om th e a b ov e s a id e nt r y p rov id ers a m o unt ing t o Rs .2 6 ,93 ,5 00 / -" b y su bm it t ing t ha t t he r ef e renc e t o s ha r e c ap it a l/s h a re pre m ium a c c ou nt w as a n i na d v e rt ent er ror.

7.4 . Ac c o rd i ng t o M r. S ingh , t h e a c c om mo da t io n e nt ries w e re re f lec t ed in t he ret ur n o f t h e a s s es s ee w hic h is ac c om p a nie d b y its ba l a nc e s he et s in t he f orm of uns ec ured loa ns . I t wa s , th us , t he c o nte nt ion o f M r . Sin gh t hat a t t h e s ta ge o f init ia t io n of r ea s s e s s me nt p roc eed ings , a ll t hat o ne is req u ire d to e nq uir e is het he r or n ot p rim a fa c i e m at e ria l wa s a va ila b le , w h ic h c ou ld f orm t h e b a s is fo r re as s e s sm e nt . M r . Sin gh em p ha s iz ed t he fac t t ha t , a t t his s t ag e, t he co urt w a s not re q u ired t o ex a m in e t h e s uf f ic ienc y or c o rrec tn es s of t he m a t e ria l, w hic h f or m ed t h e ed if ic e fo r t he f or ma t io n of t he b el ief t ha t t he as s es s ee's t ax ab le inc o m e ha d es c ap ed a ss es s m e nt . I n s up po rt of t his p lea , re lia nc e w as p lac ed b y M r. Sin gh on t he j ud gm ent of t he Su pre m e Cou rt re nd ered in Ra ym on d W o od e n M ills L im it ed v . I nc om e T a x Of f ic er , Cent ra l Ci rc le XI, Ra ng e Bo m ba y a nd O rs . , (2 008) 14 SCC 218 .

7.5 . M r. S ingh d re w our a tt ent io n, a s n ot ed a b ov e , t o t ha t p a rt of t h e ord e r r ec o rd in g r ea s ons w hic h b o re t he he a d ing " a nal ys is o f inf or ma t io n" t o em p has iz e t he fa c t tha t rea s s es s m ent proc eed in gs ha d b e en in it ia t e d a s res p o nd e nt no.1 s u sp ec t ed t he ge nui nen es s of t he l oa ns rec e iv ed d uri ng t he s ub j ec t AY .

7.6 . I n s um , M r. S ingh a rg ued t h at t he re w as c og ent m a t e ria l a v a il ab l e fo r res p o nd e nt no.1 t o form a b eli ef t ha t t h e a s s es s ee 's t a x a b l e inc om e ha d esc a p ed a s s es s m ent . T h is inf o rm a t ion, ac c ord in g t o M r. Sin gh, w hic h wa s rec eiv e d f rom t he off ic e of t h e AD I T a nd t he rep ort g en era t ed t here af t e r Arun Duggal a nd its a na lys is form e d t he b as is of r es p ond ent n o.1 's b eli ef t h at t he a ss es s ee 's i nc om e c ha rg ea b le t o t a x ha d es c ap ed

a s s es s m ent . 7.7 . M r. Sing h w e nt o n t o s ta t e t ha t r es p o nd ent no.2 had g iv e n his a pp r ov a l to in it ia t i on of p roc ee d ings a ga ins t the as s es s e e on ly a ft e r s at is fy in g hims e lf t ha t a c as e wa s ma de out f or init iat ion of p r oc e ed ings und e r t h e p r ov is ion s o f Sec t io n 14 7 of t he Ac t "

Sig nif ic a nt ly H on' b le D elh i hig h c o urt a ft er ta k i ng p a ins ha s s uc c inc t ly c ull ed o ut fol low ing im p o rt a n t p r inc ip l es on s ec t io n 14 8 o f t he A c t :

" A na ly s is a nd R ea s o ns : -

9. W e ha v e h ea rd th e lea rn ed c ou ns el f or t h e p a rt i es a nd p e rus ed t h e rec or d. Bef or e w e p roc e ed fu rt her, it wo uld b e hel pf ul if w e w e re t o s et f or t h c er ta in w e ll-e st a b lis hed p r inc ip l es e nu nc ia t ed b y t h e c ourts ov er t h e y ea rs v is -à - v is i nit i at ion of p roc e ed ing s und er Sect io n 14 7 of t h e Ac t . (i) T h e r ea s ons w hic h le ad t o t h e f orm a ti on of op inio n or b eli ef t h at t h e a ss es s ee 's inc om e c ha rge ab le t o ta x ha s es c a p ed a ss es s me nt s ho uld b e in ex t ric a b ly c on nect ed . I n ot he r w ord s , t he r ea s ons f o r t h e f or ma t io n o f op ini on s hou ld ha v e a ra t io na l c on nec t io n w it h t he f orm a t io n of t he b e lie f t hat t he re has b e en a n es c a p em ent of i nc om e c ha rg ea b le t o ta x (Se e: IT O v . L a k hm a ni M ew a l D as , 1 97 6 3 S CC 7 57] (ii) T he ex p r es s io n " r ea s o n t o be lie v e " is s t ro ng er t ha n t h e w ord " sa t is f ied ". T he b e lie f s hou ld b e ba s ed on ma t e ria l t ha t is re lev a nt a nd c o ge nt . (Se e: Ga nga Sa ra n & S ons P v t . Ltd . v . I T O , 1 98 1 3 SC C 143]. (ii) (a) T he a s s es s in g of f ic er s ho uld h av e reas o ns t o b elie v e t hat t h e t a x a b le inc om e ha s es c ap ed a s s ess m en t. T h e pr oc es s of re as s ess m en t c a nnot b e t rig ge red ba s ed on a m er e s usp ic ion . T h e e xp ress io n " r ea s on t o b e lie ve " w h ic h is f ound in Sec t io n 14 7 of t he Ac t d o es not ha v e t he s a m e c o nnot a t i on a s " r ea so n to s us pec t ". T he o rd e r rec or d ing reas o ns s hou ld f ill t his c ha s m. T h e m a t er ia l b ro ugh t t o t h e k now led ge of t he a s s es s in g o ff ic e r s ho uld hav e nex us w it h t h e f orma t i on of b e lie f t hat t he t a x a b le inc om e of t he as s es s e e es c a p ed a s s es s m en t ; t he lin k b ei ng t he r ea s ons rec o rd ed , in t ha t beha lf , b y t he a s se s s ing (iii) T he A O is m a nd a t oril y ob lig ed t o r ec o rd r ea s ons b ef or e is s ui ng n ot ic e t o t he a ss es s ee und er S ec t ion 1 4 8 (1) of t he A ct . T his is e v id ent f rom t he ba r e pe rus a l of su b -s ec t io n (2) of Sec t ion 1 4 8 of t he A ct . (i v) N o not ic e c a n b e is s ued u nd e r Sec t io n 1 4 8 o f t he Ac t b y t he A.O . a fte r t he ex p iry o f f o ur y ea rs fr om t he end of t he r ele v a nt AY unl es s t he Pr inc ipa l Chie f Co mm is s ion er or Ch ief Co mm is s ion er or P ri nc ip a l Co m m is s ion er or Arun Duggal Co mm is s ion er a rr iv es a t a s at is fa c t io n b as ed on t h e r ea s ons r ec o rd ed b y t he A . O. t ha t it is a f it c as e f or is s ua nc e of a not ic e un d er Sec t i on 148 o f t he Ac t. [Se e: Sect ion 15 1 (1) of t he Ac t]. (v) T h e l im it at io n f or is s ua nc e of no t ic e und er Sec ti on 14 8 as pr es c rib ed und er Sect io n 14 9 of t h e Ac t c om m ences f ro m t he da t e o f its is s u a nc e w h ile t h e t im e li m it f or pa s s i ng t he ord er o f as s es s m en t, reas s es s m en t , c om p u ta t io n a n d re -c omp uta t i on a s p res cr ib ed u nd e r Sec t io n 15 3 of t he A c t c om m enc es from th e d a t e o f s erv ic e [Se e: R .K . U pa d h ya y v . Sha na b Bha i P . P at el , (19 8 7) 3 SCC 9 6] . (v i) A j ur is d ic t iona l e rro r wo uld oc c ur, w hic h c a n b e c orrec t ed by a wr it c ou rt , if r ea so ns t o b elie v e a re b as ed o n gro unds t ha t a r e eit he r a rb it ra r y a nd /o r irrat ion a l. (See : She o Na t h Si ngh v . A p p el lat e A CI T , Ca lc ut t a (1 972) 3 SC C 2 34] .

9.1 . T hus , if on e w ere t o a pp ly t h e a f or es t at ed p r inc ip l es , it w oul d b e c lea r a s da y l ight t ha t t h e ord e r rec o rd ing reas o ns d is c los e s c om p let e no n- a pp lic a t i on of m i n d. The r ea s on we say so is d is c e rni b le from t he f ollow i ng: ... "

Im p o rt a n t inf e re nc es on b as is of ab ov e pr inc ip les :

"9 .5 . M r. Sing h, in a d es p e ra t e a tt em pt t o s a lv a ge t he s it u at ion, d r ew o ur a tt ent io n t o t he u ns ec ure d lo a ns s h ow n in t he inc ome ta x r et urns of t he a ss es s ee f o r A Ys 2 0 10 -20 11 a nd 20 1 1 -2 012 a m o unt ing t o Rs .38 ,0 7 1 /- a nd Rs .25 ,5 7 ,2 06 /- r es p ec t iv ely . A p a rt fr om a ny t hi ng els e , s im ple m at h w ou ld s how t ha t th e c um u lat iv e t ot a l of t hes e fig ures is R s.2 5 ,9 5 ,27 7 /- a nd not Rs .26 ,9 3 ,5 00 /- w hi ch, a c c ord ing t o re sp ond e nt n o. 1 , is th e u nex p la ine d c red it i n t he b ooks of ac c ou nt s of t h e a s s ess e e a nd, h enc e , r eq u ired to b e a dd ed und e r Sec t io n 68 of t he Ac t . T h er ef or e, f or M r. S ingh t o s a y t ha t t hes e a re ina d v er t e nt e rro rs a nd he nc e s ho uld b e ig no red , in ou r o p in ion , is a n a rgu m e nt t ha t is co m p let e ly m is c o nc e iv ed. As in d ic a t e d ab ov e, i f t h e in fo rm at ion r ec ei v ed (f rom t he in v es t igat ion w ing) w as t ha t the a cc om m odat io n ent r ies , in lie u o f c a s h, w er e t ak en in t he f orm of s ha r e c ap it a l a nd sh a r e p rem ium t hey c ou ld c e rt a i nly not b e l ink ed t o uns ec ure d lo a ns rec eiv e d in A Y s 20 1 0 -20 1 1 a nd 2 0 1 1 -20 12 .

9.6 It is p ert i nent t o not e t ha t in t he o bj ec t io ns f iled b y t h e as s es se e, a n a tt em p t has b e en ma d e t o e xp la in t h e p u rp o rt ed a c c om mo da t io n e ntr ies by s ta t i ng t he re in t ha t t h e a d v a nc es ha d b e e n giv en to t h e 5 c om p a n ies a dv e rt ed to in t h e o rd e r r ec ord in g re a s o ns w h ic h w e re rec e iv ed b ac k on Arun Duggal t he da t es giv en in t he s a id o rde r. T he as s ess e e a ls o w e nt on to s ta t e , in it s obj ect io ns , t ha t th e op en ing b a la nc e (as on 0 1 .04 .2 0 10) a nd c los i ng ba la nc e (a s on 31 .0 3 .20 1 1) of the s ha re p rem iu m ac co unt (Rs . 3,6 6 ,1 6 ,800 /-) a nd th e s h a r e c a p it a l a c c ount (R s . 24 ,15 ,2 0 0/-) re ma ined unc ha n ge d. I n ot he r w ords , t he em p ha s is w as t ha t t here wa s no inc rea s e in t he s h a re ca p ita l o r t h e s ha re p rem iu m ac c o unt , a s a lle g ed , o r at a ll. I n t he or d e r p as s ed b y t h e as s ess in g of fic er da t ed 08 .1 0 .2 01 8 , w h ereb y , t he obj ec t ions of t he a s s es se e w e re rej ec ted ; no ne of t his has b ee n d ea lt w it h. T he re fore , in our v iew , w h ile t h e a s s es s in g o f fic e r m a y s us p ec t t ha t t he ta xa b le inc o m e of t he a ss es s ee es c a ped a s s es s m e nt , he co uld not ha v e fo rm ed a b e l ief q ua t he s am e ba s ed o n t h e m at eria l w h ic h is , pr es e nt ly , on r ec or d .

9.7 T he re fo re, in o ur op i nio n, t h e f or ma t i on of b e lie f by res p ond ent n o. 1 t hat inc o m e of th e as s es se e c ha rg ea b le t o ta x ha d es ca p ed a ss es s m e nt , wa s un re as on ab le a nd irr at iona l, as it c ou ld n ot be re lat ed to t he und e rlin ing inf or ma tio n; s o m et h ing w hic h is d isc e rn ib le fr om a b ar e rea d ing o f t he ord er r ec o rd in g re as o ns .

9.8 T h is a pa rt , w ha t is ev en m or e d is c o nc ert in g is t he f ac t t ha t res p o nd e nt no .2 , w ho ac c ord ed s a nc t io n f or t r igg er ing t he pr oc ess u nd e r Sec t io n 14 7 of t h e Ac t , s im p ly rub b e r-s t am p ed t he rea s on s f u rnis h ed b y res p o nd e nt no.1 f or iss u a nc e of not ic e u nd e r Sect io n 1 48 o f t he A ct .

9.9 . T he p rov is io ns o f Sect io n 1 51 (1) of t he Ac t req u ired r es p ond ent no.2 t o sa t is fy hi ms e lf a s to w het he r it w a s a f it c as e in w h ic h s a nc t i on s hou ld be ac c or d ed fo r is s ua nc e of not ic e u nd e r Sec t ion 1 48 of t h e Ac t a nd, t hus , t rigg er ing t he p r oc e s s of reas s es s m en t und e r Sec t io n 1 4 7 . T h e s a nc t io n- ord e r pa s s ed by r es p o nd ent no.2 s im p ly c o nt a ins the end o rs em ent 'a p p rov ed ' .

10 . I n o ur v ie w, t h e s a nc t i on- ord er pa s sed by res p ond ent n o. 2 p res e nt s , m et ap hor ic a ll y sp ea kin g 't h e ins c ruta b le f ac e o f s p hin x' (Se e: Bre en v . A m a lg am at ed Eng in e eri ng U nio n [1 9 71] 2 Q B 1 75 0 0 ; A ls o s e e: St at e o f H .P . v . Sa r da ra Sin gh, (2 0 08) 9 SC C 39 2). I n o ur v ie w, the s at is fac t i on a rriv ed at by the c onc er ned of f ic er shou ld be d isc e rn ib le fr om the s anc t io n-o rd er p as s ed u nd er Sec t io n 15 1 of t he Ac t .

Ev en if w e w er e t o as s um e f or t h e m o me nt t ha t t he ap p rov a l o f t h e A CI T wa s r igh t ly t a k en, a b a re p e rus a l of t he end o rs em ent w o uld s how t ha t Arun Duggal t her e is no a p p lic at i on of m ind a s to w het he r t he info rm at io n r ec e iv ed b y t he AO ha d any ne x us w it h t h e fo rm at ion of ho nes t be lief t ha t the a ss es s ee 's ta xa b le i nc om e ha d es ca pe d . W h at is gla rin g is t ha t t h e A CI T not es t ha t inc om e t o t h e t un e o f Rs . 27, 60 ,8 3 8 /- ha d es c ap ed ta xa t i on w h er ea s , in t he or de r r ec o rd in g r ea s ons, t he t ax ab l e in c om e has b ee n qu a nt if ied a s Rs .26 , 93 ,5 00 / -. As n ot ed ab ov e, b as ed o n t he a rg um e nt s of Mr . Sing h t ha t t he es c a p ed inc om e s h ould b e rela t ed t o uns ec ured l oa ns , t her e is in p l a y a t h i rd f igu re w hic h is R s .2 5 ,95 ,2 7 7 / 10 .5 . As n ot ed a b o v e, in t h e ins ta nt c a s e, b ec a us e of t he fa ilur e o n t h e pa rt of resp ond en t no.1 t o c orre lat e the in fo rm at ion rec ei v ed w it h t h e ost ens ib le f orm a t i on of b el ief by him , res p o nd e nt no. 2 a tt em p t ed to c on nec t, v ia he r c o unt e r-a f fid av it , t h a t t he es c a p ed inc om e w it h t h e "s usp ic ious " u ns ec u red lo a n e nt ries ref lec t ed in t he as s es s e e' s ret u rns for A Y 20 1 0 -2 01 1 a nd 2 011 -201 2. As c o rrec t ly a rgu ed b y Mr . K oc ha r, t he c ou nt er-a f f id a v it a nd t he s ub m is s i ons m ad e ac ros s t he b a r c a n not b e us ed t o s ust a in t he imp ugn ed ac t ions . T he ord e r r ec o rd in g r ea s ons a nd t h e ord e r gra nt ing s a nc ti on s ho uld s p ea k fo r t h em s elv es . (See obs e rv at ions m ad e Com m iss io ne r Of P ol ic e, Bo m b ay v s G o rd h a nd as Bha nj i A I R 195 2 SC 16 a nd M o hind er Sin gh Gi ll a nd Ors . v s . T he Ch ief E lec t ion Com m is s ion er, N ew D e lhi a nd O rs . (1 978) 1 SC C 405) 10 .8 . T his b ring s us to a not he r gr ou nd ra is ed in t h e w rit p et it ion , w hic h is , t hat t he re wa s a hug e t im e la g b et w ee n t he is s ua nc e of t he im p u gned not ic e u nd e r Sect ion 1 48 of t he Ac t a nd t he d a t e w he n t he o rd e r rec od i ng reas o ns w as fu rni s h ed t o t he a ut ho riz ed r ep res e nt a t iv es of th e p et it ion er . W hile t he a s s es s ee is , in our v iew , ri ght i n c o nt end ing t ha t if t he t im e l a g is hug e, it d oes p oint in t he d irec t io n th at t he ord er w a s a nt e -d at ed, a f ina l v ie w o n t h is a s p ec t c o uld ha v e o nly b ee n t a k en if t he o rig ina l r ec o rd wa s e x a m i ned b y us . Sinc e t he rev enu e ha s d e nie d t he a lle ga t io n l ev ell ed a ga i ns t it a nd M r. K oc ha r d id n ot pr es s t his is s ue d urin g t he hea r ing , w e c an 't r ea c h a d e fin iti v e v ie w on t his a s p ec t of t he m at t e r ba s ed o n t he rec or d a va ilab le b ef o re us T h eref or e, t h is s ub m is s ion, ma de on b eha lf o f t he a s s es s ee , c a nno t b e ac c ep t ed .

11 . G iv e n t h e a f or es a id, w e a re a ls o of t he v ie w t hat s inc e resp ond en t no .1 w as una b le t o link t he in fo rm a t io n r ec e iv ed w it h t he f o rm at ion o f be lie f, a j u ris d ict io na l er ro r d id oc c ur , w h ic h, t his Co urt , is em p o w ere d t o c orrec t , b y ex erc is ing its p ow ers und er A

rt ic le 2 26 of t h e Co ns t it ut io n o f Arun Duggal In d ia (Se e : Ca lc ut t a D is co un t Co . Ltd . vs . I nc om e Ta x Of fi c er, C om pa n ies D is t r ic t I Ca lc ut t a a nd A not h er , (1 96 1) 2 SC R 2 41). 11 .1 . A lt h ou gh M r. Sin gh d id a r gue t ha t t he a s ses s ee s ho uld be re le ga te d to st a t ut or y rem ed i es , in ou r v iew , a c as e is m a d e o ut fo r int e rf erenc e at t h is st a g e it s elf . A cc o rd ing t o us , re leg at ing a p art y t o a n al t e rna t i v e r em ed y is a s el fim p os ed lim it a t io n w h ic h, h ow ev er , do es not d e nud e t he c o urt of it s po w e rs u nd e r A rt ic l e 226 . T he Cou rt is d ut y -b ound to ex er c is e its p ow ers und e r A rt ic le 22 6 w here e v e r it f ind s t ha t a s ta t uto ry a ut hor ity has e x e rc is ed i ts j uris d ic t ion e it her ir re gul a rl y or a ct ed in a m a tt er in w h ic h it ha d n o j u ris d ict ion or c om m it t ed a b rea c h of t he p r inc ip les o f na t ura l j us t ic e.

11 .2 . Bef or e w e c onc lud e , w e m us t a ls o ind ic at e t hat t he o rd e r r ec o rd i ng reas o ns n eit he r d is c us s es t h e c ont ent s of t he rep o rt rec eiv ed f ro m t h e in v est iga t ion w ing o r t he s t at em ents m ad e by Mr. P ra d eep K um a r Jind a l a nd his as s oc ia t es . Th e ord er r ec o rd in g reas ons , m e re ly , ind ic at es t ha t t he f or ma t i on o f b e lie f is b a s ed o n t h es e s o urc es .

F urt he rm or e, a lt hou gh, t h er e is a refe re nc e to Shri La x m a n Sin gh Sa ty ap a l a nd Ms . M e era M is hra in pa ra g ra p h 3 .14 o f t h e c ou nt e r-a f fid av it , a s pe rs o ns , w hos e s t at em e nt s w e re a ls o rec ord ed d ur ing t he s ea rc h , w h ic h f or m ed t he b as is o f init iat ion of pr oc e ed ings u nd e r Sec t io n 1 4 7 of t he Ac t, t he re is no re f ere nc e t o t he m in t he or d e r r ec o rd i ng reas ons . 11 .3 . Bes id es th is , t he rev e nue ha s t a k en t h e p os iti on t ha t n ot only t h e rep o rt o f t he i nv es ti ga t io n w in g b ut a ls o t he st a t e m e nt s o f M r . P ra d ee p K um a r Jin da l a n d h is af or em ent io ned a s s oc ia t es w e re fu rnis h ed t o t he a ut h or iz ed rep res ent at iv e of t he as s es s ee in t he p roc eed in gs he ld b efor e res p o nd e nt n o.1 on 12 .1 0 .201 8 (See pa ra 3 .6 of t he c ount e r-a f fid av it) . The p r oc e ed ings s he et of 1 2 .1 0.2 0 1 8 [w hic h is ap p e nd e d w it h the c ou nt er-a f f id a v it] d oes not r ef er to t his f ac t . T he ref ore , ap a rt f ro m a nyt hin g e ls e, a case c ould h av e b ee n ma d e o ut a ls o of b rea c h of pr inc ip les o f na t ura l j us t ic e. F or t he re as o ns b es t k no w n, M r. K oc ha r d id not p res s t h is is s ue . W e ne ed not ela b o ra t e a n y f u rt h er on t his a s p ect of t he m at t e r as ou r d ec is ion d oes n ot t urn o n w h et he r or not t he re ha s bee n a b re ac h of p r inc ip les of na t u ra l j us t ic e.

Co nc lus io n: - 12 . T h us , fo r t he fo re go ing r ea s ons, w e a r e i nc lined t o qu as h t h e imp ug ned n ot ic e d a t ed 3 1. 03 .20 1 8 is s u ed und e r S ec t i on 14 8 o f Arun Duggal t he Ac t as w el l a s t h e ord er gr a nt in g s a nc t ion is s ued b y res p ond e nt no .2 . It is o rd er ed a c c ord ing ly . Pa rt ies w il l b ea r t h eir ow n c os t"

29. The ld. AR further submitted various decision as under:

30. Delhi Bench of ITAT decision in case of Marble Art in ITA No. 2478/Del/2013 order dated 08.03.2021 (Section 148 concept of borrowed satisfaction and section 151- approval of competent authority analysed in detail) "15.1 It is seen that in the case of the assessee, proceedings had been initiated for the three assessment years i.e. AY 2002- 03, 2003-04 and 2004-05 and except for the AY 2002-03, in remaining two years, assessment was also originally framed u/s 143(3) of the Act. In all the three assessment years, notice had been issued beyond a period of four years from the

relevant assessment years. At this stage, it is relevant to refer the provisions of section 151 of the Act, which reads as under:

"Sanction for issue of notice.

151. (1) In a case where an assessment under subsection (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice: Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no Arun Duggal notice shall be issued under section 148 by an Assessing Officer, who is b elow the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice."

15.2 Ergo, pr ovisions of s ub s ecti on (1) of sec tion 1 51 of the Ac t deals with the cases wherei n assessment was earlier fra med u/s 143(3) or sec tion 147 of the Act, whereas s ubsection (2) provides f or t he cas es, wherei n no assess ment was framed earlier . U nder sub sec tion (1) of s ecti on 151, if the proceedi ngs are i nitiated withi n four years , no notic e s hall be issued under secti on 148 , unl ess the Joi nt Commissi oner is satisfied on t he r easons rec orded by such Ass essi ng Of ficer that it is a fit case f or t he is sue of s uc h notice. Howev er, the proviso to the sub-s ec tion (1) provides f or t he approval in the cases where notice is iss ued aft er t he expi ry of four years from the end of the relevant ass essment y ear. The proviso provides t hat if the notice is issued beyond four yea rs, s uch notic e s hall be issued aft er t aki ng appr oval from the Chi ef Commissioner or C ommissioner on the reasons rec orded by t he Ass essi ng Of ficer. Further und er sub- sec tion (2), it was provided that if no ass ess ment was f ramed earlier u/s 143(3)(147, no notice s hall be iss ued under s ec tion 148 by an As sessi ng Offic er, who is bel ow t he rank of Joi nt Commissi oner, aft er t he ex piry of f our y ears f rom the end of the rel evant ass essm ent y ear, unl ess t he Joi nt Commissioner is satisfi ed, on the r eas ons rec orded by such Assessi ng Of ficer, tha t it is a fit cas e for t he issue of suc h notice.

15.3 Therefore, under t he s tat utory provision, t he Act provide for the sa feguards for issui ng notic e u/s 148 of the Act. It is the intent of the legislat ure tha t s uperi or a uthorit y shoul d apply his mi nd and give his s atisf action before issuanc e of notic e. In s uch circumstances, the approval s houl d not be mec hanical but s hould be obj ec tive sa tisfac tion and satisfaction recorded s houl d refl ect that Arun Duggal there is application of mi nd. In f act, the iss ue is no more res integra. The Ap ex Court i n the cas e of Chhugamal Rajpal vs . S.P. C haliha & O rs reported in 79 ITR 6 03 (SC) has hel d that important safeguards are provided in s ecti ons 147 and 151 of the Act and same cannot be lightly tr eated by the C ommissioner. I t was held tha t while granting the approval , the C ommissioner should give reason for c oming to t he c oncl usi on that it is a fit cas e for the issue of a notice under section 148 of the Act. The j urisdictional High Court in t he case of United El ectrical

Company Pvt. Ltd. vs . C IT reported in[2002] 258 ITR 317 (Del hi) has held t hat t he L egislature has pr ovided certain safeguards to prevent arbit rary exercise of powers by an A ssessi ng Offic er, par ticularly after a lapse of subst antial time f rom c ompletion of assess ment. T he power vested in t he C ommissioner t o grant or not t o grant approval is coupled with a duty. The Commissi oner is requi red t o apply his mind to the prop osal put up to hi m for approv al in t he light of the material relied upon by the Asses sing Offi cer . The said power cannot be exercised c as ually and i n a routi ne ma nner. In f act, i n the cas e of CIT v. S . Goyanka Lime & Chemical Ltd. reported i n 231 Taxman 73 (MP) it was held that s ancti on granted by merely rec ordi ng "Yes , I am s atisfi ed" is mec hanical and s ame is unsus tai nable. In fact, SLP filed agai ns t the aforesaid j udgment of Madhy a Pradesh Hi gh C ourt is also dismiss ed and sam e is reported i n 237 Tax man 378 (SC). In fact, i n the cas e of Pr. C IT vs M/s N.C. Cabl es Lt d. reported i n [2017] 391 ITR 11 (Delhi) jurisdictional High C ourt has held as under:

15.4 When t he f acts of this case are seen i n t he light of the af ores aid bindi ng prec edents, it is found that i n this case also while accordi ng appr oval, the ld. Addl . CI T whil e granti ng ap proval has mer ely recorded "appr oved" a nd has not given a ny rea son at all the reason for granti ng appr oval . In f ac t, this s hows that whil e granti ng appr oval, he has not even ex ami ned whether the material ref erred in the reasons to believe is available wit h the A O and had he applied his mi nd, he woul d have f ound that even the ma terial ref erred in the Arun Duggal reasons t o believe is not available with the AO. Now be that as may be, i n the A.Y. 2002-03 ev en the reasons rec orded do not clothe the AO wit h t he j urisdiction t o r eopen the as sessment, as he did not had the relevant mat erial.

15.8 Fr om the cont ents of af oresai d com munica tion it is seen t hat ADIT (Inv .), Meerut had rec ommended t he ca se of the assess ee to be reopened without providi ng t he AO any s upporting material. It can thus be s afely concl uded and i nferred that r eopeni ng proc eedi ngs had been i nitiat ed not on the basis of sati sfac tion of the AO, alb eit on the basis of mere rec ommendation of ADIT (Inv.), Meerut. The 'reas on t o believe' has to be t hat of the AO who is initiati ng t he proc eedings a nd in absenc e of a ny independent application of mi nd and satisfacti on of the AO the reason to believe falls in the real m of c onject ures. The AO has to have tangi ble mat erial with hi m a nd even if the i nf ormation has come from Investi gation wi ng, the AO must perus ed the mat erial whic h has been ref erred in the said inf ormation and exami ne what is the inc ome whic h has esc aped as sessment. R ec ommendation may c ome from any person or a uthorit y but it is the AO who has to entertai n reason to believe based on mat erial before him that i nc ome chargeabl e to tax has esca ped assessment . The most cr ucial mat erial here in this case is that assess ee has remov ed goods without payment of duty and there were invoices which were la ter shown to be cancelled but nowhere there is any whisper about the invoic es nor t hey have been produced. AO simply appears to have reopened t o examine the claim of sec tion 10B and wha t was the basis and premise before him as to how t he claim on exami ne u/s 10B has i nc orrec t is not comi ng fore. Mere intimation received f rom any authority cannot lead t o immediate pres umption but it needs to be verifi ed by the AO and to apply his mind. H ere i n this c as e, even the documents pertaining t o Custom & Central Exci se Authorities was not a vailable with the A O at the time of i nitiati on of proceedi ngs whic h fac t has been surfac ed bef ore us. Thus, we hold tha t the Arun Duggal reasons rec orded by the AO do not give j urisdicti on to reopen the assessment u/s 147 read wit h s ec tion 148.

17. Since we hav e already quashed the assess ment bei ng without jurisdiction under section 147 on the ground that approval gr anted is mechanical a nd also f or the A Y 2003- 04 and 2004-05, even the so called approval is not f rom the competent a uthority, ther efor e, ot her grounds raised by the assessee c hallenging the ass umpti on of jurisdiction as well as the m erits of additi ons have bec ome purely academic."

30.1 We strongly rely on above latest verdict from Hon'ble Delhi High Court and Delhi bench of ITAT which fully covers the extant case. Further we rely on recent decisions from various benches of ITAT:

IN THE INCOME TAX APPELLATE TRIBUNAL AHMEDABAD

- BENCH 'A' 118 to 123/ Ahd/2019 Asstt.Years: 2009-10 to 2014-15 Shri Hitesh Ashok Vaswani Date of Pronouncement: 12/11/2020 "93. In the present case the search information received from the investigation wing was used to form the reason to believe by the AO but without applying the mind.

Thus the reasons were merely recorded on the borrowed satisfaction by the AO. The source for all the conclusions was of the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not Arun Duggal independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment. 94. The Hon'b le High Court of Bombay in the case Principal Commissioner of Income-tax-5 v. Shodiman Investments (P.) Ltd. reported in 422 ITR 337 hold ing that reopening notice on the basis of intimation from DDIT (Investigation) about a particular entity entering into suspicious transactions, was clearly in breach of the settled position of law that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction.

31. The Hon'b le Court has pronounced as under:

"12. The re-opening of an Assessment is an exercise of ex tra- ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/ assessments. Therefore, the reasons to believ e have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of reopening Assessment and its reasons which would ev idence the linkage/nexus to the conclusion that income chargeab le to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. C IT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v . Lak hmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief Arun Duggal regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisd iction

on the part of the Assessing Officer. 13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeab le to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment. 14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a reopening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled p osition in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction." 95. The power to reopen a completed assessment under Section 147 of the Act has been bestowed on the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.

However, this belief that income has escaped assessment has to be the reasonable belief of the Assessing Officer himself and cannot be an opinion and/or belief of some other authority. On Arun Duggal the basis of the information by itself received from another agency, there cannot be any reassessment proceedings. However, after considering the information/material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee by applying his mind and thereafter is required to form an independent opinion on the basis of the material on record that the information has bearing on the income of the assessee and such income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment. It is also estab lished principle of law that if a particular authority has been designated to record his/ her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory cond ition is that the satisfaction recorded should be Shri Dilipkumar Lalwani and 'ind ependent' and not 'borrowed' or 'dictated' satisfaction. Law in this regard is now well-settled .

96. The Hon'ble Supreme Court in the case of Anirudh Sinhji Karan Sinhji Jad eja v. State of Gujarat reported in [1995] 5 SCC 302 as well has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in comp liance with some hig her authorities instruction, then it will be a case of failure to exercise discretion altogether. The cases reopened on the basis of information received from the other Departments are also governed by the aforesaid principle of mak ing an independent inquiry and recording of satisfaction by the Assessing Officer issuing notice under Section 148 of the Act.

Arun Duggal

97. Third party information is only an information and does not constitute 'reason to believe' until and unless the third party information is subjected to investigation and on the basis thereof

independent reasons are recorded by the Assessing Officer before issuance of notice under Section 148 of the Act. In other words, mentioning by the AO that the assessee has failed to d isclose all material facts in the reasons recorded is not sufficient enough. Rather the AO is under the obligation to arrive at such conclusion that the assessee failed to disclose all material facts necessary for the assessment after applying his mind and verification of the facts. But the AO has not done so. In holding so we draw support and guidance from the judgment of Hon'b le Bomb ay High court in case of Gateway Leasing (P.) Ltd vs. ACIT reported in 117 tax mann.com 442 where it was held as under: 35. Having discussed the above, we may once again revert back to the reasons furnished by Respondent No. 2 for re- opening of assessment under Section 147 of the Act. After referring to the information received following search and seizure action carried out in the premises of Shri Naresh Jain, it was stated that information showed that Petitioner had traded in the shares of M/s. Scan Steels Ltd., and was in receipt of Rs. 23,98,014.00 and therefore, Resp ondent No. 2 concluded that he had reasons to believe that this amount had escaped assessment within the meaning of Section 147 of the Act. 36. First of all it would be evident from the materials on record that Petitioner had disclosed the above information to the Assessing Officer in the course of the assessment proceedings. All related details and information sought for by the Assessing Officer were furnished by the petitioner. Several hearings took place in this regard where-after the Assessing Officer had concluded the assessment proceedings by passing assessment order under Section 143 (3) of the Act. Thus it Arun Duggal would appear that Petitioner had disclosed the primary facts at its d isposal to the Assessing Officer for the purpose of assessment.

He had also explained whatever queries were put by the Assessing Officer with regard to the primary facts during the hearings."

32. In such circumstances, it cannot be said that Petitioner did not disclose fully and truly all material facts necessary for the assessment. Consequently , Respondent No. 2 could not have arrived at the satisfaction that he had reasons to believe that income chargeable to tax had escaped assessment. In the absence of the same, Respondent No. 2 could not have assumed jurisdiction and issued the impug ned notice under Section 148 of the Act In view of the above, we hold that the initiation of proceedings under Section 147/148 of the Act are not valid in the eyes of law and liable to be quashed for the reason that the AO failed to app ly his mind. Thus the reasons were merely recorded on the borrowed satisfaction by the AO. The source for all the conclusions was of the investigation report. Accord ingly, we quash the same."

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

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

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

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

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

"Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped assessment - No independent application of mind to information received from Directorate of Investigation and no prima facie opinion formed reassessment order invalid".

36. The Bombay Hig h Court in the case of M/ s. Shodiman Investments Pvt. Ltd . has held as under (422 ITR 437):

"11 it is clear that the reasonab le belief on the basis of tangib le material could be, prima facie, formed to conclude that income chargeable to tax has escaped assessment. Mr. Mohanty, learned Counsel is ignoring the fact that the words 'whatever reasons' is qualified by the words 'hav ing reasons to believe that income has escaped assessment'. The words whatever reasons only means any tangib le material which would on application to the facts on record lead to reasonable belief that income chargeable to tax has escaped assessment. This material which forms the basis, is not restricted, but the material must lead to the formation of reason to believe that income chargeable to tax has escaped Assessment. Mere obtaining of material by itself does not result in reason to Arun Duggal believe that income has escaped assessment. In fact, this would be evident from the fact that in para 16 of the decision in Rajesh Jhaveri Stock Brokers Pvt. Ltd. [291 ITR 500], (supra), it is observed that the word 'reason' in the 'reason to believe" would mean cause or justification. Therefore, it can only be the basis of forming the belief However, the belief must be independently formed in the context of the material obtained that there is an escapement of income. Otherwise, no meaning is being given to the words 'to believe' as found in Section 147 of the Act. Therefore, the words 'whatever reasons' in Rajesh Jhaveri Stock Brokers Pvt. Ltd ., (supra), only means whatever the material, the reasons recorded must ind icate the reasons to believ e that income has escaped assessment. This is so as reasons as recorded alone give the Assessing Officer power to re-open an assessment, if it reveals/ indicate, reasons to believe that income charg eable to tax has escaped assessment.

12. The re-opening of an Assessment is an exercise of extra ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue assessments. Therefore, the reasons to believ e have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of reopening Assessment and its reasons which would evid ence the linkage/ nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v/s. CIT 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v/s. Lakhmani Merwal Bus 103 ITR 437 had laid down that Arun Duggal the

reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13. In this case, the reasons as made available to the Respondent Assessee as produced before the Tribunal merely indicates information received from the DIT (investigation) about a particular entity, entering into suspicious transactions However, that maternal is not further linked by any reason to come to the conclusion that the Respondent- Assessee has indulged in any activ ity which could give use to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which accord ing to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment. 14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDFT (lnv .). The Assessing Officer has merely issued a reopening notice on the basis of intimation regarding reopening notice from the DDIT (Inv.) This is clearly in breach of the settled position m law that reopening notice has to be issued by the Assessing Office on its own satisfaction and not on borrowed satisfaction."

On jurisd ictional issue of validity of approval u/s 151 of the Act (I AM SATISFIED endorsed by Ld. PCIT dt. 31.03.2016), we Arun Duggal humbly draw your honors kind attention to following chain of jurisprudence on the subject:

37. Text of section 151:

Sanction for issue of notice.

151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal C hief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

38. First we refer to Hon'ble three judge bench ruling of Hon'ble Apex court in income tax law reported with 88 ITR 439 (Johari Lal HUF case) that : "6. In the instant case, as seen earlier, the Income-tax Officer did not choose to proceed under Arun Duggal Section 34(1)(a). Consequently, he may or may not have recorded the reasons as required by this Section nor do we know where those reasons were submitted to the required authority and his sanction obtained on the basis of those reasons. This Court also has Ruled that the Commissioner or the Board of Revenue, while granting sanction will have to examine the reasons given by the Income-tax Officer and come to an independent decision and the authority in question should not act mechanically . From the material on record there is no basis to hold that those req uirements had been fulfilled...."

39. In this context, the observations made by the Supreme Court in Chhugamal Rajpal vs. S.P. Chaliha, (1971) 1 SCC 453 being opposite are extracted hereafter:

"... Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty Arun Duggal imposed on them under those provisions as of little importance. They have substituted the form for the substance."

40. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal. Central India Electric Supply Co. Ltd . v. ITO (2011) 333 ITR 237 (Delhi)(HC)

41. Delhi high court in case of Sahara reported at where u/s 142(2A) on CIT's requisite approval for special audit , Hon'b le Delhi high court speaking through Hon'ble Justice S.R. Bhatt has opined as under: (399 ITR 81) "..... The requirement of previous approval of the Chief Commissioner or Commissioner, casts a heavy duty on these authorities to ensure that this requirement is not reduced to an empty formality. Before granting the approval, the Commissioner or the Chief Commissioner, must have before him the materials on the basis of which the opinion has been formed by the Assessing Officer. The approval granted by the Commissioner or the Chief Commissioner must reflect application of mind to the facts of the case. This requirement was elaborated by the Calcutta High Court in West Bengal State."

42. Co-operative Bank Ltd. vs. Joint Commissioner of Income Tax, [2004] 267 ITR 345 (Cal), where it noted that-

"The Commissioner of Income Tax should not give any approval mechanically and if he finds that there is no examination of the books of account by the Assessing Officer before sending the

proposal, he will not certainly give any approval. Under this section, the Commissioner of Income Tax does not exercise the jurisdiction of the appellate authority rather the approving Arun Duggal authority. Approval means and connotes supporting and accepting of an act and conduct done by another person. Therefore, it would be his duty to examine on receipt of his proposal, whether the Assessing Officer has correctly done it or not, if he finds that this requirement has not been fulfilled then he must not approve of the same."

43. Hon'ble M.P . Hig h Court in the case of CIT Jabalp ur Vs. S. Goyanka Lime & C hemical Ltd. reported at (2015) 56 Taxmann.com 390 by following its own decision in the case of Arjun Singh Vs. ADIT (2000) 246 ITR 363 (M.P) held as under:

"7.We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following princip les arc laid down:--

The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, 1 am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectiv ity on objective material.

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of record ing satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable Arun Duggal and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent find ings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration."

Notab ly: Against the said order, the Hon'ble Apex Court dismissed the SLP filed by the Department refer : (2015) 64 taxmann.com 313 (SC)and affirmed the order of the Hon'ble M.P . High Court in the case of C IT Vs. S. Goyanka Lime & Chemicals Ltd . held as under: " that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reop ening of assessment was invalid."

44. The Hon'b le Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C . Cables Ltd . in ITA 335/2015 order dated 11.01.2017 (391 ITR 11) by returning following findings:- " Reassessment-Issuance of Notice- Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share app lication amounts and a further sum of Thirty Five Lak hs was credited to it as an advance towards loan- Original assessment was comp leted u/s 143(3)-However, pursuant to Arun Duggal reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-C IT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enq uiry to conclude that share inclusion and advances received were from bogus entities- Trib unal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits- Assessee's cross appeal was on correctness of reopening of assessment- Tribunal up held assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre- condition for issuing notice u/s 147/148.

Held, Section 151 stipulates that C IT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of CO No.57/Del/2012 given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer- Revenue's appeal dismissed."

45. Hon'ble Orissa high court in case of Sri Viresh Hemani .... Petitioner in W.P.(C) No.15305 of 2014 vide order dated 23.04.2021 on issue of mechanical approval u/s 151 has Arun Duggal observed thus "... 13. Rely ing on the decision in Principal Commissioner of Income Tax, Kerala v. N.C. C ables Ltd. (2017) 391 ITR 11(Del), Mr. Ray submitted that there was a failure by the competent authority in terms of Section 151 of the IT Act to authorize the reopening of the assessment. Factually, the above position has not been able to be disputed by Mr. Mohapatra, learned Standing Counsel on behalf of the Department. Ind eed the impugned letter dated 10th / 20th May, 2013 issued by the Joint Commissioner of Income Tax, Rourkela Range, to the ITO simply states 'Approval is hereby accorded u/s. 151(2) of the I.T. Act, 1961 for initiation of proceeding u/s. 147 of the I.T. Act, 1961 in the case of Sri Viresh Hemani....'. There is no indication of any application of mind by the authority...." We strongly rely on this latest order of Hon'b le Orissa high court.

46. Mumbai Bench of ITAT in case of M/s SEAWOOD HOSPITALITY & REALTY PVT LTD IN ITA No.92/Mum/2019 (Assessment Year :2010-11) vide order dated 23.11.2020 of the bench presided by and comprising of His lordship Hon'b le Justice P.P. Bhatt Hon'b le president ITAT, has in paragraph number 5.7 to 5.9 has held thus:

".....5.7. From the aforesaid proforma, it could be seen that the ld. PCIT had only mentioned for question No.13 as under:- "Question Number 13. Whether the Pr. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under section 148.

Reply: Yes, it is fit case for issue of notice u/s.148."

We find that the aforesaid approval granted by the ld. PCIT does not constitute proper sanction in terms of the Section Arun Duggal 151(1) of the Act and rather it would only tantamount to mechanical approval granted by him without due application of mind. In this regard, we would like to place reliance on the Co- ordinate Bench decision of this Tribunal which has been rightly relied upon by the ld. AR in the case of that Av ani Premises Pvt. Ltd., vs. ITO in ITA No.1664/Mum/2019 dated 09/01/2020 wherein the approval was obtained from Additional CIT in terms of Section 151 of the Act and question No.12 thereon and the reply given by the Additional CIT was as under:- "Whether the Addl. Commissioner is satisfied on the reasons recorded by the DCIT, that it is a fit case for the issue of a notice under Section

148." Reply: Yes, I am so satisfied 5.8.1. The operative portion of decision of this tribunal in I TA No.1664/Mum/2019 dated 09/01/2020 is reproduced hereunder:-

We find that the aforesaid decision of Mumbai Tribunal considers the decision of the Hon'ble Madhya Pradesh High Court in 231 Taxman 73, wherein revenue SLP was subsequently dismissed by the Hon'ble Supreme Court in 237 Taxman 378. We also find similar view was expressed by the Hon'ble Supreme Court in the case of Chhugamal Rajpal vs. S.P .Chaliha & Others reported in 79 ITR 603 (SC) supra wherein the Hon'ble Supreme Court had emphasised the fact that the Additional Commissioner of Income Tax granting mechanical permission by simply saying the words "yes" and affixing the signature in the prescribed proforma does not tantamount to proper sanction in terms of Section 151 of the Act. In view of the aforesaid decisions of various other High Courts and also by the decision of the Hon'ble Supreme Court on the impugned issue, it could be safely concluded that the ld. PCIT, being a competent authority had granted mechanical approval without due application of mind on the prescribed Arun Duggal proforma for reopening of assessment in terms of Section 151 of the Act. We find that the case law relied upon by the ld. DR of Hon'ble Andhra Pradesh High Court in the case of P. Munirathnam Chetty and P.Satyanarayana Chetty reported in 101 ITR 385 does not advance the case of the revenue and there is no need for us to go into it at this juncture in view of various other High Court decisions and Supreme Court decision in favour of the assessee on the similar issue. Respectfully following the aforesaid judicial precedents, we have no hesitation to hold that the entire re-assessment has been initiated without obtaining proper sanction in terms of Section 151(1) of the Act from the ld. PCI T and hence, we hold that the approval accord ed by the ld. PCIT in a mechanical way is unsustainable in law, hence, on this very jurisd ictional issue, we set aside the orders of the lower authorities and allow the appeal of the assessee."

47. Further, recently Ahmadabad Bench of ITAT in recent case of Shri Tyrone Patrick Lemos d ated 20/11/2020.

In this order entire subject of approvals by higher authority in context of section 151 where reopening is made, is analyzed in great length, some important observations which directly has imminent bearing on present issue u/s 153D are reproduced below:

"9. Adverting further, there is yet another reason to impug n the action of AO. It is an admitted position that the assessment proceedings in the instant case came into motion owing to issuance of notice under s.148 of the Act for which certain reasons were recorded as noted earlier. The reasons so recorded were sent by AO for formation of 'satisfaction' and approval thereon by JCIT under s.151 of the Act. We notice Arun Duggal from the approval memo dated 25.01.2016 given by the JC IT which notes the name of the assessee alongwith many other assessees and grants a consolidated approval for action under s.147 of the Act by stating 'your proposal for reopening the above cases under s.147 of the Act is hereby approved'. Hence, as can be seen, any reference to formation of 'satisfaction' of the JCIT prior to approval, even in brief, is sorely missing. It is a well settled proposition that the accord of approval without satisfaction is a nullity in the eyes of law. While a comb ined approval by designated authority is not a bar, ingredients of Section 151 of the Act is, howev er, required to b e fulfilled qua each case. 9.1 At this juncture, it may be pertinent to note that 'satisfaction' means to be satisfied with state or things, meaning thereby to be satisfied in one's own mind. Satisfaction is essentially a conclusion of mind. The word 'satisfied' means 'make up its mind'. The act of satisfaction is not an independent act. It is associated with ex istence of cogent material. The condition precedent is 'satisfied'. It is not mere confirmation of the act of the AO but something more. It is statutory requirement and not a mere administrative act that the superior authorities viz. JCIT/ C IT etc. need to be 'satisfied' on the conclusion of the AO. The satisfaction of the competent authority on the reasons recorded for initiation of action under s.147/148 of the Act precedes an approval.

The approval granted without expressly satisfying himself cannot be regarded as valid approval for the purposes of Section 151 of the Act. Hence, in the absence of any express satisfaction recorded by JCIT while granting approval under s.151 of the Act, the consequential action of the AO under s.147 of the Act cannot be upheld . 9.2 The JCIT/ Addl.CIT is the statutory authority in the instant case in whom the jurisdiction Arun Duggal or power is reposed in Section 151 of he Act to grant approval to the action of the AO on being 'satisfied' about the valid ity of the action of the AO. The AO cannot proceed to exercise the powers to reopen a case in exclusion to the 'satisfaction' of the competent authority as embodied in Section 151 of the Act. The JCIT/ Addl. ACIT thus must satisfy the mandate of Section 151 of the Act on the regularity of his action. Section 151 of the Act, in effect, imposes a check upon the power of the AO having regard to the drastic nature of the provisions of Section 147/148 of the Act. 9.3 In this backdrop, a cardinal question that arises is whether the AO, in the facts of the case, would be ousted in law to initiate the impugned re-assessment proceedings under s.147 of the Act on the basis of consolidated approval granted by the superior authority under the umbrella of Section 151 of the Act for several assesses in a combined approval memo dated 25.01.2016 (i) when such memo is stoically silent on disseminating any 'satisfaction' whatsoever for the purposes of approval so granted and when (ii) no process for formation of purported satisfaction, if any, towards alleged 'reasons to believe' of AO qua the assessee was found discernible in such consolidated approval. 9.4 Courts have taken a nuanced view and time and again held that the satisfaction of the superior authorities are not empty formalities and such approval cannot be

given mechanically or perfunctorily without application of mind to the facts and material p laced before him. The Hon'ble Supreme Court in Chhugamal Rajpal vs. S. P. Chaliha (1971) 79 ITR 603 (SC) has set aside the action of the superior authority as satisfaction was found to b e arrived mechanically and a mere pretense where the superior authority merely expressed his satisfaction as 'yes' on the note forwarded to him by the AO for reopening a case. Application of mind to arrive at a satisfaction has been Arun Duggal again emphasized in Mohinder Singh Malik vs. CCIT (2003) 132 TAXMAN 477 (P&H)."

48. Similar view has been expressed in Dwijendra Lal Brahmachari vs. New Central Jute Mills Co. Ltd. (1978) 112 ITR 568 (Cal.). The Hon'ble Allahabad High Court in the case of Dr. Shashi Kant Garg v. CIT (2006) 285 ITR 158 (All.) has also similarly expressed that reopening is void on failure to obtain sanction of the superior authority accord with Section 151 of the Act. The Hon'ble Delhi High Court in the case of Central India Electric Supply Co. Ltd . Vs. ITO (2011) 333 ITR 237 (Del.) has also reiterated that the superior authority requires to be satisfied on the valid ity of action under s.147 of the Act with due application of mind. The co-ordinate bench of Tribunal in the case of Amar Lal Bajaj vs. ACIT ITA No. 611/Mum/2004 order dated 24.07.2013 has also opined that merely writing 'approved' in the sanctioned form without recording satisfaction renders the reopening void. The identical v iew has been expressed by the coordinate bench in ITO vs. N. C . Cab les Ltd. ITA No.4122/Del/2009 order dated 22.10.2014 approved by the Hon'ble Delhi High Court (2017) 98 CCH 0018 (Del.) and Direct Sales Pvt. Ltd vs. ITO ITA No. 3545/Del/2010 order dated 25.02.2015. 9.5 It is true that expression 'satisfied' provides greater latitude and obligation cast on Superior authority towards 'satisfaction' under S. 151 is on a relatively lower pedestal vis a v is ob ligation cast on AO towards 'reasons to believe' under S. 147 of the Act. Nevertheless, a process of reasoning for arriving at a satisfaction on " why approved" and " how income is alleged to be escaped in the light of material he is privy to" by the JCIT, howsoever, in brief, is expected by the Court/ appellate authority to gauge the application of mind on the reasons recorded. A mere find ing towards purchase of Arun Duggal property may not necessarily galvanise the satisfaction of involvement of unexplained money in all cases universally. For instance, the investment made can arguably be out of existing source or cap ital of earlier years or out of other means which is not in the nature of chargeable income. The difference between connotations 'reasons to believe' and reason to suspect' are vital and substantial. The Supervisory Authority was under some duty to ap ply its mind to the relevancy of material before sanction of proceedings. In the light of jud icial precedents noted above and many more, a summary approval by the JCIT without expressing any satisfaction on presence of underly ing materials showing escapement while exercising the functions under s.151 of the Act cannot be countenanced in law. This apart, a consolidated approval memo of multip le assessee without recording satisfaction qua each individual case raises serious doub t on plausibility of imp licit satisfaction for each case as contemplated in Section 151 of the Act. A nondescript approval under S. 151 without requisite satisfaction is a nullity. The issuance of notice under S. 147 itself is thus void where the sanction is not obtained in terms of S. 151 of the Act. Hence, on this g round also, the notice under s.147 of the Act itself gets vitiated."

49. Then we refer Delhi ITAT recent decision in case of Eminent computers Pvt. Ltd. dated 24.11.2020 in ITA No.6372/Del./2019 (ASSESSMENT YEAR : 2010- 11) "14. First of all, ld. AR for the assessee drew our attention towards the sanction accorded by the ld. Principal C IT for

reopening the assessment which is available at pages 14 & 15 of the paper book. On perusal of the sanction accorded by the ld. Principal CIT in the prescribed proforma goes to show that Arun Duggal there is a question no.13 viz.: "Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the A.O. that it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961." 15. In response to the aforesaid question no.13 in the prescribed proforma for according sanction, ld. Principal C IT has written "Yes, I am satisfied." 16. No doubt, column of "reasons recorded" are there in the prescribed proforma shown as Annexure A, available at page 14 of the paper book, and it is mentioned in Column No.11 that "reasons for the belief that income has escaped assessment". In response to the said question as contained in Column No.11, it is mentioned by the AO that "as per Annexure A". But no such Annexure 'A' has been brought on record before the Bench for perusal. In these circumstances, it is difficult to make out as to what were the "reasons for belief that income has escaped assessment" with the AO on the basis of which Principal CIT has accorded sanction by merely writing "I am satisfied." 17. Apparently , from the approval recorded and words used that "Yes. I am satisfied.", it is proved on record that the sanction is accorded in mechanical manner and Pr.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/ss 147/148 of the Act.

18. Even the AO has not applied his judicial mind independently while recording the reasons for initiating proceedings u/ s 147/148 of the Act. Bare perusal of the reasons recorded shows that the entire emphasis is p laced on the report of the Investigation Wing, which has otherwise been based upon the statements of Pradeep Kumar Jindal, Shri Subodh Kumar Arun Duggal Khandelwal, Ms. Seema Khandelwal & Ms Meera Mishra who have furnished the list of companies stated to be not doing any business but engaged in providing accommod ation entries. Before issuing the notice, the AO has not examined the profile of the said companies to arrive at the logical conclusion so as to issue notice u/s 148 of the Act..... 20. Neither any reason has been recorded which is sufficient to believe that income to the tune of Rs.15,00,000/- received from M/s. H ajima Resorts Ltd. has escaped assessment nor any such notice has been given to the assessee. All these facts goes to prove that the AO has not applied his judicial mind before record ing the "reasons to believe" that such and such income has escaped assessment rather proceeded to initiate the proceedings u/ s 147/148 of the Act by blindly following the report of the Investigation Wing . Before according approval, ld . Principal CIT has also not examined all these facts rather accorded the approval in a mechanical manner.... 22. In view of what has been discussed above, we are of the considered view that according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Principal CIT/C IT, as the case may be, as required u/s 151 of the Act. We fail to understand that when the Revenue Department is manned by highly qualified officers having experience of at least 20 years till reaching in the rank of Principal CIT, they are required to evolve legally sustainable "standard operating procedure" containing "self-speaking reasons" for according sanction while discharging such quasi- jud icial function."

50. Further, recently Delhi Bench of ITAT in case of Digvijay Advisor Pvt. Ltd. in ITA No.4540/Del/2019 for the A.Y. 2008-09 dated 16.04.2021 held as under:

Arun Duggal "13. I find the Addl. CIT while giving approval has mentioned as under:-

"I am satisfied that this is a fit case for issuing notice u/s 147/148".

14. A perusal of the approval given by the Addl. C IT shows that he has not applied his mind properly and has in a mechanical manner given his approval. I find the Hon'ble Delhi High Court in the case of CIT vs N.C . Cables Ltd . reported 391 ITR 11 has held as under:- (short notes) "Reassessment- Issuance of Notice-Sanction for issue of Notice- Assessee had in its return for AY 2001-02 claimed that sum of Rs.1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)- However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After consid ering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs. 1,35,00,000-C IT(A) held against assessee on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enq uiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's app eal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Trib unal upheld assessee's cross objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre- cond ition for issuing notice u/s 147/148- Held, Section 151 Arun Duggal stipulates that C IT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion-Mere appending of expression 'approved' says nothing- It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possib le manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

I find the Hon'ble Madhya Pradesh High Court in the case of C IT vs. S. Goyanka Lime & Chemicals Ltd. reported in 231 taxmann 73 (MP) has held that where the Joint Commissioner recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice under section 148 of the Act, reopening of assessment was invalid. Similar view has been taken by the Hon'ble Delhi High Court in the case of Yum Restaurant Asia Pte Ltd. vs DCIT reported in 99 Taxmann.com 423 (Del). Since, the Addl. CIT in the instant case has given approval in a mechanical manner without independent application of mind, therefore, such approval given u/s 151(1) of the Act being not in accordance with law, the reassessment proceedings has to be quashed."

We strong ly rely on aforesaid order of Hon'ble Delhi Bench of ITAT."

51. Further very recently Chandigarh bench of ITAT in case of Tek Chand in ITA No. 255/Chd/2020 for the A.Y. 2009-10 dated 15/03/2021 on approval granted by PCIT as " Yes, satisfied, it is a fit case for issue of notice under section 148 " Sd/- Pr. CIT, Karnal 14.2 From the aforesaid ap proval, it is clear that the Ld.

Arun Duggal Pr. C IT recorded satisfaction in the mechanical manner, without application of mind to accord sanction for issuing notice under section 148 of the Act... 15. We therefore by following the

ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case, are of the view that the reop ening under section 148 of the Act on the basis of mechanical approval without applying the mind by the Ld . Pr.CIT was not valid . Therefore, in the present case, the reopening of the assessment on the basis of notice under section 148 of the Act is quashed .

52. Further we humbly rely on Delhi G bench ITAT decision in SSG mercantile case in ITA 1864/Del/2019 for the A.Y. 2008-09 order dated 14th January , 2021 "5.2 Even otherwise, we find that Ld. Joint CIT, Range-24, New Delhi has granted the approval in a mechanical manner by mentioning only "Yes, I am satisfied that this is a fit case for issue of notice u/s. 148 of the I.T. Act." which is not valid for initiating the reassessment proceedings. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. This view is supported by the following decision:-

"Hon'ble Supreme Court of India in the case of C IT vs. S. Goyanka Lime & Chemical Ltd. reported in (2015) 64 taxmann.com 313 (SC) arising out of order of Hon'ble High Court of Mad hya Pradesh in CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP).

"Section 151, read with section 148 of Income Tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in Arun Duggal mechanical manner and without application of mind to accord sanction for issuing notice und er section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against imp ugned order was to be dismissed - Held, Yes (in favour of the Assessee)."

6. Keep ing in view of the facts and circumstances of the present case and respectfully following the case laws applicab le in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the assessment year in dispute is bad in law and deserves to be quashed, hence, the same is quashed and the addition in dispute is deleted. Since we have decided the legal issues in favour of the assessee and quashed the reassessment and also deleted the addition in dispute, hence there is no need to adjudicate the other grounds."

53. Finally we strongly rely on recent Hon'ble Delhi High Court decision in case of Synfonia ltd 26.03.2021 wherein relevant paragraph is again reproduced below at cost of repetition:"9.8. This apart, what is even more d isconcerting is the fact that respondent no.2, who accorded sanction for triggering the process under Section 147 of the Act, simp ly rubber-stamped the reasons furnished by respondent no.1 for issuance of notice under Section 148 of the Act. 9.9. The provisions of Section 151(1) of the Act required respondent no.2 to satisfy himself as to whether it was a fit case in which sanction should be accorded for issuance of notice under Section 148 of the Act and, thus, triggering the process of reassessment under Section 147. The sanction-order passed by respondent no.2 simply contains the endorsement 'approved'. 10. In our v iew, the sanction-order passed by respondent no.2 presents, Arun Duggal metaphorically speaking 'the inscrutab le face of sphinx' (See: Breen v. Amalgamated Engineering Union [1971] 2 QB 17500; Also see: State of H.P. v. Sardara Sing h, (2008) 9 SCC 392). In our view, the satisfaction arrived at by the concerned officer should be discernib le from the sanction-order passed under Section 151 of the Act. In this contex t, the observations made by the Supreme Court in Chhug amal Rajpal vs. S.P . Chaliha, (1971) 1 SCC

453 being apposite are extracted hereafter: ....

The order recording reasons and the order granting sanction should speak for themselves. (See observations made Commissioner of Police, Bomb ay vs. Gordhandas Bhanji AIR 1952 SC 16 and Mohinder Sing h Gill and Ors. v s. The Chief Election Commissioner, New Delhi and Ors. (1978) 1 SCC 405):

54. We strongly rely on above Hon'ble SC/HC and ITAT coordinate bench latest and recent decisions to support our contentions that both reasons are recorded mechanically and approval is also mechanical in extant case which ergo makes the entire reopening as ultra vires and without jurisdiction. That is we humb ly submit that when information is recd to Ld AO only on 31st march 2016 , reasons drafted on same day just referring investigation wing letter, and rubber stamp approval (I am satisfied) given on same day by PCIT, along with order sheet entry dated 21.04.2016 (no time giv en for GKN driveshaft EXERC ISE to be exhausted) and final assessment made without any show cause notice /scn issued to assessee making addition u/s 68 on bank cred it (sans books) as dicated/directed in forwarding letter of investigation wing (dated 30.03.2016), estab lishes our case that entire Arun Duggal assessment is simply based on borrowed satisfaction of investigation wing. This we submit on 2nd issue framed above.

55. Finally we humbly submit that lack of any prior inquiry in between receip t of investigation wing information and formation of reasons makes the reopening invalid in eyes of law. Further we humbly submit that extant reasons are recorded without any tangib le material as mere investigation wing information cannot be called as tang ible material. Even there is lack of coherence in reasons recorded and information referred as mere credit in bank account does not make the credit as income of assessee concerned ipso facto, as there is no reference to complete information v is a vis Jagatjit Industries case which aspect is analysed in detail in assessee's own case by Hon'ble ITAT order dated 19.01.2021 which order is relied here to establish debility in reasons recorded. Entire reopening is made on basis of mere credit in bank account which is already held in assessee's own case cannot be called as real income in hands of assessee by the Hon'ble ITAT (refer Hon'ble Apex court decision in Shoorji Valllab hdass 46 ITR

144). It is clearly recorded in said Hon'ble ITAT order of 19.01.2021 that revenue can't assess Jagajjeet for entire undisclosed sales/revenue how can entire amount be added in hands of assessee herein which proves entire reasons are factually erroneous and are based on non ex isting grounds.

56. On basis of above four aspects we humb ly submit that instant reopening is not valid in law and cannot pass legal and jud icial scrutiny . Further we humbly submit that assessee's objections against reasons recorded u/s 148 dated 29.04.2016 (paper book pages 13,14 &15) are no where disposed off as per law.

Arun Duggal

57. On third issue that is immediate/straight issue of scrutiny /regular assessment notice u/s 143(2) and questionnaire u/ s 142(1) dated 21.04.2016 on day when reasons were first supplied to assessee

as per request letter dated 03.04.2016 , is vitiating to entire assessment as by this Ld AO has disp layed that firstly he is not ready to allow assessee to lawful recourse to Sacred exercise and process of GKN driveshaft case 259 ITR 19 which alone is sufficient to annul the impugned assessment second ly it is confirmed by this approach of Ld AO that entire extant proceedings are initiated and started on mere dictate and direction of investigation wing. We produce relevant order sheet entry dated 21.04.2016 (also ad mitted in impugned assessment order) for sake of ready reference:

"Above vindicates our contention that entire reopening/approval etc is based on borrowed satisfaction and lacks independent application of mind."

58. On Fourth issue that impugned assessment order passed on 23.12.2016 , immediately after reply of assessee dated 16.12.2016 which responded to AO questionnaire u/s 142(1) dated 29.11.2016 (refer second page of impugned assessment order) , it is admitted fact that at no stage where so much variation is mad e to returned income (Rs. 494,550) vis a vis assessed income of Rs. 12,81,75,000 which is 259 times of returned income, showing serious/grave prejudice to assessee , no mandatory and requisite show cause notice (scn) is issued to assessee before final assessment being framed on reasoning made known to assessee for first time from imp ugned assessment ord er. That is assessee got no effective and objective opportunity in name of natural justice to lawfully defend itself on reasoning/charges which weighed with & Arun Duggal leveled by AO in drawing adverse inference against assessee herein. That is had proper and valid scn b eing given to assessee on reasoning to be met by assessee and had assessee been given proper opportunity in this regard at assessment stage, may be addition which is made would not have been made is our humble submission on fourth issue. So lack of valid SC N has jeopard ized the complete impugned assessment.

We rely for above on:

Recently Hon'ble Delhi Bench of ITAT in the case of M/s Marubeni Ind ia P vt. Ltd . in ITA No. 978/Del/2015 for A.Y. 2005- 06 dated 24.06.2020

14. Regarding the lack of opportunity afforded, while making the addition as canvassed by the ld. AR. The ld. CIT (A) held that the calculation of the ad justment and determination o f the ALP has been made based on the working given by the assessee. Thus, at this juncture two issues needs to be addressed, a) Whether in the absence of show-cause notice as to the quantum proposed, the addition made by the revenue can be held to be legally valid . b) Whether the allocation of expenses be on the basis o f gross sales or on the basis o f gross profit.

15. Having gone through the show-cause notice and the addition made, we find that the assessee has not been afforded an opportunity while mak ing the addition, thus denying the principles of natural justice. It is very unfortunate that in many cases, Assessing Officers mak e additions under scrutiny assessments in gross violation of the principles of natural justice even without issuing a proper Show Cause Notice or without giving the taxpayer a fair opportunity to explain his Arun Duggal point o f v iew. This approach not only creates ill-will for the department, b ut also gives rise to un justified demands. Further, it makes the appeal proceedings also comp lex and time consuming , because the

Commissioner Appeals is required to admit additional evidence or call for Remand Reports etc. "Hearing rule" states that the person or party who is affected by the decision made judicial/quasi judicial should be given a fair opportunity to express his point of view to defend himself. The principle of natural justice is a very old concept and it originated at an early age. The people of Greek and roman were also familiar with this concept. In the days of Kautilya, Arthashastra and Adam were acknowledged the concep t of natural justice. According to the Scriptures, in the case of Eve and Adam, when they ate the fruit of knowledge, they were forbidden by the god. Before g iving the sentence, eve was given a fair chance to defend himself and the same process was followed in the case of Adam too. Later on, the concept of natural justice was accepted by the English jurist. The word natural justice is derived from the Roman word 'jus-naturale' and 'lexnaturale' which planned the princip les of natural justice, natural law and equity . "Natural justice is a sense of what is wrong and what is right." In Ind ia, this concept was introduced at an even as earlier as of Ramayana and Mahabharata.

59. The Hon'ble Supreme Court of India in the case of Mohinder Singh Gill vs. Chief Election Commissioner 1978 SCR (3) 272, held that the concept of fairness should be in every action whether it is judicial, quasi- judicial, administrative and or quasi-administrative work. The rules of natural justice are rooted in all leg al systems, and are not any 'new theology. They are manifested in the twin principles of nemo judex in Arun Duggal causa sua and audi alteram partem. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice. These rights can operate only in areas not covered by any law validly made. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the trib unal. Whenever, a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observation of that rule was necessary for a just decision on the facts of that case.

60. The ld. AR further submitted as under:

"Every Ass essi ng Officer, TPO, C IT(A) or any ot her f unctionary implementi ng st atute or law whether impl ementi ng j udicial functions or an ad mi nistrati ve func tions is a judicial authority with regard to the rol e and duties he is s uppos ed t o perform. While exercisi ng s uch judicial authority, observanc e of principl es of natural justice is a sine qua non. 17. Keepi ng in vi ew t he above and the well laid down pri nciples and keeping i n vi ew that there is substantial discrepancy bet ween the show-caus e iss ue and t he addition made, we have c ome to a c onclusion that t his is a n unambi guous case of violati on of pri nciples of nat ural justic e and henc e t he action o f t he revenue whic h was concluded wi thout aff ordi ng an opport uni ty to the assess ee is liable to be oblit erat ed."

Further relianc e is placed on CB DT Instruc tion number 20/2015 dat ed 29.12.2015 par agraph 4 is releva nt is hi ghli ghted bel ow:

"4 . The Board f urther desires t hat in all cas es under scruti ny, where the Assessi ng Officer propos es t o make additi ons or disallowanc es, the ass essee would be given a fair opportuni ty to ex plai n his Arun Duggal position on the propos ed additi ons /disallowanc es i n accordanc e with the principle of natural j ustice. In t his regard the As sessi ng Of ficer shall issue a n appr opriat e s how-caus e notice duly i ndicati ng the reasons for t he propos ed addit ions/disallowa nces along wi th nec es sary evidences/reasons f ormi ng the basis of t he same. B efore passi ng the final order agai ns t t he propos ed additi ons /disallowances, due c onsi deration s hall be given to the submissi ons made by the assess ee in response to the show-caus e notice."

This is asked t o be strictly complied by CBDT i n asses sments ma de. That is we humbly submit that i nstant ass essment is fram ed i n violati on of mandat ory CBDT Instruction u/s 119 of t he Ac t (s upra) whic h requir ed fai r opportunity bas ed pr oper SCN t o assess ee which is t otally lac ki ng i n pr esent cas e.

Further we rely on H on'ble G uja rat high court decision in case of Zenith Proc essi ng Mills vs. CIT 219 I TR 721 wher ei n it is held that it is inherent part of section 143(2) wherever ret urned i nc ome is vari ed to prejudice of assess ee SCN is mandator y on part of L d AO bef ore adv ers e i nf erence is dra wn agai nst ass essee on any issue.

Further we draw your honors a ttention to conc ept and pri ncipl e of proc edur e fairness whic h is not adhered to i n extant cas e for which we rely on leadi ng c ommentary f ol lowed worldwide by Wade and Forsyth on admini strative law (elev enth edition) wher e in on iss ue of fairness it is s uggested that A uthority conc erned mus t put clearly to assess ee t he charge framed by Ld AO in assessment sans which entire ass essm ent shall collapse. S ame are the vi ews contai ned i n leading tax c ommentary by Mr A rvi nd Da tar s upporting our point of view.

For valid SC N requirement we made ref erenc e to followi ng Hon'ble Apex court rulings :

Arun Duggal Hon'ble S upreme Court of India M/S Kesa r Enterprises Ltd vs St ate Of U .P. & Ors on 6 July , 2011 Author: D .K.Jai n

21.Havi ng considered the iss ue, framed i n para 12 supra, on the touchs tone of t he af ore-not ed legal pri nciples i n regard t o the applicability of the pri ncipl es of nat ural j ustice, we are of the opi ni on that keeping i n vi ew t he nat ure, sc ope and consequenc es of direction under s ub-rul e (7) of R ule 633 of the Excise Manual, the pri nciples of na tural jus tice demand that a show-caus e notice shoul d be issued and an opport unity of heari ng should be afforded to the person c oncerned bef ore an order under the said Rule is made, not withstandi ng t he fact that the said R ul e does not contai n any expres s provision f or the aff ec ted party being gi ven an opport unity of bei ng hea rd. U ndoubtedly, acti on under t he said Rule is a q uasi - judicial func tion whic h i nvolves due application of mi nd to t he facts as well as to the requirem ents of law. T heref ore, it is plain t hat bef ore raising any demand and initi ating any step to rec over f rom the exec uta nt of the bond any amount by way of penalty, there has to be an adjudication as regar ds the breach of c ondition(s) of the bond or the failure to prod uce the dischar ge c ertificate withi n the time menti oned i n the bond on the basis of the explanati on as also the mat erial whi ch may be adduced by t he p ers on c

onc erned denyi ng t he liability to pay s uch penalt y. Moreov er, the penalty amount has also t o be quantified before proc eedi ngs f or recovery of the amount s o determi ned are take n. In our vi ew, therefore, if the requirement of an opp ortunit y to show-caus e is not read i nto the said R ule, an act ion t hereunder would be open to challenge as violative of Article 14 of t he Constit ution of India on t he ground that the power conferr ed on the c ompetent authority und er the provision is arbitrary.

In Uma Nath Pandey & Others Vs . State of UP & A nother: (2009) 12 SCC 40, Supreme Court, i nt er alia observed as under:

Arun Duggal ☐Notic e is the first limb of this principle. It must be precise and unambiguous. It shoul d a pprais e the party determi natively the case he has to meet. T ime given f or the pur pose s hould be adequate so as t o enable him to make his representation. In the absence of a notice of t he ki nd and s uch reasona ble opportuni ty, the ord er pass ed bec omes wholly vi tiat ed. Thus , it is but ess ential tha t a party should be put on notice of the c as e bef ore any adv ers e order is passed against him.

In Bi ecc o La wri e Limited & Anot her Vs. State of West B engal & Another: (2009) 10 SCC 32, Supreme C ourt, i nter alia, obs erved as under:

☐One of the es sential ingredi ents of fair hea ri ng is t hat a person shoul d be s erved with a pr oper noti ce, i.e., a person has a right to notice. Notice should be clear and precise so as t o giv e t he other party adequate i nformation of the ca se he has t o meet a nd make an effective defence. Deni al of notice and opport uni ty to respond res ult in maki ng the administ rative decision as vitiated. T he a dequacy of notice is a relative term a nd must be decided with ref erenc e t o each case. B ut generally a notice to be adequate m ust contai n the f ollowi ng: (a)time, place and nat ure of heari ng; (b) legal authority under which heari ng is t o be held; (c) statement of specific c harges whic h a person has t o meet.

Even ass essee i n extant cas e has nowhere b een lawf ully c onfr onted with i nf ormati on of investi gati on wi ng as collect ed at bac k of assess ee (ref er s ec. 142(3) of t he A ct etc) s o as to give ass ess ee a chanc e of f air heari ng so as to rebut a nd repudiat e the bald allegati ons levelled by Ld AO s umma rily sta mped by Ld CIT -A.

Thes e requi rem ent of natural jus tice is emphasized i n f ollowi ng case laws :

Hon'ble Apex c ourt i n case of 26 ITR 1 S uraj Mal Mohta cas e Arun Duggal Hon'ble Ap ex court in case of 26 I TR 775 Dhakes hwari cotton case Hon'ble Apex c ourt in case of Kis hanc hand C hella ram 125 ITR Hon'ble Apex c ourt i n case of S ona B uilders c as e 251 ITR 197 Hon'ble Apex c ourt i n case of Odeon Builders case 418 ITR 315 Hon'ble Apex c ourt i n case of NDTV 424 ITR 607 Hon'ble A pex c ourt three judge benc h rec ent case of S udhi r Kumar Singh c as e vs UO I Cita tion: AIR 2020 SC 5215 Thus total a bsence of SC N i n ins tant c as e has resul ted and caus ed subst antial prej udice to ass es see as he c ould not defend its case as per fair heari ng c ons titutional norm. This fac t is also c onfirm ed f rom impugned assess ment order a nd case order s heet copy plac ed on case records."

61. On 5th issue our first leg of contention is: we humbly submit that entire assessment is based on direction and d ictate of investigation wing as it is clear that sec. 68 is applied to case where assessee is neither maintaining books of account u/s 2(12A) nor there is any requirement on part of assessee to do so u/s 44AA which is v ind icated from fact that revenue has not initiated any penalty u/s 271A for non maintenance of books of account we rely on following chain and long line of precedents to argue that sans books of accounts being positively maintained by assessee, scope of applicability of section 68 gets ousted:

Delhi ITAT F bench decision in Vijay Kumar Prop V.K. Medical Hall order dated 27.11.2918 Delhi ITAT B bench decision in Inder Singh case order dated 05.12.2018 Mumbai C bench ITAT decision in case of Palimar Gopal Shetty order dated 26.8.2020 Arun Duggal Bombay high court decision in case of Manisha M Shah order dated 27.06.2016 ITA 2432/2013- referring Bhai chand Gandhi 141 ITR 67, Baladin Ram 71 ITR 427 Mumbai bench E ITAT decision in case of Ek ta Housing Pvt.

Ltd. para 30 of the decision order dated 24.05.2021 (Sec 2(12A) analysed in detail Chennai bench D ITAT decision in case of GSNR Rice Industries Pvt. Ltd. order dated 09.06.2021 sec. 2(12a) analysed in leng th Hon'ble Allahabad high court decision in case of Sarita Devi 407 ITR 254

62. Finally on six th issue framed above, we humb ly submit that entire assessment as framed for the sub ject period here comes in teeth of observations of Hon'ble coord inate Delhi E bench of ITAT in assessee's own case on identical addition of bank credits u/s 68 of the Act (for years assessed u/s 153A and sec. 143(3) order dated 19.01.2021), we reproduce the relevant ex tract here for sake of immed iate ready reference:

"......It may also be noted that in the present case the facts stated in the impugned orders are that the sales of liquor are made by M/s. JIL to M/s. MAPSCO and Sing la Group of cases and that part of the sale proceed s have been transferred to the account of M/s. Alfa India instead of paying the entire sale consideration to M/s. JIL. Thus, the nature of total receipt/ addition is the sale proceeds originally to be received by M/s. JIL. If the part of the sale proceeds which were to be received by M/s. JIL and when transferred to the account of M/s. Alfa Ind ia Ltd., the entire part sale receipts cannot be the income either in the hands of M/s. JIL or M/s. Alfa India or the Arun Duggal Assessees who may be the conduit as argued before us. The A.O. has failed to consider the concept of real income for the purpose of determining the correct tax liab ility and correct determination of income of the assessees. We rely upon the Judgment of the Hon'ble Supreme Court in the case of Godhra Electricity Co. Ltd., 225 ITR 746 (SC). This fact is also not verified and considered by the JCIT while granting approval under section 153D of the I.T. Act. It may be noted here that entire sale proceeds when cannot be added in the hands of M/s JIL as income which is also not done in the case of M/s. JIL, rightly so, how the same sale proceeds could be added as income in the hands of assessees under section 68 of the I.T. Act is not understandable."

63. Had proper and valid scn being given assessee would have been able to submit above legal position which has now got imprimatur of this Hon'ble Tribunal in assesse's own case on identical fact situation. We request for stare decisis and egalitarian view to be taken in extant case for sake of

judicial comity enshrined in article 14 of indian constitution. In worst case scenario , without prejudice to above, Further we draw support from Latest Gujarat hig h court decision in case of 430 ITR 253 in case of PCIT VS Shitalben Saurabh Vora order dated 19.09.2020. Ad ding 2% income on undisclosed business receipts related deposits made in unaccounted bank account.

64. Summary of our arguments before this Hon'ble Tribunal:

That imp ugned assessment framed u/s 147/148 is made in violation to operative statutory scheme and design of search based assessment u/s 153A which is restricted to sic specified years only and cant indirectly allow revenue to take recourse to sec.148 for additional one year which is supported from Arun Duggal subsequent amendment made in law of sec. 153A by finance act 2017; We rely on Hon'ble Delhi hig h court decision reported in 393 ITR 1 and strong non obstante clause referred in sec.153A of the Act.

65. That imp ugned assessment framed u/s 147/148 is based on d irection and dictate of investigation wing when all facts I) investigation wing forwarding letter received in office of AO on 31.03.2016 II) reasons drafted on 31.03.2016 and iii) PC IT approval (I AM Satisfied) given on 31.03.2016 iv) notice u/ s 148 issued on 31.03.2016 and v) order sheet entry dated 21.04.2016 displaying hurried issue of notice u/s 143(2) and 142(1) questionnaire thus strangulating GKN drive shaft procedure to be recourse by assessee.

vi) final assessment made without any SC N vii) as per investigation wing forward ing letter 30.03.2016 addition made u/s 68 qua bank credits ; all this combined shows impug ned assessment is based on direction and dictate of investigation wing.

66. That purported reasons recorded u/s 148(2) and rubber stamp sanction u/s 151 (I am satisfied) are both mechanically given based on borrowed satisfaction and lack independent application of mind on p art of Ld AO and Ld PC IT as evident from above sequence of events () investigation wing forward ing letter received in office of AO on 31.03.2016 II) reasons drafted on 31.03.2016 and iii) PC IT approval (I AM Satisfied) given on 31.03.2016 iv) notice u/s 148 issued on 31.03.2016 and v) order sheet entry dated 21.04.2016 displaying hurried issue of notice u/s 143(2) and 142(1) questionnaire thus strangulating GKN drive shaft p rocedure to be recourse by assessee vi) final assessment made without any SCN v ii) as per Arun Duggal investigation wing forward ing letter 30.03.2016 addition made u/s 68 qua bank credits).

67. That there is serious infraction of sacred right of assessee to be allowed to follow GKN driveshaft procedure as Ld AO has transgressed the same by issuance of notice u/s 143(2) and questionnaire u/s 142(1) dated 21.04.2016 which vitiates the entire assessment;

68. That impugned assessment framed in absence of any valid mandatory scn where more than 230 times returned income is varied causes serious and grave prejudice to assessee and makes the assessment non est; we humb ly rely on the same. We strongly rely on Delhi bench ITAT decision in Marubeni case.

69. That mechanical invocation of section 68 of the Act to entries in bank account sans books of accounts maintained by assessee (on direction in forward ing letter of investigation wing supra) is rejected in various Hon'ble high court decisions and recent coordinate bench ITAT decisions based on sec. 2(12A) of the Act;

70. That Hon'ble ITAT in assessee's own case in identical fact situation has disapproved the revenue approach to tax the assessee on entire bank credits.

71. Against the arguments and written submissions of the ld . AR Ms. Paramita Biswas, the Departmental Representative argued eloquently relying on the record of the ADIT(Inv.), JCIT, Range, PCIT, the Assessing Officer and the ord er of the First Appellate Authority. The sum and substances of the arguments have been submitted in writing which are as under:

> Arun Duggal Written Submission-I dated 01.07.2021 It is sub mitted that a search and seizure operation was conducted on 29.12.2015 against the Talwar & Duggal Group of which Sh. Arun Duggal is a memb er.
>
> 2. The main issue in this search was that huge money was deposited in the bank accounts of M/ s Alfa India (which is a proprietary concern of Shri Arun Duggal. The huge amounts were transferred from M/s Alfa India to family members of Talwar & Duggal group.
>
> 3. Thereafter the case of this assessee for AY 2009-10 was reopened under section 148 by DCIT-Central Circle-I, Faridabad. The Assessing Officer after detailed inquiry and opportunity completed assessments by making additions u/s 68 of IT Act 1961.
>
> 4. In this regard the following assessment year wise breakup of the cases in ITAT of Arun Duggal is submitted regarding the case of assessee for A.Y. 2009-10 in ITA No. 3075/Del/2018:

Date of search 29.12.2015 S. No. ITA Nos. A.Y. Returned Assessed Details of return of Remarks Income Income income & assessment proceedings 1 3 0 7 5 / D e l / 2 00 9 - 1 0 4 9 45 5 0 1 2 8 6 6 9 5 1 T R u/s 1 3 9 (1) Sum of R s . 1 2 , 81 , 7 5 , 00 0 / -

> 2018 50 14.7.09, 1 4 3 (2) w a s t re a t e d a s i n c o m e o f 21.4.16, 1 47 r.w.s assessee from undisclosed 143(3) 2 3 . 12 . 1 6 sources under section 68, not (Assessment order) disclosed by the assessee in his return of income, even though he is the proprietor of M/s Alfa India.
>
> 5. Perusal of the Grounds of appeal pressed by the assessee show that Ground of appeal 1 from 1.1 to 1.8 and Ground of appeal from 2.1 to 2.6 are extremely d ilatory.
>
> Arun Duggal

6. The first Ground of appeal and its sub-paras question the action of Ld. C IT(Appeals)-3, Gurgaon in sustaining the Assessment order under section 147/143(3) without appreciating that assumption of jurisdiction under section 148 by Ld. AO was in violation of the cond itions stip ulated under the I.T. Act.

7. It has been argued that the Assessing Officer has reopened assessment proceedings on the basis of borrowed satisfaction and without independent application of mind . In this regard, I would like to rely on the decision of Hon'ble Delhi High Court in Brijbasi Education and Welfare Society vs. Principal Commissioner of Income Tax Central III, New Delhi in [2021] 125 taxmann.com 95 (Delhi) dated 22.12.2020, where it was held that Assessee was an educational trust. Assessing Officer received information from DDIT (Investigation), based on a report of Central Bureau of Investigation (CBI) that chairman of assessee-trust had made huge cash deposits in accounts of assessee with intent to evade tax. Assessing Officer on basis of aforesaid information reopened assessment and made additions under section 68 on account of unexplained receipts. Assessee contended that evidences were provided for confirmation of donations along with relevant bank statements to prove genuineness, creditworthiness and identity of donors. It was noted that donors which initially during orig inal assessment submitted confirmation of donation, confessed that they had not g iven any such donations during investigation by CBI. Also while making enquiries. Assessing Officer received documents from CBI which revealed that assessee-trust had received certain sum from one MG who was involved in providing accommodation entries. The Hon'ble Court held that Arun Duggal since Assessing Officer had sp ecific information about cash deposits, supported by statement of witnesses, there were reason to believe that income of assessee had escaped assessment and , thus, justify ing reopening of assessment under section 147. Hon'ble Court also held in favour of revenue that since genuineness of donors could not be established, donations were to be treated as bogus, and ad ditions made under section 68 were justified.

8. Hon'ble H IGH C OURT OF GUJARAT in the case of Garvit Diamonds Pvt. Ltd. vs Income Tax Officer in [2021] 127 taxmans.com 2Sf Gujarat) has held that Assessing Officer is entitled to initiate reassessment proceedings on basis of tangib le material which comes in his hand , which tends to expose untruthfulness of entry of purchase made in books of accounts. Further, Competent Authority had given satisfaction in writing and had expressed his satisfaction with regard to reasons recorded and accorded sanction to issue impugned notice. Therefore, approval for reassessment was granted on date on which impugned notice were issued.

9. Hon'ble Gujarat High Court in the case of Nisha Diamonds (P.) Ltd. vs. Income Tax Officer, Ward-1(1)(4) in [2021] 127 taxmann.com 689 (Gujarat).

10. Hon'ble Delhi High Court in the case of Experion Developers (P.) Ltd. vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) has held that where necessary sanction to issue notice under section 148 was obtained from P r. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a find ing of approval when he was satisfied with reasons recorded by Assessing Officer.

Arun Duggal

11. It has been argued that Assessing Officer had issued notices under section 143(2) and 142(1) without actually having any evidence in hand, in the form of bank statements of the two accounts maintained by Sh. Arun Duggal with South Indian Bank Ltd. having account no. 0419073000000213 at Plot no. 97, SCO, Sec.-31, Main Road, Gurgaon and 0358073000002431 at Door no. B-103, Ground floor, Chittranjan Park, New Delhi. Notice under Section 143(2) of the Income Tax Act is the second chance to assessee after Income Tax Department finds major or minor discrepancies in the tax return. The discrepancy can be in the form of under-reporting the income or over-reporting of the losses. On receipt of a notice, an indiv idual must respond timely to the tax department along with the supporting proof to defend themselves. Scrutiny assessment or detailed assessment u/s 143(3) means scrutiny carried out to confirm the correctness and genuineness of various claims, deductions, etc made in the Income Tax Return. The basic p urpose of this scrutiny assessment is to ensure that assessee has filed the return with the correct income and paid the tax accord ing ly.

12. A notice under section 142(1) can be issued if the assessing Officer requires additional information and documents in support of the return of income furnished by the assessee. In this case, the Assessee is challenging the issue of notices under section 143(2) and 142(1) on the ground that the Assessing Officer was not in possession of any information to justify the reopening under section 148. Nothing could be further from the facts of the case.

13. In this regard, it is sub mitted that verification of the claim of assessee can only be done from inspection of the Arun Duggal Assessment records. These are with the Assessing Officer and time may kind ly be granted for production of the same.

The arguments of the counsel of assessee and the oral submissions & arguments of the undersigned may kindly be incorporated into the body of the order.

Written Submission-II dated 14.07.2021 Ground no. 1 1.1 The assessee is arguing about the rubber stamp reasons which are based on borrowed satisfaction and lack of independent application of mind. In this regard, I would like to say that Assessing Officer after ap plication of indep endent mind has recorded reasons to believe for escapement of income and has moved the proposal for reopening of assessment and the proposal was duly approved by Pr. CIT after independent application of mind.

It has been argued that the Assessing Officer has reopened assessment proceedings on the basis of borrowed satisfaction and without independent application of mind .

A. In this regard, I would like to rely on the decision of Hon'ble Delhi Hig h Court in Brijbasi Education and Welfare Society vs. Principal Commissioner of Income Tax Central III, New Delhi in [2021] 125 taxmann.com 95 (Delhi) dated 22.12.2020, where it was held that Assessee was an educational trust. Assessing Officer received information from DDIT (Investigation), based on a report of Central Bureau of Investigation (CBI) that chairman of assessee- trust had made huge cash d eposits in accounts of assessee with intent to evade tax. Assessing Officer on Arun Duggal basis of aforesaid information reopened assessment and made additions under section 68 on account of

unexplained receipts. Assessee contended that evidences were provided for confirmation of donations along with relevant bank statements to prove genuineness, creditworthiness and identity of donors. It was noted that donors which initially during original assessment submitted confirmation of donation, confessed that they had not given any such donations during investig ation by CBI. Also while making enquiries, Assessing Officer received documents from CBI which revealed that assessee-trust had received certain sum from one MG who was involved in providing accommodation entries. The Honrile Court held that since Assessing Officer had specific information about cash deposits, supported by statement of witnesses, there were reason to believe that income of assessee had escaped assessment and, thus, justifying reopening of assessment under section 147. Hon rile Court also held in favour of revenue that since genuineness of donors could not be established , donations were to be treated as bogus, and additions made under section 68 were justified.

B. Hon'ble H IGH C OURT OF GUJARAT in the case of Garv it Diamonds Pvt. Ltd. vs. Income Tax Officer in [2021] 127 taxmam.com 28(Gujarat) has held that Assessing Officer is entitled to initiate reassessment proceedings on basis of tangib le material which comes in his hand, which tends to expose untruthfulness of entry of purchase made in books of accounts. Further, Competent Authority had given satisfaction in writing and had expressed his satisfaction with regard to reasons recorded and accorded sanction to Arun Duggal issue impugned notice. Therefore, approval for reassessment was granted on date on which impugned notice was issued.

C. Hon'ble Gujarat High Court in the case of Nisha Diamonds (P.) Ltd. vs. Income Tax Officer, Ward-1(1)(4) in [2021] 127 tax.mann.com 689 (Gujarat) has held that where assessee was aware that transaction with company 'A' was not business transaction but in form of bogus p urchase, however, failed to disclose true and correct facts at relevant time, Assessing Officer was entitled to initiate reassessment proceedings on basis of tang ible material which came into his hands through investigation wing. It was also held that where competent authority had given satisfaction in writing and accorded sanction under section 151 to issue impugned notice for reopening assessment, contention of assessee that valid sanction had not been obtained could not be accepted.

D. Hon'ble Delhi High Court in the case of Experion Developers (P.) Ltd. vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) has held that where necessary sanction to issue notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer.

1.2 Assessee has raised a ground that no back material was confronted/provided to the assessee. However as seen from Assessment record, assessee has requested for certified copies of reason recorded and certified copies of reasons recorded Arun Duggal under section 148(2) were given t:o assessee on 21.04.2016. Also, Inspection of file was also undertaken b}/ Assessee AR on 21.04.2016.

1.3 In this regard, it is submitted that this ground of appeal was also taken by assessee before Ld. C IT(A). Kind reference is inv ited to para 3 of Ld. CIT(A) on page no. 10 wherein Ld . CIT(A) has adjudicated that the search was conducted in AY 2016-17 and notice u/s 153A could be issued from

AY 2010-11 to 2015-16 and therefore AY 2009-10 is excluded from the same. Therefore, assessment und er section 147/148 has been done as per the provisions of the Act.

1.4 Assessee has argued that none of its submissions were appreciated during adjudication of appeal by CIT(A). However as seen from C IT(A) order, assessee was not interested to pursue its appeal before C1T(A), neither it filed submissions with respect to ground of appeal nor did it appear before Ld . C1T(A).

1.5 This has been discussed in para 1.4 above.

1.6 Assessee has argued about non issuance of notice under 143(2) by DCIT Central Circle 1 Faridabad after transfer of record from ITO Ward 1(1). However these facts are completely erroneous as seen from Assessment record because Notice under section 143(2) was duly issued by DCIT Central Circle 1 Faridabad on 26.09.2016 and it was received by Assessee's Wife by hand on 27.09.2016. Thus, assessee's contention regarding non issuance of notice under section 143(2) is blatantly incorrect.

Arun Duggal 1.7 Assessee has argued that reasons recorded are conclusions without any factual enquiry/back material on record. I would like to say that reasons were recorded after carefully going through information received from the Investigation wing, assessee's statement taken in the course of survey dated 29.12.2015 and copies of bank statements received alongwith information from the Investigation Wing. Thus, there was enough material on record to reopen the reassessment proceedings.

Arun Duggal

18. Regarding the assessee's contention of mechanical and rubber stamp approval by Pr. CIT Faridabad, I would like to mention that Pr. CIT Faridabad has given her approval in her own hand writing after going through the reasons recorded by Assessing Officer and the information received from the Investigation Wing, which includ e the statement of Sh. Arun Duggal recorded on 29.12.2015 and copy of bank statement of Alfa India maintained with South Indian Bank bearing account no. 0419073000000213 at Plot no. 97, SCO, Sec.- 31 Main Road Gurgaon and 0358073000002431 at Door no. B-103, Ground floor, Chittaranjan Park, New Delhi, of which Sh. Arun Duggal is the proprietor.

Ground no. 2 2.1 & 2.2 Asseessee has argued about having no valid basis of addition. However CIT(A) despite assessee not filing its submission has adjudicated the appeal on merit and confirmed the addition after discussing all the facts in para 4.1. Ld . CIT(A) has clearly mention in para 4.1 (v iii) that no explanation has been given by assessee with regard to credits in his bank account inspite of various opportunities given with regard to the sources of the two bank accounts operated by assessee during the year under consideration.

2.3 Assessee has argued about no meaningful enquiry by AO however as can b e seen from Assessment order, order has been passed after giv ing assessee many opportunities to justify the

credits in his bank accounts.

2.4 Assessee has arg ued about not providing bank statements on the basis of which additions have been made. I would like to say that assessee has inspected the records on 21.04.2016 and Arun Duggal it has mentioned in its letter d ated 29.04.2016 that it had inspected the file on 21.04.2016 and also seen the letter of ADIT(Inv)- 11 Faridabad on the basis of which reasons have been recorded. Also, during the assessment proceedings, assessee never asked for copies of bank statements therefore question of providing bank statements become infructuous.

2.5 & 2.6 Regarding the contention taken by assessee in this ground of appeal that no show cause was issued and its detailed reply was also not considered, 1 would like to mention that Assessing Officer, ITQ Ward 1(1), Faridabad issued Notice under section 143(2) and 142(1) dated 21.04.2016 which was received by Sh. Vijay Kumar Sing la, CA/ AR of assessee on 21.04.2016 by hand. Vide ordersheet entry dated 21.04.2016, assessee was asked to file copy of bank statements, file source of cash amounting to Rs. 12,81,75,000/- deposited in the bank accounts maintained by the assessee with South Indian bank. The copy of the notice u/s 142(1) is pasted below on page 7. Case was ad journed to 03.05.2016 in response to the request of the assessee.

142. (1) For the purpose of making an. assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,--

(i) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and Arun Duggal verified in the prescribed manner and setting forth such other particulars as may be prescribed, or:

Provided that where any notice has been served under this sub- section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed, under sub-section (1) of section 139 or before the end. of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section.

Arun Duggal

(ii) to produce, or cause to be produced, such accounts or documents as the Assessing Officer may req uire, or

(iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require.

Thereafter, vide Notice u/s 142(1) dated 26.09.2016 issued by DOT, Central Circle-1, Faridabad, assessee was again asked to file information as already called for and case was fixed for 06.10.2016. Subsequently, vide Notice u/s 142(1) dated 29.11.2016 issued by DOT, Central Circle-1, Faridabad , assessee was again asked to furnish the copies of all bank accounts maintained by it and explain all credit entries with documentary evidence vide point (iv) and assessee was also asked to justify the credit entry amounting to Rs. 12,81,75,000/- received from M/ s Alfa India during the year vide point (v).(Copy of notice enclosed).

Arun Duggal Assessee was afforded many opportunities to explain the source of credits in his bank account and Assessing Officer has passed the assessment order after tak ing into consideration reply of the assessee. Assessing Officer has d iscussed the reply of assessee in Assessment order on page no. 2 &3 and also reproduced assessee's reply in assessment order. Assessee's contention regarding overruling of evidence filed by it also become infructuous as it has neither filed submissions before Assessing Officer nor before CIT(A) in support of its claim, thus no evidence was produced by assessee at any time during case proceedings.

Arun Duggal

4. Assessee has argued about non providing of opportunity of cross examination of any of officers of M/ s Jagatjit Industries Ltd. Regarding this contention of assessee, Assessing Officer in para (ix) on page no. 7 has categorically mentioned that request of assessee for cross examination cannot, be acceded as Mr. Banga has already expired and no name of Director along with name of company hav e been given by assessee for cross examination.

Grounds of appeal 5, 6, 7, 8, 9 are either general in nature or have been discussed in detail in above mentioned paras.

5. Written submissions on issues raised during appeal 5.1 Whether revenue can use section 148 of the Act for the period under consideration (AY 2009-2010) when provisions of section 153A as it stood at relevant time only enabled assessment for six specified years u/s 153A and one year in which search is conducted for mandatory scrutiny assessment in section 143(3), which revenue action plainly operates contrarily to legislative intent as evident and manifest from i) strong non obstante operating clause in section 153A and ii) subsequent amendment in section 153A by finance act 2017 enlarging scope of years which can be assessed after search operation?

Revenue's Submission- In this regard, it is submitted that this ground of appeal was also taken by assessee before Ld. CIT(A). Kind reference is invited to para 3 of Ld. CIT(A) on page no. 3.0 wherein Ld. C IT(A) has adjudicated that the search was conducted in AY 2016-17 and notice u/s 153A could be issued from AY 2010-11 to 2015-16 and therefore AY 2009-

Arun Duggal 10 is excluded from the same. Therefore, assessment under section 147/148 has been done as per the provisions of the Act.

5.2 Whether in light of collective read ing of final paragraph of forwarding letter of investigation wing (reed in office of AO on 31.03.2016), reasons drafted on 31.03.2016 and approval of PCIT (I AM SATISFIED) dated 31.03.2016, is it not a case of reopening/reasons recorded and approval both given as per rubber stamp /borrowed satisfaction and without independent application of mind on part of Ld AO and Ld PCIT?

Revenue's submission-

(i) Regard ing the assessee's contention of mechanical and rubber stamp approval by Pr. CIT Faridabad, I would like to mention that Pr. CIT Faridabad has given her approval in her own hand writing after going through the reasons recorded and the information received from the Investigation Wing, which include the statement of Sh. Arun Duggal recorded on 29.12.2015 and copy of bank statement of Alfa India maintained with South Indian Bank bearing account no. 0419073000000213 at Plot no. 97, SCO, Sec.-31 Main Road Gurgaon and 035807300000243 at Door no. B-103, Ground Floor, Chittranjan Park, New Delhi, of which Sh. Arun Duggal is the proprietor.

(ii) Assessee is arguing about the rubber stamp reasons which are based on borrowed satisfaction and lack of independent application of mind. In this regard, I would like to say that Assessing Officer after ap plication of indep endent mind has recorded reasons to believe for escapement of income and has moved the proposal for reopening of assessment and the Arun Duggal proposal was duly approved by Pr. CIT after independent application of mind.

(iii) It has been argued that the Assessing Officer has reopened assessment proceedings on the basis of borrowed satisfaction and without independent application of mind. In. this regard, I would like to rely on the decision of Hon'ble Delhi High Court in Brijbasi Education and Welfare Society vs. Principal Commissioner of Income Tax Central III, New Delhi in [2021] 125 taxmann.com 95 [Delhi] dated 22.12.2020, where it was held that Assessee was an educational trust. Assessing Officer received information from DDIT (Investigation), based on a report of Central Bureau of Investigation (CBI) that chairman of assessee-trust had made huge cash deposits in accounts of assessee with intent to evade tax. Assessing Officer on basis of aforesaid information reopened assessment arid made additions under section 68 on account of unexplained receipts. Assessee contended that evidences were provided for confirmation of donations along with relevant bank statements to prove genuineness, creditworthiness and identity of donors. It was noted that donors which initially during orig inal assessment submitted confirmation of donation, confessed that they had not g iven any such donations during investigation by CBI. Also while making enquiries, Assessing Officer received documents from CBI which revealed that assessee-trust had received certain sum from one MG who was involved in providing accommodation entries. The Hon'ble Court held that, since Assessing Officer had sp ecific information about cash deposits, supported by statement of witnesses, there were reason to believe that income of assessee had escaped assessment and , thus, justify ing reopening of assessment under section 147. Hon'ble Court also held in favour of revenue Arun Duggal that since genuineness of donors could not be established, donations were to be treated as bogus, and ad ditions made under section 68 were justified.

Hon'ble HIGH C OURT OF GUJARAT in the case of Garvit Diamonds Pvt. Ltd. vs. Income Tax Officer in [2021] 127 taxmann.com 28(Gujarat) has held that Assessing Officer is entitled to initiate reassessment proceedings on basis of tangib le material which comes in his hand , which tends to expose untruthfulness of entry of purchase made in books of accounts. Further, Competent Authority had given satisfaction in writing and had expressed his satisfaction with regard to reasons recorded and accorded sanction to issue impugned notice. Therefore, approval for reassessment was granted on date on which impugned notice was issued.

Hon'ble Gujarat High Court in the case of Misha Diamonds (P.) Ltd, vs. Income Tax Officer, Ward-1(1)(4) in [2021] 127 taxmann.com 689 (Gujarat) has held that where assessee was aware that transaction with company 'A' was not business transaction but in form of bogus purchase, however, failed to disclose true and correct facts at relevant time, Assessing Officer was entitled to initiate reassessment proceedings on basis of tangible material which, came into his hands through investigation wing. It was also held that where competent authority had given satisfaction in writing and accorded sanction under section 151 to issue impugned notice for reopening assessment, contention of assessee that valid sanction had not been obtained could not be accepted.

Hon'ble Delhi High Court in the case of Experion Developers (P.) Ltd., vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) has held that where necessary Arun Duggal sanction to issue notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer.

5.3 Whether from order sheet noting dated 21/04/2016 (copy placed on case records) stating that "Present Sh. Vijay Sing la CA and filed a letter seek ing insp ection of the record and filed a challan of Rs 400 for the same. Copy of reason has also been supplied to him. Inspection of case record has also been made by the counsel. Notice u/s 143(2) issued and served upon the counsel. Asked to file copy of bank statement and other information as p er notice u/s 142(1) issued and served upon the counsel. And also asked to file source of cash amounting to Rs.12,81,75,000 deposited in the bank account maintained by the assessee. C ase adjourned to 3/05/2016 where return u/s 148 was promptly filed on 03.04.2016, on same day request made for supply of reasons recorded u/s 148 from assessee side (refer order sheet entry dated 03.04.2016), it further confirms that reopening in present case is purely as per dictate and direction of investigation wing on borrowed satisfaction as Ld AO never allowed or gave assessee any time /room to place its ob jections on reasons supplied on 21.04/2016 as per dictum of Bon'ble apex court, in GKN drive shaft case 259 itr 19 and hurriedly started assessment proceedings in extreme haste by issuing notice u/ s 143(2) and sec 142(1) questionnaire on very same day (21.04.2016), when reasons were first supplied to assessee, thus display ing i) dictated action of reopening and ii) strangulation of sacred proced ure of GKN Driveshaft case?

Arun Duggal Revenue's submission

(i) Assessee has argued about no meaningful enquiry by AO however as can b e seen from Assessment order, order has been passed after giv ing assessee many opportunities to justify the

credits in his bank accounts.

(ii) Assessee has argued about not providing bank statements on the basis of which additions have been made. 1 would like to say that assessee has inspected the records on 21.04.2016 and it has mentioned in its letter d ated 29.04.2016 that it had inspected the file on 21.04.2016 and also seen the letter of ADIT(Inv)- II Faridabad on the basis of which reasons have been recorded. Also, during the assessment proceedings, assessee never asked for copies of bank statements therefore question of providing bank statements become infructuous.

(iii) It is further submitted that during the course of search & seizure, statement of Sh. Arun Duggal was recorded on 29.12.2015 regarding his concern M/s Alfa India which is reproduced below-

Question no. 9 at page 5- Please tell how are you related with M/s Alfa India?

Answer-1 am in no way associated with M/s Alfa India. I am hearing this name for the first time. I do not have any kind of interest in M/s Alfa India. Even my family members are not associated with this concern.

(iv) It is pertinent to mention that even though Sh. Arun Duggal is proprietor of M/s Alfa Ind ia yet he denied any knowledge of his own firm in his statement.

Arun Duggal

(v) Statement of Sh. Sanjay Duggal was recorded during post-search proceedings on 24.02.2016 at the office of ADIT Faridabad, during which he was confronted with his reply during statement recorded during the course of search between 29th to 31st December, 2015.... "In relating to M/s Alfa India you gave variable response while under oath. The response varied from-

a) used for promotional activ ities through gift distribution in the nature of brand promotion on behalf of firms like Discovery Asia

b) funds received in account of M/ s Alfa India on account of unaccounted sales made by M/s JIL

c) under reporting/sales suppression by M/s JIL by receiving payments in the account of M/s Alfa India."

5.4 Whether addition made in imp ugned assessment dated 23.12.2016 immediately after issue of q uestionnaire u/s 142(1) dated 29.11.2016 after assessee reply on same d ated 16.12.2016 is valid where admittedly no where assessee was issued mandatory Show cause notice (SC N) as per CBDT instruction and H on'ble SC/HC/ITAT decisions on the subject?

Revenue's submission - Regarding the contention taken by assessee in this ground of appeal that no show cause was issued and its detailed reply was also not consid ered, I would like to mention that Assessing Officer, ITO Ward 1(1), Faridabad issued Notices under section 143(2) and 142(1) dated

21.04.2016 which was received by Sh. Vijay Kumar Sing la, CA/ AR of assessee on 21.04.2016 by hand. Vide order sheet entry dated 21.04.2016, assessee was asked to file copy of bank statements, file source of cash amounting to Rs. 12,81,75,000/- deposited in the bank accounts maintained by Arun Duggal the assessee with South Ind ian bank mentioned at bottom of the Notice. (Copy of notice u/s 142(1) dated 21.04.2016 is enclosed at page 7 supra). Case was adjourned to 03.05.2016.

Thereafter, vide notice u/s 142(1) dated 26.09.2016 issued by DOT, Central Circle-1, Faridabad, assessee was again asked to file information as already called for and case was fixed for 06.10.2016. Subsequently, vide Notice u/s 142(1) dated 29.11.2016 issued by DCIT, Central Circle-1, Faridabad , assessee was again asked to furnish the copies of all bank accounts maintained by it and explain all credit entries with documentary evidence vide point (iv) and assessee was also asked to justify the credit entry amounting to Rs. 12,81,75,000/- received from M/ s Alfa India during the year vide point (v).(Copy of notice u/s 142(1) enclosed at page 9 supra).

It is submitted that in the notice u/s 142(1) dated 21.04.2016, the Assessing Officer has requested assessee to file the following details:

Please furnish copy of all bank accounts maintained by you arid also file source f cash amounting to Rs. 12,81,75,000/- deposited by you in the bank account maintained by you.

It is further submitted that in the notice u/s 142(1) dated 29.11.2016, the Assessing Officer has req uested assessee to file the following details:

i. Please justify the salary received from Duggal Estates. ii. To furnish documentary evidences regarding income from other sources and short term capital gain.

iii. Please justify the deduction u/s 80C and SOD Arun Duggal iv. To furnish the copies of all bank accounts maintained by you and explain all credit entries with documentary evidence v. Please justify the credit entry amounting to Rs.12,81,75,000/ - received from M/s Alfa India during the year.

Thus, it is clear that Assessee was afforded many opportunities to explain the source of cred its in his bank account and Assessing Officer has passed the assessment order after taking into consideration the rep ly of the assessee. Assessing Officer has discussed the reply of assessee in Assessment order on page no. 2 & 3 and also reproduced assessee's reply in assessment order. Assessee's contention regard ing overruling of evidence filed by it has also become infructuous as it has neither filed sub missions before Assessing Officer nor before CIT(A) in support of its claim, thus no evidence was produced by assessee at any time during case proceed ings.

5.5 Whether invocation of section 68 in final assessment to bank credit treating bank statement as assessee's books of accounts u/s 68 of the Act read with sec 2(12A) of the Act which was also the final direction in forwarding letter of investigation wing dated 30.03.2016 is in accordance with applicable legal norms in peculiar facts as highlighted above?

Revenue's submission-

Section 68 of I.T. Act is reproduced as under- Cash credits.

Where any sum is found credited in the books of an assessee maintained for any previous year, and. the assessee ojfers no Arun Duggal explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless--

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

According to Section 68 of Income Tax Act 1961, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not satisfactory in the op inion of A.O., the sum so cred ited may be charged to income tax as the income of the assessee of that previous year.

The basic precondition for the Section 68 is that the assessee should file a valid confirmation. Valid confirmation has no specific format b ut it must contain name, complete address of the lender. It is better if PAN of the lender is also obtained as, Arun Duggal if no PAN given then ambit, of d oubt is far more for the AO. With the confirmation the AO must insist on some identity proof like copy of driving license, cop y of passport, copy of ration card or election ID card etc. The confirmation so filed must ind icate comp lete details of transactions (lik e mode- cash or cheq ue, with number date of cheque with bank details). The AO have right to demand the copy of bank account of the lender evidencing such transactions and the same needs to be filed. In case transaction is in cash then AO must demand cash flow statement of the lender, preferably containing details of opening balance and its source thereof.

Under Section 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing Officer, the source and nature of the amount of cash credits, he is entitled to draw an inference that the cred it entries represent income taxable in the hands of the assessee. It is not the d uty of the Assessing Officer to locate the exact source of the cash credits. The burden to identify the source lies upon the assessee and he is req uired to explain the genuineness of the credit entry.

Provisions of section 68 apply to all credit entries in the cases where credit entry has been made in the books of the assessee, the amb it of Section 68 is wide and inclusive. Provision applies to all credit entries. The language of Section 68 shows that it is general in nature and applies to all credit entries in whomsoever name they may stand, that is, whether in the name of the assessee or a third party as held in the case of Gumani Ram Siri Ram v. C IT [1975] 98 ITR 337 (Punj. & Har.).

Arun Duggal The section has applicability even in the cases of search as Section 68 is a provision of general app lication and there is nothing either in Section 132 or Section 68 or elsewhere to exclude the application of this general provision to a case where the business premises or the residence of a person has been searched and the documents and other things seized under Section 132 of the Act. The presumption under Section 132(4A) does not override or ex clude Section 68, that is, it does not obviate the necessity to estab lish by independent evidence the genuineness of the cash credits under Section 68, nor does it do away with the burden which is on the assessee to estab lish the requisites of cash credits as held in the cases of Pushkar Mamin Sarraf vs. CIT [1990] 183 ITR 388 (All) and Daya Chand vs. CIT [2,001] 250 ITR 327 (Delhi).

There is no stip ulation that section 68 can only be invoked in case of search and seizure action only .

5.6 Whether recent order of Hon'ble E bench of Delhi ITAT dated 19.01.2021 in assessee's own case (covering/dealing identical /same issue of addition based on same bank credit) invalidates the stand of revenue in extant case on merits of the matter?

Revenue's submission - In this regard, it is submitted that Hon'ble ITAT vide its order dated 19.01.2021 has allowed the Assessee's appeal by quashing the assessment proceedings on the issue of ap proval under section 153D of the Act. it is pertinent to mention here that Hon Tie ITAT has not gone into the merits of ap peals in its order dated 19.01.2021 thus no inference can be drawn from this order regarding merits in this case.

Arun Duggal Written Submission-III dated 16.08.2021

1. Assessee has argued that reasons recorded are conclusions without any factual enquiry/back material on record. It is submitted that reasons were recorded after carefully going through information received from the Investigation wing alongwith its annexures (Bank statements of South Ind ian Bank accounts of M/s Alfa India). As can be seen from the Annexures i.e. bank statements, there are multiple transactions in the name of Sh. Arun Duggal. Thus, assessee's contention regarding non-availab ility of any back material on record is not justified.

2. Here it is submitted that the Assessing Officer in accordance with the Notice u/s 143(2) gave the assessee an opportunity to g ive narration/explanation of credit entries in his bank account. Inspite of various opportunities given with regard to assessee to explain the sources of the two bank accounts operated by him during the year under consideration, he refused to cooperate with the Assessing Officer during the Assessment proceedings and do not g ive any explanation for the credit entries in the bank account of M/s Alfa Ind ia during the financial year relevant to this Assessment

year.

3. During the course of search & seizure, statement of Sh. Arun Duggal was recorded on 29.12.2015 u/ s 133A regarding his proprietary concern M / s Alfa India which is reproduced below-

Question no. 9 at page 5- Please tell how are you related with M/s Alfa India?

Arun Duggal Answer- I am in no way associated with M/s Alfa India. I am hearing this name for the first time. I do not have any kind of interest in M/s Alfa India. Even my family members are not associated with this concern.

4. Regarding this claim of assessee, Assessing Officer has submitted copies of Bank account opening Form & KYC of M/s Alfa India for the bank account no. 0419073000000213 South Indian Bank Gurgaon and 035873000002431 at South Indian Bank Chittaranjan Park, New Delhi. Copies of the same are furnished before the Hon'ble Bench. These have been obtained by the Assessing Officer from the Branch Managers of the respective bank branches at Gurgaon and Chittranjan P ark. As can be seen from the Bank account opening form of M/s Alfa India, Sh. Arun Duggal is the proprietor of M/s Alfa Ind ia and he has also submitted his Voter Identity card as identity proof alongwith account opening form. It is pertinent to mention here that Sh. Rajnish Talwar is the introd ucer for both the bank accounts of M/ s. Alfa India with South Indian Bank. In the account opening form of South Indian Bank , Gurgaon Branch, it is seen that Mr. Arun Duggal, the assessee has given special instruction that "Mr. Sanjay Duggal Proprietor (??) will operate the account." [Emphasis supplied]

5. This makes it amply clear that not only is Sh. Arun Duggal, the proprietor of M/s Alfa India, but he has also opened both bank accounts of M/s Alfa India with South Indian Bank at Chittranjan Park and Gurgaon. Denial by Arun Duggal of any knowledge of M/s. Alfa India in his statement recorded by Investigation wing during surv ey u/s 133A on 29.12.2015 is patently false.

Arun Duggal

6. In this regard the sub mission by Shri. Sanjay Duggal, brother of Shri. Arun Duggal, was recorded during post-search proceedings on 24.02.2016 at the office of ADIT Faridabad , during which he was confronted with his reply in statement recorded during the course of search between 29th to 31st December, 2015.... "In relating to M/s Alfa India you gave variable response while under oath. The response varied from-

a) used for promotional activities through gift distribution in the nature of brand promotion on behalf of firms like Discovery Asia

b) funds received in account of M/s Alfa India on account of unaccounted sales made by M/s JIL

c) under reporting/sales suppression by M/s JIL by receiving payments in the account of M/s Alfa India."

7. From the statements of assessee recorded on 29.12.2015 and his brother Sh. Sanjay Duggal recorded during post search proceedings between 29th and 31st December 2015, it is amply clear that they have intentionally created a smokescreen regarding the credit of unexplained money into the bank accounts of M/s Alfa Ind ia with South Indian Bank and have deliberately refused to g ive any cogent reply to either the Assessing Officer or the CIT(A) in this regard.

8. Copy of approval letter from ITO(Technical) O/o Pr. C IT Faridabad to Assessing Officer at page-51 of the Assessment record shows that the approval for issue of notice u/s 148 of the Act was g iven by Pr. CIT Faridabad after perusing the reasons recorded by the Assessing Officer which was forwarded to Pr. CIT Faridabad by the Addl. C IT Faridabad.

Arun Duggal

9. Copy of proforma seeking app roved for reopening the assessment along with reason recorded by Assessing Officer at page-44 & 45 of the Assessment record shows that the Assessing Officer followed due process of law as per the I.T. Act prior to seek ing approval for reopening the assessment u/ s

148.

9. Perusal of the Assessment record which is being furnished before the Hon'ble Bench will hop efully bring more clarity.

Written Submission-IV dated 06.10.2021 1.1 I would like to draw your Honour's kind attention to page no. 58 of Revenue's written sub mission dated 17.08.2021 which is a copy of approval letter dated 31.03.2016 from ITO(Technical) O/o Pr. CIT Faridabad to Assessing Officer i.e. ITO, Ward-1(1), Faridabad. It can be seen that para 2 of letter which states-" In this regard, I am directed to return the following files alongwith the approval of Worthy Principal Commissioner of Income tax, Faridabad u/s 151 of the I.T. Act, 1961 for your kind approval and necessary action.

1.2 This shows that Pr. C IT, Faridabad has given approval u/s 151 after perusal of the files which were subsequently returned to Assessing Officer alongwith approval. Thus, the assessee's contention about mechanical and rubber stamp ap proval by Pr. CIT Faridabad is not correct.

1.3 I would also like to draw your Honour's kind attention to page no. 4 of Revenue's written submission dated 17.08.2021 wherein it can be seen that Asstt. Director of Income Tax(Inv.)-II, Faridabad has marked a copy of his letter F.No. ADIT/ INV-II/ FBD./2016- 17/4974 dated 30.03.2016 to Joint Arun Duggal Commissioner of Income Tax , Range-I, Faridabad for kind information. Thus, Joint Commissioner of Income Tax, Range-I, Faridabad also had a copy of the information intimated to Assessing Officer vide above cited letter of Asstt. Director of Income Tax(Inv .)-II, Faridabad . Hence, by no stretch of imagination can it be said that the approval g iven by Pr. C IT Faridabad for reopening recorded u/s 147 is either without application of mind or so called dotted line borrowed satisfaction as has been claimed repeatedly before this Hon'b le Bench by Ld. AR of appellant.

2. Further, I would like to place reliance on following case laws-

> 1. Hon'ble Delhi High Court in the case of Experion Developers (P.) Ltd. vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) has held that where necessary sanction to issue notice under section 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer.

2. In Network Infrastructure Ltd. vs. Assistant Commissioner of Income-tax, Corporate Circle-1(2), Chennai [2021] 130 taxmann.com 195 (Madras) HIGH COURT OF MADRAS Chennai (Assessment year 2010-11)- has held in favour of the Revenue that on the basis of information during assessment year 2010-11, assessee had made p ayments to some companies which were not genuinely eng aged in business of sale of software. It was concluded that purchase made b y assessee-comp any had to be disallowed Arun Duggal and considered for tax incidence and, thus, reassessment was initiated. On writ, assessee submitted that said issues were examined by Assessing Officer during scrutiny assessment and, thus, there was no tangible material to reopen assessment. Whether since disp uted facts could not be gone into by High Court in a writ proceeding under article 226, which was to be done with reference to documents as well as evidences made available before competent authority and reasons furnished for reopening of assessment as well as finding s made in order disposing of objections were candid and convincing , reopening of assessment was justified - Held , y es

3. In Aircel Cellular Ltd. vs. Deputy Commissioner of Income-

taxmann.com 164 (Madras) HIGH COURT OF MADRAS Petitioner-company was engaged in business of providing telecommunication services. In its return of income for relevant year, petitioner/assessee claimed deduction under section 80-IA which was allowed accordingly. Thereafter, Assessing Officer noticed that assessee commenced operation in year 1996-97 but it started claiming section 80-IA deduction from year 2005-06 and he observed that since assessee had no option to choose initial assessment year in terms of provisions of section 80-IA as existed in assessment year 1996-97, it could claim deduction only in assessment year 1996-97 itself and for subsequent nine years and not from any other year and, accordingly , assessee was eligib le only for 30 per cent of deduction claim and remaining 70 per cent was to be taxed and , initiated reassessment - Whether since on account of certain informations provided by assessee, a Arun Duggal wrong assessment had been made and excess d eduction was allowed to assessee under section 80-IA so as to cause loss to revenue, then it was to be construed that assessee had not disclosed fully and truly all material facts, and authorities had got every reason to believe that assessment was to be reopened and excess claim allowed to assessee should be disallowed and writ petition against said reopening was to be dismissed - Held, yes [Paras 16 - 17] [In favour of revenue] II. Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non d isclosure of primary facts (General) - Assessment years 2006-07, 2007-08 and 2009-10 - Whether scope of section 147 is wider enoug h to cover under-assessment also and when on account of certain information provided by assessee, a wrong assessment had been made and excess deduction was allowed, so as to cause loss to revenue, then, it is to be construed that assessee had not disclosed

fully and truly all material facts - Held, yes [Paras 16 - 17] [In favour of revenue] III. Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non d isclosure of primary facts (Reason to believe) - Assessment years 2006-07, 2007-08 and 2009-10 - Whether when prima facie case is made out by department to arrive a conclusion that there is a reason to believe, that income has escaped assessment, then revenue must be permitted to proceed with reopening proceedings and mere reopening would not cause any prejudice to assessee and during adjud ication, assessee would get an opportunity to defend his case in manner Arun Duggal known to law - Held, yes [Paras 16 - 17] [In favour of revenue]

4. In Orchid Chemicals & Pharmaceuticals Ltd. u/s. Deputy Commissioner of Income-tax, Company C ircle V(l), Chennai [2021] 129 taxmann.com 404 (Madras)HIGH COURT OF MADRAS In course of scrutiny assessment, it was found that assessee claimed deduction under section 10B by reporting higher profit in EOU unit by claiming deduction on account of expenditure relatable to non-EOU units. AO opined that for relevant assessment year deduction claimed by assessee needed to be disallowed and it was a fit case for issue of notice under section 148. Assessee filed writ petition and sought to quash section 148 notice. It was found that fact about higher claim of section 10B ded uction came to knowledge of department only when a survey was conducted and this information was not available earlier when assessment orders were passed. Whether if accounts were cast to distort income to show higher profit from EOU operation to claim deduction under section 10B, revenue would be justified in reopening assessment und er section 147 and, thus, reopening of assessment appeared to be in order - Held, yes [Paras 17 and 18] [In favour of revenue]

5. In Nishant Vilaskumar Parekh vs. Income-tax Officer, Ward 1(3) [2021] 129 taxmann.com 119 (Gujarat) HIGH COURT OF GUJARAT- Assessee company sold 40,000 shares of a company held by it and earned long-term capital gain (LTCG) of certain amount and claimed same as exemp t income under section 10(38) - Same was allowed and an assessment order was passed - An Arun Duggal information was received from AIMS module that shares sold by assessee were of penny stock. On basis of same, Assessing Officer issued a reopening notice against assessee. It was noted that said information was specific with regard to transactions of penny stock entered into by assessee. On basis of information received, Assessing Officer had mad e independent enquiry and applied his mind to such information and upon due satisfaction and materials gathered during enquiries, finally formed a belief that income had escaped assessment. Whether, on facts, impug ned reopening notice issued against assessee after four years was justified - Held, yes [Paras 16, 17, 21 and 23] [In favour of revenue]

6. In Deputy Commissioner of Income-tax vs. Leena PowerTech Eng ineers Pvt. Ltd. [2021] 130 taxmann.com 341 (Mumbai - Trib.) -Coordinate Bench of Hon'ble ITAT decided that where assessment was reopened in case of assessee on basis of certain information flowing in from investigation wing which indicated that assessee had received monies, in form of share application money, from an entity by name of 'R' but that money, though subjected to routing through several layers, ultimately had its source in form of huge cash deposits in one branch of ICIC I Bank, b urden was on assessee to prove nature and source of credits in his books of account, to satisfaction of Assessing Officer. However, assessee failed to justify huge share premium received by it and material on record did not point towards imp ugned transaction being a regular transaction in

normal course of b usiness, hence, impugned additions made by Assessing Officer were justified.

Arun Duggal

7. In Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd . [2019] 103 taxmann.com 48 (SC)- The Apex Court decided the question whether assessee is under a legal ob ligation to prove receipt of share capital/premium to satisfaction of Assessing Officer, failure of which, would justify ad dition of said amount to income of assessee in favour of the Revenue. Assessee company in its return of income for relevant year showed that money aggregating to Rs. 17.60 crores had been received through share capital/premium. Assessing Officer added back Rs. 17.60 crores to total income of assessee on ground that assessee had failed to d ischarge onus by cogent evidence either of creditworthiness of so-called investor-companies, or genuineness of transaction - On appeal, Commissioner (Appeals), deleted addition on ground that assessee having filed confirmations from investor companies to show that entire amount had been paid through normal banking channels, and hence discharged initial onus under section 68 for establishing credibility and id entity of shareholders. Trib unal as well as High Court confirmed order passed by Commissioner(Appeals). However, it was found that Authorities below did not even advert to field enquiry conducted by Assessing Officer which revealed that in several cases investor companies were found to be non- existent, and onus to estab lish identity of investor companies, was not discharged by assessee. Entire transaction seemed bogus, and lacked credibility . Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish creditworthiness of investor companies stood discharged. Whether therefore, Assessing Officer was justified in Arun Duggal passing assessment order making additions under section 68 for share capital/premium received by assessee company - Held, yes [Paras 8.2, 8.3, 13 and 15][In favour of revenue].

8. In NDR Promoters (P.) Ltd. vs. Principal Commissioner of Income-tax [2019] 109 taxmann.com 53 (SC) SUPREME COURT- The Apex Court decided the issue of additions made under section 68 in resp ect of share application money in favour of the Revenue. During the year, assessee-company received money in form of share capital from five companies. Assessing Officer received an information that share capital money received by assessee was bogus as aforesaid five companies from whom it received premium were operated by one, 'TG', Chartered Accountant who had set up about 90 companies for providing accommodation entries - Accordingly , he made an additions under section 68 in respect of impugned share application money received by assessee - It was noted that assessee had failed to produce directors of shareholder companies, thoug h directors had filed confirmations and, therefore, were in touch with assessee

- Further, it was found that directors of all these five companies were either employees of 'TG' or close relatives

- All five shareholder comp anies were located at a common address - During search on premises of TG', it was found that all passbooks, cheque books, P AN cards etc. belonging to said comp anies were in possession of 'TG' - High Court by impugned order held that, on facts, impugned additions made under section 68 in respect of share application money was justified - Whether Special Leave

Petition filed against impugned order was to be Arun Duggal dismissed - Held, yes [Paras 12 and 13] [In favour of revenue].

72. Heard the arguments of both the parties and perused the material availab le on record. We have examined the arguments, judgments relied upon, the written submissions and the record before us in detail.

73. The first contention taken up by the ld. AR that whether use of Section 148 for instant period is in accordance with law when the assessee is already assessed for six years u/s 153A and whether Section 153A as it stood for relevant period permit use of Section 148 for this period outside the scope of Section 153A of the Act?

74. At the outset, the ld. AR submitted that reliance has been placed on the judgment in the case of Director of Income Tax Vs. M/s Mitsub ishi Corporation in Civil Appeal No.1262 of 2016 of the Hon'b le Apex Court dated 17.09.2021. We have perused the said judgment and find that the judgment d eals with the issue of interest on advance tax payment u/s 234B but not with an issue connected with the provisions of Section 148 or Section 153C as canvassed. For the sake of ready reference, snap shot of said judgment is reproduced below:

> "The conundrum befor e t his Court concerns t he liability of an ass es see to pay i nt erest on s hort p ayment of adva nce tax due to default of the payer i n not d educti ng tax at the time of payment, under the provisions of the Inc ome-tax Act, 1961 (her ei nafter ref erred to as t he "Act"). The fact s givi ng rise t o Civil Appeal No. 1262 of 2016 are ref erred to herein, for the sake of c onveni ence.
>
> 2. Notice was issued to t he R es pondent-As sess ee under S ec tion 14 3 (2) of the Ac t on 12.10.2004. The Arun Duggal Assessi ng Offic er pass ed an ass essm ent order on 24.03.2006 for the assess ment y ears 1998-99 to 2004-05. The Ass essee is a non-resident c ompany i ncorporat ed i n Japan, with oper ations i n India. In spite of r esista nce from the Assess ee, it was held by the D epartment t hat a p ortion of the Assessee's incom e was attributabl e to its activiti es i n India and was therefore liabl e to be taxed i n I ndia, under Articles 4, 5 and 6 of the Double Ta xati on A voidance Agreement bet ween India and Japan, read wit h the provisions of the Act . The R espondent-Assess ee filed appeals agai nst the ass essment order dated 24.03.2006 bef ore the C ommissioner of Inc ome-Tax (Appeals) (hereinaft er r eferred to as the "C IT") only wit h respect to levy of i nter est under S ec tion 234B of the Ac t. The C IT dismissed the appeals by a common order dated 10.02.2009, aggrieved by whic h the Respond ent filed appeals bef ore the Inc ome Tax A ppel late Tribunal .....

75. The provisions of Section 153A and Section 148 operate under different arena and different situations and for different purpose. The provisions of Section 153A reads as under:

> "Section 153A Assessment in case of search or requisition "153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151

and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall--

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause

(b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

Arun Duggal

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years] :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years]:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this sub- section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [and for the relevant assessment year or years]:

[Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless--

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.--For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Arun Duggal Explanation 2.--For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.] (2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.--For the removal of doubts, it is hereby declared that,--

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

76. The provisions of Section 153A have been brought into fore to deal with assessments to be undertaken based on the documents, bullion and other material found and seized during the course of search and seizure operations u/s 132 of the Income Tax Act, 1961. The section have been brought to specifically deal with assessment in case of search or requisition wherein six assessment years immediately preceding the assessment year relevant to the previous y ear in which such search action is cond ucted or requisition made as per the provisions u/s 153A. The AO can assess total income in respect of each assessment year falling within such six assessment years. On the date of the search in the assessments which already stood completed, and in case no incriminating material was unearthed during the search, no additions could be made to the income already assessed. Any material which is not found in the case of the search cannot be utilized in the Arun Duggal assessments passed u/s 153A. Similarly, the provisions of Section 153C are very specific with regard to the seized material belonging to a person other than the person referred in Section 153A. The provisions of Section 153A, Section 153C and Section 148 are very specific and cannot fall into each

other or can be interpolated nor can be invoked against the mandate of each section.

77. The Hon'ble jurisdictional High court in the case of Kab ul Chawla held that:

"On conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six A.Ys immed iately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pend ing on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other word s there will be only one assessment order in respect of each of Arun Duggal the six AYs "in which both the disclosed and the und isclosed income would be brought to tax".

iv. Althoug h Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information availab le with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to comp leted assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment und er Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

Arun Duggal

78. Hence, the leg islature and the jud icial pronouncements thereof carved out specific niche for each provision of the section and sub-sections thereof.

79. In contrast to the provisions of Section 153A, the provision of Section 148 reads as under:

> "S ection 148 Is sue o f no tice where income has es caped assessment.
>
> 148. (1) Before maki ng the ass es sment, reassess ment or re-c omput ati on under s ecti on 147, the Assessing Of ficer shall serve on the assess ee a notice requiri ng hi m to f urnish withi n s uch peri od, as may be specifi ed i n t he notice, a ret urn of his inc ome or the inc ome of any ot her person i n res pect of which he is ass essabl e under this Act during the previ ous y ear c orrespondi ng t o the relevant assessment year, i n the prescribed form and verified i n the presc ribed manner a nd s etti ng for th suc h other partic ulars as may be prescribed; a nd the provisions of t his Act shall, so far as may be, apply accordi ngly as if such return were a return required t o be f urnis hed under section 139:
>
> Provided that i n a case--
>
> (a) where a ret urn has been furni shed duri ng the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this sec tion, and
>
> (b) subs equently a notic e has been served under sub- section (2) of section 143 after the expiry of twelv e mont hs specified in t he pr ovis o to s ub-secti on (2) of s ec tion 143, as it stood immediately bef ore t he amendment of sai d sub- section by the Fi nanc e Ac t, 2002 (20 of 2002) but bef ore the expiry of the time limit for making t he assess ment, re- assessment or re-computation as specified in sub-s ecti on (2) of section 153, every s uc h notice refer red to in t his clause s hall be deemed to be a valid notic e:
>
> Provided fur ther t hat i n a c as e--
>
> (a) where a ret urn has been furni shed duri ng the period commencing on the 1st day of October, 1991 and ending on the 30th day of S eptember, 2005, in res pons e t o a notice served under this sec tion, and Arun Duggal
>
> (b) s ubsequentl y a notic e has b een serv ed under clause (ii) of s ub-s ecti on (2) of s ec tion 143 after the ex piry of t welve mont hs specifi ed in the provis o t o clause (ii) of sub-s ection (2) of section 143, but bef ore the expiry of the time limit for maki ng t he ass essment, reass ess ment or re-c omputati on as specified i n sub-section (2) of s ecti on 153, every such notice r eferred t o in t his claus e s hall be deem ed to be a valid notice.

Explanati on.--For the removal of doubts, it is hereby declared that not hi ng c ont ained in the first proviso or the second proviso shall apply to a ny return which has been fur nished on or after t he 1st day of October, 2005 in res pons e to a notice s erv ed und er this sec tion.

(2) The Assessi ng Of ficer s hall, bef ore issui ng any notice under this sec tion, rec ord his reas ons f or doing so."

80. Section 148 of the Income Tax Act, 1961 deals with the issuance of notice wherein any income is found to have escaped re-computation or assessment. The section asserts that an Assessing Officer so assigned will intimate the assessee in question by sending them a notice wherein they will be required to produce the details as sought. The assessee is required to produce the details of his/her income tax returns within 30 days of the duration that has been specified by the assessing officer in the notice given. In the case that the assessee needs to provide income tax returns of any other assessab le person, then he or she has to provide them in the format specifically mentioned as per provisions of the act, with any other information to be provided with the detailed information. Before the issuance of a notice, the Assessing Officer will not state the reason for the notice given to the assessee in question. The assessee can ask for the reason on receipt of the notice.

• Before issuing a notice to the assessee based on the provisions under Section 148, the Assessing Officer should have some kind of concrete evidence that Arun Duggal suggests the Assessee in question has evaded assessment of income tax return for the relevant year of assessment. Without any proof, the officer can't produce a notice based on mere suspicion.

• A reasonab le link must be presented linking the material presented to the assessing officer with a reason to believe that the assessee has tried to evade assessment for the particular year in question. • The information provided to the assessing officer should be of utmost relevance to the particular and not be based on any superficial reasoning and understanding. • Before issuing the notice, the assessing officer must provide in writing as to why he/she thinks that the assessee in question has tried to evade the assessment of income.

• Simp ly stating and doub ting that the assessee is hoarding a large sum of money without providing proof, reason, and information to back up the claim will not be considered as a valid reason to issue a notice under Section 148.

• Unless any new information or reason is presented to the assessing officer, he or she can't issue a notice to the assessee purely based on a difference of understanding. The assessment officer shall have no reason to suspect the assessee if he/she has provided disclosure regarding the particulars related to his/ her taxable income as well as disclosed the practical and factual information that has led to the completion of his or her assessment and reassessment.

• The Assessment officer cannot issue a notice based on the facts and information gained by reading the documents and information that assessee has already Arun Duggal submitted during the course of the assessment. The Assessing Officer can only issue a notice if and only if he/she has been

presented with the new information and not by reading it by himself/herself.

• If any fact or information arises, which has been disclosed previously relevant to the assessment in question, the assessing officer can immediately issue a notice under Section 147/148, even if the information has come to notice in a later period.

• As per the provisions of Section 149, no notice u/s 148 shall be issued, if four years have elapsed from the end of relevant assessment year or four years but not more than six years have elapsed from the end of relevant assessment year unless the income chargeable to tax which has escaped assessment amounts or lik ely to amount to Rs.1,00,000/- or more for that year.

81. Thus, from the bare reading of provisions of the Act, on going through the legislative intention and inbuilt safeguards with regard to the invocation of the provisions, the contention of the assessee that since the assessee has already assessed u/s 153A the provisions of Section 148 cannot be invoked is hereby held to b e legally invalid . The jurisdiction for triggering the assessment proceedings under both the sections stands in different scenario. Assessments/ reassessments under Section 153A as d iscussed in detail in the foregoing paragraphs are triggered by the action taken u/ s 132 and thereafter the AO has to mandatorily pass assessment and reassessment for the six preceding assessment years in terms of Section 153A. In case, there is any incriminating material or d ocuments are found from the possession of the assessee, that can be subject matter of additions in assessment/reassessment. Whereas in Arun Duggal case of reopening u/s 147, the Assessing Officer acquires jurisdiction to reopen the case b ased on any tangible material or information coming into his possession from any source having live link nexus with the income escap ing assessment for a particular assessment year to which information/material pertains to. This material difference has to be kept in mind . Here, in this case material information was received to the Assessing Officer who after due application of his mind has entertain reasons to believe that the deposits in the bank account of the assessee is unexplained and to that extant income chargeab le to tax had escaped assessment.

82. The ld. AR has also raised as to whether four incidents of receipt of investigation wing information on 31.03.2016, drafting reasons on 31.03.2016, taking mechanical approval on 31.03.2016 and issuing notice u/s 148 on 31.03.2016 on dotted lines, itself shows non application of mind on p art of Ld. AO and Ld. PCIT who respectively recorded satisfaction and gave sanction to reasons recorded? - We strong ly rely on Hon'ble Mumbai bench 1TAT decision in case of Bajaj Hindustan Ltd (30.08.2021) decision on identical facts apart from two recent Hon'ble jurisdictional Delhi high court two decisions reported at 437 ITR 1 & 435 ITR 642.

83. The ld. AR raised the issue as to whether reasons recorded dated 31.03.2016 can pass test of legal scrutiny on its own u/s 148(2) and can it be said to be based on valid and justified reasons leading to valid "believe " or is it merely based on suspicion and borrowed satisfaction as evident from first five /six lines of reasons recorded? On basis of 103 ITR 437 (lakmani mewal dass) and 435 ITR 642 (synfonia case) we strongly plead that instant reasons lack live nexus as they are Arun Duggal based on borrowed satisfaction and further they are based on mere suspicion which is evident from first opening paragraph of instant reasons recorded and revenue's belated attempt to

show from account opening forms related inq uiry conducted in august 2021 when case is going at Hon'ble ITAT.

84. The ld. AR has also raised the issue as to whether instant approval of PC IT dated 31.03.2016 u/s 151of the Act in terms of endorsement of "1 AM SATISFIED" can sustain on its own given the present facts? We rely on Hon'b le jurisdictional recent Delhi High Court two decisions reported at 437 ITR 1 & 435 ITR 642 to plead same are non starter and further held to be inadequate in so many cases by this Hon'ble ITAT.

85. Further, the ld. AR arg ued as to whether when repeated request made from appellant side to share relevant investigation wing information which is made basis to reopen the case as referred in reasons recorded, as ob tained by Ld AO, so as to rebut it, same is categorically denied in final impugned assessment ord er at point viii page 7 thereof and said information much less its enclosures, is nowhere confronted to assesseee despite specific request, is a serious violation of GKN Driveshaft procedure and mandate of sec. 142(3) of the Act? We strongly rely on recent Hon'ble Apex court decision in NDTV case 424 ITR 607 and further recent Delhi C bench decision in Sur Buildcon case dated 15.07.2021 where on same facts, proceedings are quashed by Hon'ble ITAT applying sec. 142(3) of the Act. This is further supported by last paragrap h no. 11.3 of Hon'ble Delhi lush court decision in syunfonia case 435 ITR 642.

86. The facts relevant to adjudication of the contentions are as under:

Arun Duggal

1. The information received from the ADIT(Inv.)-II, Faridabad Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal

87. Based on the information, the Assessing Officer has recorded the reasons triggering the initiation of the reassessment proceedings u/s 148. The reasons of belief of escapement of income recorded by the Assessing Officer are as under:

Arun Duggal

88. After recording of the reasons, the Assessing Officer has sent the request for approval u/s 151(1) of the IT Act, 1961 to issue notice to the assessee u/s 148. The said requisition of the Assessing Officer is as under:

Arun Duggal

89. The approval given by the ld. PCIT in accordance with the provisions of Section 151 are as reproduced below. For the sake of ready reference, the provisions of Section 151 of the IT Act are enumerated hereunder:

"S ec tion 151.

Sanctio n for issue o f no tice.

151. (1) No notice s hall be issued under s ec tion 148 by an Assessi ng Of ficer, after the expiry of a period of f our years from the end of the relev ant ass essment year, unless t he Principal C hi ef Commissi oner or Chief Commissioner or Pri ncipal Commissioner or Commissi oner is s atisfied, on the reasons recorded by the Ass essi ng Of ficer, t hat it is a fit cas e f or the issue of s uch notice.

(2) In a c as e ot her t han a cas e falling under s ub-section (1), no notice s hall be issued under sec tion 148 by an Assessing Offic er, who is below the rank of Joi nt Commissi oner, unless the Joi nt Commissi oner is satisfi ed, on t he reas ons rec orded by s uch Assessi ng Of ficer, that it is a fit cas e for the issue of suc h notic e.

(3) For the purposes of sub-sec tion (1) a nd sub-s ecti on (2), the Pri ncipal C hi ef Commissioner or the C hi ef Commissioner or the Pri ncipal C ommis sioner or the C ommissioner or the Joi nt Commissi oner, as t he cas e may be, bei ng satisfied on t he r eas ons rec orded by t he Assessi ng Offic er about fitness of a case for the issue of notic e under section 148, need not issue such notice hims elf ."

90. The approval given by the ld. PCIT in accordance with the provisions of Section 151 is as under:

Arun Duggal No Arun Duggal

91. The said statutory approval by the ld ld.. PCIT PC IT has been conveyed to the Assessing Officer through his office and the files examined by b y the ld. PCIT PC IT before according approval have been duly returned to the Assessing Officer. The said letter is as under:

Arun Duggal

92. From the above, the following undisp uted facts emerge from record that, From the report of ADIT(Inv .) dated 30.03.2016 A bank account related intelligence was received in the office of the ADIT(Inv.) which has been investigated. (page 1) The bank accounts were in the name of Sh. Arun Duggal who is proprietor of the entity named M/s Alfa India. The total credits in the accounts was Rs.12,81,75,000/-. The details of the credits have been tabulated. The details of the transfer of funds have been mentioned. All accounts have been operated in the South Ind ian Bank Ltd.

The ITD records of the assessee have been examined and found that the AS-26 statement reflects only the salary and not TCS credit was found .

The statements of the persons namely, Sh. Sanjay Duggal brother of the assessee and Sh. Rajnis Talwar to whose account most of the monies hav e been transferred have been recorded who submitted that the amounts were received into account of M/s Alfa India upon instructions of M/s Jagjit Industries Ltd .

M/s Jagjit Industries Ltd. denied issue of any such instructions.

The credits in the account of M/s Alfa Ind ia remained unexplained. M/ s Alfa India does not have any business no genuine activity conducted by the M/s Alfa India. The certified true copy of the bank statement of South Indian Bank, New Delhi, Chitranjan Park of the assessee addressed at Faridabad showing the credits/deposit of amounts have been duly enclosed for the entire period.

Arun Duggal

93. On receipt of this information, the Assessing Officer has duly recorded reasons for initiation of proceeding s u/s 147 of the IT Act, 1961. We have gone throug h the reasons which indicates two accounts have received credit from Liquor distrib utors from Haryana it also mentions about the statement of the assessee which was recorded by the ITO(Inv.), Headquarter Gurgaon on 30.12.2015 in which he has stated that he was noway associated with M/s Alfa India and was hearing the name for the first time. The AO has also recorded that the credit into bank accounts of M/s Alfa India remain unexplained. The Assessing Officer has also recorded about the income shown by the assessee for the relevant assessment year. The AO has examined the return for the assessment year which was filed on 14.07.2009 and also examined different heads of income offered by the assessee to tax authorities. The Assessing Officer was in custody of the information with regard to the credits in the bank account as deciphered by the certified copy of the bank statement. We find these are all stark facts recorded by the Assessing Officer. In the entire information received or the reasons recorded there have been no theories, surmises or suspicion. The information gathered was entirely of factual content. The credits in the bank are not disputable nor the bank account i.e. pertaining to the assessee. We also find that the Assessing Officer had a credible information in his possession and the reasons have been duly recorded after application of mind. It is also an und isputable fact that the assessee has denied owing any such bank account during the statement recorded by the department. The statement of the assessee has recorded on 29.12.2015 wherein while answering in question no. 9, he categorically said that "I am in no way associated with M/ s Alfa India. I am hearing this name for the first time. I do not have any kind of interest in Arun Duggal M/s Alfa India. Even my family members are not associated with this concern." The statement of the assessee is grossly wrong and misleading as the account opening forms and the other document given to the bank left no iota of doubt that the bank accounts have been opened by Sh. Arun Duggal at South Indian Bank, Chitranjan Park and Gurgoan. The statement of the assessee is patently false.

94. The main argument of the ld. Counsel was that four incidences viz., 1) receipt of information 2) drafting of reasons

3) approval by ld. PCIT 4) issue of notice on the same date shows non-application of mind and mechanical approval. Having gone through the entire record as mentioned above, we find that the arguments of the ld . Counsel cannot be sustained. We find that the enquiries by the inv estigation are pointed, logical and focused . There has been no allegation except facts brought above with reg ard to opening of the account and credits thereof. The reason of the Assessing Officer clearly mentioned that the AO has applied his mind verified the Income Tax Return of the assessee, gone through the bank statement wherein the credits are appearing. We see no reason for the Assessing Officer to d isbelief or suspect the certified bank statement and if this cannot be a reason to believe there cannot be no other reason that can be espoused. While the citizen and public are d isgruntled

regarding the apathy, red tap ism and delays in various bureaucratic and jud icial procedures, the prompt action taken by the revenue authorities in this case cannot be looked with contempt, rather it is highly appreciable. Keeping the file for longer time, mulling over issue cannot be considered as a sign of application of mind and taking prompt decision must not b e taken as non-application of mind nor mechanical action by the authorities. Urgent needs Arun Duggal inv ite urgent action. The need to take a prompt, immed iate decision which is rationale and judicious is always preceded by pressing reasons in various situations. In the instant case, the information received from the investigation being has been acted upon in a judicious way and the same has b een rolled up by the revenue authorities. Such action cannot be faulted with. The action can be said to be borrowed, mechanical, non- application of mind based on the facts of each case. In the instant case, on going throug h the entire records, we find that there were no theoretical postulates involved in the information or the reasoning recorded by the revenue authorities. Not only that, we have also gone through the satisfaction recorded by the ld . PC IT. The record clearly proves that the entire information has been sent to the ld. PCIT and the ld. PCIT after perusal of the record has accorded the approval and the records have been duly returned . The ld. C IT(A) has sufficient material before him to arrive at a conclusion to accord statutory approval u/s 151(1). The action of the non-application of mind by the ld. PCIT can be up held only in cases where the reasons recorded are wrong or the statutory provisions invoked are incorrect or where there is no nexus between the material available and the satisfaction and belief with regard to the escapement of income is incorrectly derived. This is not a case where the ld. PCIT has g iven a mechanical approval disregarding the factual inaccuracies recorded by the Assessing Officer. The copy of the bank statement bearing A/c No. 0419073000000213 maintained with South Indian Bank, Gurgaon and bank A/c No. 358073000002431 maintained at Chitranjan Park Branch are also a part of the record before the ld. PCIT which has been duly considered along with the reasoning of the AO on the report of the ADIT(Inv.) before according the approval.

Arun Duggal

95. We find in this case the due procedure, application of mind, satisfaction has been rig htly derived by the revenue authorities. We rely on the jud gment of Hon'ble Delhi High Court in the case of Experion Dev elopers (P.) Ltd. vs. Assistant Commissioner of Income Tax in [2020] 115 taxmann.com 338 (Delhi) wherein it was held that where necessary sanction to issue notice u/s 148 was obtained from Pr. Commissioner as per provision of section 151, Pr. Commissioner was not required to provide elaborate reasoning to arrive at a finding of approval when he was satisfied with reasons recorded by Assessing Officer. Thus, we cannot accep t with arg uments that the satisfaction is borrowed, the approval is mechanical and the promptness of the revenue authorities is misplaced. This is a classic case of prompt action on the part of the revenue taking into consideration the information received, having live nex us after satisfaction and the belief based on such information, the approval and satisfaction of the ld . PC IT is aptly derived.

96. Reliance is being placed in the judgment in the case of Network Infrastructure Ltd. vs. Assistant Commissioner of Income-tax, Corporate Circle-1(2), Chennai [2021] 130 taxmann.com 195 (Madras) H IGH COURT OF MADRAS C hennai (Assessment year 2010-11) wherein it was held that on the basis of information during assessment year 2010-11, assessee had made payments to some

companies which were not genuinely engaged in business of sale of software. It was concluded that purchase made by assessee-company had to be disallowed and considered for tax incidence and, thus, reassessment was initiated. On writ, assessee submitted that said issues were examined by Assessing Officer during scrutiny assessment and, thus, there was no tangible material to reopen assessment. Whether since d isp uted facts could not be gone Arun Duggal into by High Court in a writ proceeding under article 226, which was to be done with reference to documents as well as evidences made available before competent authority and reasons furnished for reopening of assessment as well as findings made in order disposing of objections were candid and convincing, reopening of assessment was justified.

97. Similarly, in the case of DCIT Vs. Leena P owerTech Engineers India Ltd. 130 Taxman 341, the co-ordinate Bench of Mumbai Tribunal held that reopening based on the information from investigation wing with regard to receip t of monies that the assessee is held to be valid. The facts are ak in to the facts in the instant case.

98. Hon'ble Gujarat High Court in the case of Nisha Diamonds (P.) Ltd. vs. Income Tax Officer, Ward-1(1)(4) in [2021] 127 taxmann.com 689 (Gujarat) has held that where assessee was aware that transaction with company 'A' was not business transaction but in form of bogus purchase, however, failed to disclose true and correct facts at relevant time, Assessing Officer was entitled to initiate reassessment proceedings on basis of tangib le material which came into his hands through investigation wing. It was also held that where competent authority had given satisfaction in writing and accorded sanction under section 151 to issue impugned notice for reopening assessment, contention of assessee that valid sanction had not been obtained could not be accepted.

99. Hon'ble Supreme Court while delivering judgment in the case of Raymond Woollen Mills Ltd Vs. Income-Tax Officer And Others [1999] 236 ITR 34 (SC) laid down a ratio that the sufficiency or correctness of the material is not a thing to be considered by the courts. It was held.....

Arun Duggal "We have only to see whet her t here was prima faci e s ome material on the basis of whic h the Department could reopen t he c as e. The sufficiency or cor rectness of the material is not a thi ng to be considered at this sta ge. We are of the view t hat the court cannot s tri ke down t he reopeni ng of t he case in the fac ts of thi s cas e. It will be open t o the assessee to pr ove that the as sumption of fac ts made i n the notice was erroneous. The assess ee may also prove that no new f acts came to t he knowl edge of t he Income-tax Of ficer af ter compl etion of t he ass essm ent proc eedi ng. We are not expres sing any opini on on t he m erits of the cas e. The questi ons of fac t a nd law are l ef t open t o b e investi gated and decided by the assessi ng authority. The appellant will be entitled t o take all the poi nts before the assessi ng a uthority."

100. This view is reaffirmed by Hon'ble SC, in case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. 291 ITR 500(5C). The Hon'b le SC has stated as under:

"This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. Pvt. Ltd . [1996 (217) ITR 597 (SC)]; Raymond Woollen Mills Ltd. v. ITO [1999 (236) ITR 34 (SC)]."

101. In Anant Kumar Saharia Vs. CIT [1998] 232 ITR 533 (Gauhati), it was held as follows:

"The belief is that of the Assessing Officer and the reliability or credibility or for that matter the weight that was attached to the materials naturally, depends on the judgment of the Assessing Officer. This court in exercise of power under article 226 of the Constitution of India cannot go into the sufficiency or adequacy of the materials. After all the Assessing Officer alone is entrusted to administer the impugned Act and if there is prima facie material at the disposal of the Assessing Officer that the income chargeable to income-tax escaped assessment this court in exercise of power under article 226 of the Arun Duggal Constitution of India should refrain from exercising the power. In the instant also, the case of the petitioner was fairly considered and thereafter the above decision is taken." (emphasis supplied).

102. In Phool Chand Bajrang Lal vs. ITO [1993] 203 ITR 456, Hon'ble apex court has held as under:

"From a combined review of the judgments of this court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must; record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To Arun Duggal that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examined whether there was any material available on the record from which the requisite belief could be formed by the Income-tax officer and further whether that material had any rational connection. Or a live link for the formation of the requisite belief..."

103. Hon'ble Delhi High Court, while delivering the judgment, in case of Dalmia Pvt. Ltd . Vs Commissioner of Income Tax Delhi [2011] 14 Taxmann.com 106 (Delhi), on 25 September, 2011 has uphold this principle. The Hon'ble HC stated as under:

"..The sufficiency or correctness of the material is not a thing to be considered at this stage as held by Supreme Court in the case of Raymond Woolen Mills Ltd. V ITO (1999) 236 ITR 34 (SC), Green Arts (P) Ltd. V ITO (2005) 257 ITR 639 (Delhi). The assessee cannot challenge sufficiency of belief-ITO V. Lakhmani Mewal Das (1976) 103 I TR 437 (SC)..."

104. We have also gone through the following case laws relied upon by the assessee.

105. Lax mi Machine Works 290 ITR 667 - Not applicable to facts of the case as the present case involves Section 148. Tushar Jag tap ITAT Pune in ITA No. 725/Pune/2015 - Approval granted by JCIT in a routine manner - Not applicab le to the facts of the case.

106. The information is of baked and external dictation - In this case, the information is merely fact base, cogent and undisputed.

Arun Duggal

107. Synphonia Trade Links Pvt. Ltd. - Deals with invalid approval - In the instant case reasons are discernable and rationale neither arbitrary nor illogical.

108. G&G Pharma 384 ITR 147 (Del.) - No independent application of mind and no prima facie opinion, in the instant case, there is prima facie case with regard to und isclosed bank account and the AO has verified the return wherein the banks accounts have not been disclosed indicating verification of the facts as well as the application of mind.

109. Sodhiman Investments Pvt. Ltd. 422 ITR 437 - Reasons to believe means cause or justification - There is a reason to reopening and justification to issue notice.

110. Johari Lal HUF 88 ITR 439 - Dealt with mechanical approval in the instant case, the record proves that there is an independent decision of the ld. PCIT.

111. At the time of reopening what is required is reasons to believe with regard to escapement of income, the Assessing Officer is not required to establish escapement of income. Estab lishing escapement of income is the culmination of examination of material and investigation of the facts following the d ue procedure as env isaged in the Income Tax Act. What is necessary to reopen an assessment is not a final verdict but a prima facie reason. In the instant case, neither the information was wrong nor the reasons to believe were faltered. Hence, we uphold the action of revenue authorities on the issue of impugned u/s 148.

112. Further, from the record, we also find that the assessee was given the entire record for inspection. Hence, the argument Arun Duggal of that the relevant information has not been given to the assessee cannot be accepted. The order sheet entries of the Assessing Officer reveals that " Sh. Vijay Singhla, C A filed a letter seeki ng i nspec tion of rec ord and filed a c hallan of Rs.400/- f or the same. C opy of the reas ons has also been supplied t o him, i nspec tion of t he rec ord has also been made by the c ouns el." Hence, the contention of the assessee is against the facts on record.

113. The Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd . Vs ITO & Ors. In App eal(civil) 7731 of 2002 held as under:

We see no j ustifiable reas on t o i nter fere wi th t he order under challenge. However, we clarify that when a notice under S ecti on 148 of the Inc ome tax Act is issued, the proper cours e of ac tion for the notic ee is to fi le return and if he so desires , to s eek reasons f or issui ng notic es. The ass essing

offic er is bound t o fur nish r eas ons withi n a r eas onable time. On rec eipt of reasons , the notic ee is entitled t o file objecti ons t o issuance of notic e and t he ass es sing offic er is bound t o dispose of the same by passi ng a s peaki ng order. In t he i ns tant ca se, as the reas ons have been disclosed i n these proc eedi ngs, the ass essi ng offic er has to dispos e of the obj ec tions, if filed, by passi ng a speaking O rder bef ore proceeding with the assessment in res pec t of the aboves aid five as sessment years .

114. Hence, the contention of the assessee that there is a serious violation of guidelines, mandate and procedure enunciated in the case of M/s GKN Driveshafts (supra) has no substance. In the instant case, the assessee was issued notice, the reasons were provided and hence the procedure laid down by the Hon'ble Apex Court was duly followed.

115. It was also contended before us that no so cause notice has been given, hence there is a serious violation of principles Arun Duggal of natural justice. From the record, we find that notice u/s 148 has been issued on 31.03.2016. And on 13.04.2016, the assessee requested for copy of reasons recorded u/s 148 which were supplied to the assessee on 21.04.2016. The assessee filed a reply on 13.04.2016 stating that the return filed u/s 139(1) on 14.07.2009 may be treated as ITR filed in response to the notice u/s 148. Notices u/s 143(2) and Section 142(1) have been duly issued , the assessee was asked to justify a credit entry amounting to Rs.12,81,75,000/- by the Assessing Officer. The assessee soug ht ad journment on 05.06.2016 which was duly granted. The assessee has duly furnished reply on 16.12.2016. The assessee has also replied to the query No. 5 in the notice which is as under:

"The assess ee has rec eived nothing from the Alfa India or from Alpine Ent erpris es during the yea r under c onsiderati on. Ac tually the account of Alfa India along wi th other acc ount of mi ne or my family members to which transf ers were made to wi thdraw the cash was mai nt ained/operated at the i ns truc tion of M/s Jagatjit Industries Ltd, the then employ er of Mr. Sanjay Duggal (Real Brot her of mi ne). Even duri ng the searc h proc eedi ngs and post searc h proc eedi ngs , the ass essee along wi th ot her conc erned was subj ect to statement on oat h. Every time t he ass ess ee has clarifi ed t hat the acc ount of Alfa India along with other accounts of mine or my family members to whic h transfers were made to wi thdra w the cas h was mai nt ained/operated at the i nst ructions of M/s Jagatjit Indus tri es Ltd, the then empl oyer of Mr. Sanj ay Duggal (Real Brother of mi ne). However, if the Assessi ng Offic er, is not s atisfi ed with that and is i n the pr ocess of maki ng any additi ons to the i ncome already off ered f or t axation, and maki ng the ass ess ee f or hi gher taxati on, it is request ed with fol ded hands , that the assess ee s houl d be given an opportunity f or c ross ex ami nation t o any of t he officers designated over and above t he pos t of Mr. Banga or Directors of the company itself and should be allowed to take c opi es of their books of Arun Duggal accounts (relevant parts onl y) by mys elf/my c ouns el. Furt her, the copies of the Investigati on Report, on whic h t he Assessing Offic er is relyi ng, may pl ease be provided wit h."

116. From the events narrated above in detail and the reply of the assessee clearly proves that nothing has been done behind the back of the assessee and the assessee has been given ample opportunities on various occasions as to why the case has been reopened and as to what the amounts the revenue is proposing to bring to tax. The assessee has failed every time and feigned

ignorance about the account which has opened with his full knowledge and conscience. With regard to the cross examination of Mr. Banga as soug ht by the assessee, the same could not be provided as Sh. Banga stand left to the heavenly abode. The Assessing Officer cannot be expected to do the impossibility . The principles of natural justice was depend on the circumstances of each case, the set of facts that surround each situation, the nature of enquiry , the rules that govern that procedure, the sub ject matter being dealt with and the prejudice that can be caused to either side. The princip les of natural justice as observed by House of Lords is not engraved on tab lets of stone, the rules of natural justice are flexible to adopt to situation and circumstances to advance the cause of justice. Hence, we find that no infarction of princip les of natural justice can be attrib uted to the conduct of the revenue authorities.

117. With regard to the opening and owing up of the account, the following evidences have been produced before us:

1. Copy of the account openi ng form

2. Copy of the request f or iss ue of pas sb ook and cheque book

3. Copy of the declaration given to the bank dated 18.12.2016 Arun Duggal

4. The ass essee declared to the bank t hat he is carrying busi ness under the name and styl e of Alfa India

5. He has declar ed t hat he is the s ole propri et or

6. He has s ubmitted t hat t he signature as the s ol e pr oprietor to be honored

7. The El ec tion C ommission of India identity card no.

HR/06/51 /072179 bears the name of the assess ee and photograph

8. The ad dress giv en on EC I Card also matches wit h the assess ee

9. The account has been introduc ed by Raj nish Talwar to whom certai n amounts have been t rans fer red

10. There is no disput e on the signatures of the assessee on t his doc uments .

118. For the sake of ready reference, the said documents are scanned and placed below:

> Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal Arun Duggal

119. We find that the revenue department has been conducted enquiries with the bank as to the transactions of the account. The assessee has vehemently arg ued that entire reopening and assessment is made on the basis of mere credit in the bank account and the credit cannot be called as real income in the hands of the assessee. The ld. AR argued referring to the decision of Hon'ble Apex Court in the case Shoorji Vallabh Dass 46 ITR 144. We have gone through the said judgment. The Hon'ble Supreme Court in Shoorji Vallabh Das (supra) has held that income tax is a levy on income and the Act takes into account two points of time at which the liability to tax is attracted i.e., accrual of income or its receipt but substance of the matter is the income. It has further been held that if the income does not result at all, there cannot be a levy of tax even thoug h in book keeping entry is made about a hypothetical income which does not materialize. The Hon'b le High Court of Delhi in Ericsson Communications Ltd. has also taken a v iew that in the absence of any accrual of income, there is no oblig ation on the part of the assessee to deduct tax at source. Similar view has been taken by various other High Court's including in the case of Toyota Kirloskar Motor (P) Ltd. Vs ITO (Karnataka High Court). We find that the facts and ratio of the said judgment is not applicable to the instant case before us.

120. At the cost of repetition, we reiterate the bare facts of this case, that the assessee has opened, operated and owned two bank accounts in which Rs.12.81 crores duly deposited. The assessee before the revenue authorities on various occasions denied the knowledge of having any such account. During the statement recorded on 29.12.2015, the assessee said that he was no way associated with Alfa India and he was hearing the Arun Duggal name for the first time during the assessment proceedings also the assessee contended that he received nothing from Alfa India and explained that it is operated at the instruction of M/s Jagjit Industries Ltd. Late Sh. Banga has denied that any such instructions were given to Mr. Arun Duggal. These submissions of the assessee when weighed against the documentary evidences collected by the revenue authorities, it can be said that the assessee has miserably failed to explain in the cred its in the bank account.

121. Section 68 of the Income Tax Act reads as under:

> "68. Where a ny s um is found c redi ted in the books of an assess ee mai ntai ned f or any previ ous year, and the assess ee off ers no explanati on about the nat ure and source ther eof or t he explanation off ered by him is not, in the opi ni on of the Assessi ng Officer, s atisfac tory, the sum so credited may be charged to income-tax as the inc ome of the assess ee of that previous year:
>
> Provided that where the ass ess ee i s a company (not bei ng a c ompany i n whic h the public are substa ntially interested), and the sum so credit ed c onsist s of s hare application money , share capi tal, s hare premi um or any suc h amount by whatever nam e called, any explanation offered by such assess ee-c ompany s hall be deemed t o be not satisfactory, unl ess--
>
> (a) the pers on, being a resident in whos e name suc h credit is recorded i n the books of s uc h company also of fers an expla nati on about the na ture and sourc e of suc h sum so credited; and

(b) such explanat ion in the opini on of t he Assessing Offic er af ores aid has been f ound to be satisf actory :"

Arun Duggal

122. As per the provisions of the Act, since the assessee failed to prove the source of sum of money found in the b ank account of the assessee they have been rightly taxed by the revenue u/s 68 of the Income Tax Act. Onus of provid ing the source of a sum of money found to have been received by an assessee is on him. When the nature and source of a receipt, whether it be a money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.

[Roshan Di Hatti Vs CIT (SC) 107 ITR 938, Kale Khan Mohammad Hanif Vs CIT 50 ITR 1].

123. Where any sum is found credited in the books of the assessee for any previous year, it may be charged to Income Tax as the income of the assessee for that previous year if the explanation offered by assessee about the nature and source thereof is, in the op inion of the Assessing Officer, not satisfactory. [Vasantibai N. Shah Vs. C IT (Bom.) 213 ITR 805, Sreelekha Banerjee & Ors. Vs. C IT (SC) 49 ITR 112]

124. Cash credit can be assessed even if transaction is through cheques. [K.C.N. C handrasekhar Vs. AC IT (ITAT, Bang), 66 TTJ 355, C IT Vs. United Commercial & Industrial Co. (P) Ltd . (Cal.) 187 ITR 596]

125. Section 68 applicable even to share application money - use of the words "any sum found credited in the books" indicates that the section is widely worded and ITO is not precluded from making enquiry as to the true nature and source thereof even if the sum is credited as share application money. [CIT Vs. Nivedan Vanijyya Niyojan Ltd. (Cal.) 263 ITR 623, CIT Vs. Rathi Finlease Ltd. Ltd. (MP) 215 CTR 429] Arun Duggal

126. Merely disowning the bank accounts by the assessee do not lead to the conclusion that the accounts are not maintained by him when there is a direct evidence contrary to the contention of the assessee. Enquiry was also made from State Excise Authorities of Haryana with regard to the proprietary concern of the assessee and it was proved that the assessee was not authorized dealer for sale of liquor. Hence, any business or liquor trade can be attrib uted and the assessee could not explain the source of deposits and accountab ility thereof to the revenue authorities. The statement of the brother of the assessee Sh. Sanjay Duggal wherein it was stated that the sales of M/s Jagjeet Industries Ltd. were unreported and under invoicing and the d ifferential proceeds have been received could not be substantiated as the verification of books of accounts of M/s Jagjeet Industries Ltd. by the revenue did not yield any such under reporting or under invoicing. The contention of the assessee that he do not have any kind of interest in M/s Alfa India vide the statement recorded on 20.12.2015 and in the subsequent assessment proceedings cannot cut any ice as the documents,

signature, photograph and instructions given to the b ank by the assessee himself. There is absolutory no dispute on this issue.

127. The order of the Co-ordinate Bench of ITAT dated 19.01.2021 has been perused and we find that the said order not dealt on the merits of the issue and the appeal of the assessee was allowed on technicalities of approval u/s 153D.

128. The ld. Counsel has also tried to canvass before us that the entire deposits in the bank account of the assessee did not belong to him and therefore, there is no real income accrued or received to the assessee. We are unable to accept such a Arun Duggal contention for the reason that, firstly, there are actual deposit in the bank account of the assessee for which no explanation about the nature and the source was explained which has led to addition u/s 68. Secondly, Section 68 is a deeming provision wherein the statute provides that if the assessee is unable to explain the nature and source of the credits, then it is deemed to be income of the assessee as undisclosed sources and is taxed accordingly. Provisions of section 68 apply to all credit entries in the cases including where credit entry has been made in the bank account of the assessee, if the assessee fails to offer any explanation fully corroborated and sub stantiated by evidences. The ambit of Section 68 is wide and inclusive and this provision applies to all cred it entries either in the books of accounts or the bank account of the assessee because the bank account itself forms the account of the assessee where the assessee credits the amount for which he is required to explain the nature and source of such credit. The language of Section 68 applies to all credit entries in whomsoever name they may stand , that is, whether in the name of the assessee or even in the name of a third party as held in the case of Gumani Ram Siri Ram v. CIT [1975] 98 ITR 337 (Punj. & Har.). No presump tion under any other section does not override or exclude Section 68, that is, it does not obviate the necessity to estab lish by independent evidence the genuineness of the cash credits under Section 68, nor does it do away with the burden which is on the assessee to estab lish the requisites of cash credits as held in the cases of Pushkar Mamin Sarraf vs. C IT [1990] 183 ITR 388 (All) and Daya Chand vs. CIT [2001] 250 ITR 327 (Delhi). Hence, keeping in view the entire facts and circumstances of the case narrated above, we hereby hold that, firstly, the action of the revenue authorities on the issue of notice u/ s 148, approval under section 151 was in accordance Arun Duggal with the law and second ly, ad dition u/ s 68 has rightly been made as assessee has failed to offer any explanation with regard to nature and source of credit in his bank account and the primary burden cast upon the assessee for proving the credits has not b een discharged either before AO or ld . C IT(A) or before us. According ly, the action u/s 147/148 as well as the addition made u/s 68 is hereby affirmed.

129. In the result, the appeal of the assessee is dismissed. Order Pronounced in the Open Court on 04/01/2022.

Sd/-	Sd/-
(Amit Shukla)	(Dr. B. R. R. Kumar)
Judicial Member	Accountant Member

Dated: 04/01/2022
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR