

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'D+SMC', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 637/Del/2018
Assessment Year: 2009-10**

Peethambra Buildcon Ltd., D-46, East of Kailash, New Delhi.(PAN- AADCP 5251R) (Appellant)	vs.	Income-tax Officer, Ward 19(3), New Delhi (Respondent)
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Appellant by	Shri Sunil Jain, FCA
Respondent by	Sh. Kaushlendra Tiwari, Sr. DR

Date of Hearing	14.08.2018
Date of Pronouncement	23 .10.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of the Id. CIT(A)-VII, New Delhi dated 16.10.2017 for the assessment year 2009-10 on the following grounds :

- 1. On the facts and circumstances of the case and in law, the notice dated 21.03.2016 issued by the learned Assessing Officer under section 148 of the Act is wrong and bad in law and the learned CIT(Appeals) has erred in upholding the validity of the notice.*
- 2. On the facts and circumstances of the case and in law, the notice dated 21.03.2016 issued by the learned assessing officer under section 148*

of the Act was wrong and bad in law as it was barred by limitation and the learned CIT(appeals) erred in upholding the validity of the notice.

3. On the facts and circumstances of the case and in law, the learned CIT (Appeals) has erred in upholding an addition of Rs. 50 lacs as income of the assessee by treating the share capital as unaccounted money of assessee.

On the facts and circumstances of the case and in law, the learned CIT(Appeals) has erred in upholding an addition of Rs. 90000/- made by the learned AO as unexplained investment."

2. The brief facts of the case are that the assessment of the assessee was completed u/s. 143(3) on 30.12.2011. The case was reopened by issuing notice u/s. 148 dated 21.03.2016 after obtaining approval of the appropriate authority. The reasons for reopening of assessment were recorded as under :

The company filed its return of Income on 29.09.2009 for- the assessment year 2009-10 declaring income at Nil thereafter the return was processed under 143(1) of the I.T. Act on 02.11.2010.

2. In this case, the information has been received from the office of the Director of Income-Tax (Investigation-II) Jhandewalan Ext. New Delhi vide letter No. F. No. DIT(lnv)II/U/s.148/2012-13/197, dated 12.03.2013 mentioning therein that a search-operation-was carried out in the case of Sh. Surendra Kumar Jain group of cases (herein after known as Entry operator) wherein after scrutiny of incriminating documents seized during course of Search and subsequent post search enquiry, it has been noticed that the said group was involved in providing accommodation entries to the persons which were named in the report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries provided by the group.

3. As per the report of Investigation Wing, name of various companies/ persons used by the group to provide accommodation entries as well as 'list of beneficiary companies, firm and other entities were identified after extensive verification of documents seized as a result of search operation. The incriminating document seized during search (date of search 14.09.2010) revealed that accommodation entries were obtained by way of share capital/ share premium/loans. The details of accommodation entries viz. amount received

by beneficiary companies, the cheque/ PO number, the name of company engaged in providing accommodation entries, the mediator/ middle man, bank etc. noted from scrutiny of the seized documents have been tabulated and enclosed with the report.

4. In the appraisal report of Sh. Surendra Kumar Jain Group, has summarized evidences which had proved that Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain were engaged in the business of providing accommodation entries. The modus operandi for providing accommodation entries in lieu of cash as adopted by the Jain Brothers have been discussed below in brief:

A. During the course of search proceedings in the Sh. S.K. Jain Group it was found that a number of companies were running from the residential as well as other premises related to Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. However, all the books of accounts and other relevant papers of these companies were found at the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain itself and no documents were found at the other addresses which were mentioned in the statutory records of these companies. The above facts and result of post search enquiries have revealed Shri Surendra Kumar Jain and Shri Virendra Kumar Jain companies are controlled by/ through dummy directors / Principal officers of these companies.

B. The seized records include blank unsigned as well as blank signed cheque book, acknowledgement of filing of return of these companies, user id and password of all companies of e-filing of their return, bank account opening and closing letters, authorization letters for attending assessment proceedings, book of account in tally format as well as format for filing the return, proof of use of mobile numbers of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in bank account opening forms where option of mobile banking was required. The companies were used- in business of providing accommodation entries.

C. The investigation wing has listed 99 companies which were controlled by S.K. Jain Group.

5. The investigation wing has sent relevant details of accommodation entries to the Assessing Officers having jurisdiction over beneficiaries which had obtained accommodation entries from S.K. Jain Group. Scanned copy of the relevant documents seized from S.K. Jain Group wherein the relevant details of accommodation entry taken by the beneficiary from S.K. Jain Group Company were recorded were also sent along with the report.

6. A careful scrutiny of the details and copies of seized documents have revealed that the assessee company has taken accommodation entry amounting to Rs 50,00,000/- in F.Y. 2008-09 from the following S.K. Jam Group Companies:

Name of the Beneficiary	A.Y	Amount	Name of Entry Operator's Details
MIs Peethambra Buildcon Ltd	2009-10	10,00,000	Ad Fin Capital Services P.Ltd.
MIs Peethambra Buildcon Ltd	2009-10	10,00,000	Shalini Holdings Ltd.
MIs Peethambra Buildcon Ltd	2009-10	10,00,000	Mani Mala Delhi Pro. P. Ltd.
MIs Peethambra Buildcon Ltd	2009-10	10,00,000	VIP Leasing & Finances P. Ltd.
MIs Peethambra Buildcon Ltd	2009-10	10,00,000	Virgin Capital Services P. Ltd.
	Total	50,00,000	

7. I have carefully examined the report of investigation wing along with details of transaction as recorded in the seized documents which revealed following important facts:

- i. That passbooks and cheque books of approximately 200 persons/firms/companies engaged in the business of providing accommodation entries along with details of beneficiary companies/ entries were found and seized, from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar. .
- ii. Undated blank cheque and signed by entities engaged in providing accommodation entries were also seized from custody and control of Jain.
- iii. That computer hard discs seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contained confidential details like user name, passwords and IDs of the various companies engaged in providing accommodation entries required for filing of e-returns of these companies, authority letter of these companies authorizing to represent these companies in various Govt. Department. These companies were used to provide accommodation entries of beneficiary including Assessee Company. .
- iv. That details of funds transferred through cheque / RTGS/pay order to various entities / persons through these dummy companies maintained by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in excel sheets found and seized during the course of Search.

- v. That maintenance of books of accounts-in tally format as well as in the format required for preparing Income Tax Return of these companies in the computer Hard Discs found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. .
- vi. That daily cash books, balance sheet and cheque books found and seized from Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain wherein details of cash received from different beneficiary companies/ persons through various middleman/ agents in lieu of accommodation entries provided to them on different dates have been recorded .
- vii. That one of the mediators Sh. Rajesh Aggarwal admitted that he arranged accommodation entries for a group through a person named Sh. Ravinder Goel through various. companies directly controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and also accepted the fact that he knew since long that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain are engaged in the business of providing the accommodation entries in lieu of cash charging a certain amount of commission for the same.
- vlil. That these dummy companies are running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra KumarJain.
- ix. That existence of third' party correspondence with these companies in the custody of Sh. Surendra Kumar Jain and Sh. VirendraKumar Jain have been recovered from S.K. Jain Group Company.
- x. That S.K. Jain! Virendra Jain are / were director in many of these companies in these companies presently or at one point of time in the past.
8. It has been further noticed that out of 99 companies controlled by Shri Surender Kumar Jain and Sh. Virendra Kumar Jain, used for providing accommodation entries a large-number of companies were registered at following common addresses:
- i. 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi (12 companies).
 - ii. 3198-15, 4th Floor, Gali No.1, Sangatrashan, Paharganj, New Delhi(14,Companies).
 - iii. 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj, New Delhi. (11 companies)
9. In order to verify the genuineness and the existence of these companies at the above mentioned addresses, a simultaneous survey action 133A of the I.T. Act, 1961 was carried

out on 14.09.2010 on above referred to address by officers of Investigation Wing on the Department which resulted following facts:

- a. On the address, 106, Palco House; T-10, Main Patel Road, Patel Nagar, Delhi, the survey party found only one person named Sh. Mukesh Kumar S/o Sh. Satyender Kumar, R/o Village Gazera, Distt. Pauri Gadhwal in this premises. He deposed before the survey party that his employer and owner of that place is one Sh. Virendra Jain R/o somewhere in Rajender Nagar, Delhi and provided his telephone No. as 9891095232. It was already proved from the call records that this telephone number pertained to Sh. Virendra Jain."resident of 221/, New Rajinder Nagar; New Delhi. He also disclosed that Shri Virendra Jain used to visit the place once in a while. Sh. Mukesh Kumar also told that no books of account of companies registered on this address was available in the premises i.e. 106, Palco House, :I-10, Main Patel road. Patel Nagar, Delhi.
- b. During the course of the survey at premise no. 3198-15, 4th Floor, Gali No. 1, Sangatrashan, Paharganj, New Delhi, it was found that this premise was a small room, which was incapable of accommodating so many companies-and : persons. Books of accounts and' document of companies registered at this address was not found.
- c. At the third premises 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj], New Delhi, there was single room office occupied by one Sh. Jaikishan Tikku S/o late Sh. Prem Nath Tikku, who was running his courier business from in the name and style of M/s Linkers Couriers since Aug. 2006. Mr. Tikku had told the survey team that he was a tenant of Sh. Surendra Kumar Jain and was paying him monthly rent of Rs.3,000/- in cash every month.

It is evident from the findings of the survey that the companies controlled by Shri S.K. Jain having registered office at the abovementioned three addresses, did not exist at those addresses. Neither books of account and document relating to business nor was employee of these companies found at those addresses. From a single address a number of companies were registered as well as this address was also declared as the residential address of various directors of different companies and partners/ proprietors of various firms engaged in providing accommodation entries. As mentioned above, during the course of survey operation at these-addresses, the premises were found to be very small dwelling units.

10. I have taken note of another fact that was highlighted by investigation wing that : during the course of post search enquiries, they had obtained the bank details of companies of S.K. Jain Group for example account opening forms, introducers' form and statement of accounts etc. for last few years. It was pointed out that in some cases where the option of mobile banking was exercised, the mobile numbers of either of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain were provided, in the ' account opening. forms of those specific companies/firms/persons. Some of these bank accounts as illustration are mentioned in the following table.

Name of the bank	Account No.	Name of the Company	Mobile No.	Person to whom this no. belongs
Axis Bank	224010200005906	Eagle Infratech Pvt. Ltd.	9891095232	Virendra Jain
	224010200007160	Kailash Textiles	9891095232	Virendra Jain
	223010200020846	Mani Mala Delhi Properties Pvt. Ltd.	9891095232	Virendra Jain
	224010200005890	Singhal Securities Pvt. Ltd.	9310395234	Surendra Kumar Jain
	2240102000007016	Roshan Lal Lalit Kumar & CO.	9310395234	Surendra Kumar Jain
	224010200005845	Finage Leasing & Finance Ltd.	9310395234	Surendra Kumar Jain
	223010200012014	Mani Mala Delhi Properties Pvt. Ltd.	9310395234	Surendra Kumar Jain
	224010200006989	Erode Clothing Empire	9310395234	Surendra Kumar Jain

The above facts prove beyond doubts that the 200 odd entities, data pertaining to which were found and seized from the premises of S.K. Jain Group, were controlled and used by Shri S.K. Jain his brother Shri Virendra Kumar Jain for providing accommodation entries.

11. It is also noticed from the following finding as recorded in the report of investigation wing that incriminating documents in the form of hand written cash books were also seized from the residence of Shri S.K. Jain showing the receipts of cash by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain to provide accommodation entries. Finding in this regards may be summarized as under:

a. Cash books seized during search operation were maintained on daily basis to keep a record of their daily transactions of receipts and payments of cash as well as to keep them updated in respect of accommodation entries provided as well as accommodation entries pending in lieu of the cash which they had received. However, the cash transactions which were being recorded by them in hand written cash books were not recorded in their regular books of accounts, To introduce and channelize this unexplained cash in their books, they have shown the sales of various items including Rice etc., made through the bogus proprietary! partnerships firms directly controlled by them.

b. Thus, the cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms! companies in the guise of the cash received against the bogus sales; duly shown in the books of accounts. Later, this Cash was transferred to different paper companies floated by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through complex series of transactions, so as to hide the actual sources of funds.

c. As part of well devised modus operandi the reserve & surpluses and the capital account of a specific set of companies were enhanced with the help of the unexplained cash received by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, which was routed to these companies through their dummy concern/ firm /companies. Once the funds of these companies were increased sufficiently, accommodation entries through RTGS/Cheque/P.O. in the shape of the share capital, share premium, capital gains or loans as per the specific requirement of the recipient clients were provided to beneficiary in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

d. The above findings corroborated with the seizure of documents by investigation wing evidencing the above mentioned process used by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain for providing accommodation entry.

12. As sequel to the information received from the Investigation Wing, copies of available assessment orders & CIT(A) orders of members of accommodation entry group were obtained from assessment wing for examination.

Reason for formation of belief:

13. I have carefully perused and considered the return of income of the assessee, information received from Investigation Wing, copies of incriminating documents seized from custody and control of Jain Brothers, copies of assessment order and appeal order as

discussed along with evidences related to the assessee and have reached the-following conclusion:

- a. That S.K. Jain Group Was engaged in the business of providing accommodation entries to beneficiaries in lieu by entities controlled by them in cash.
- b. During the course of search operation and S.K. Jain Group various incriminating documents were been seized which showed that all the companies/entities controlled by the group do not have any known business activities and lack of independent existence as a separate entity and were a part of group of companies engaged in providing accommodation entries.
- c. The above conclusion was corroborated with the following evidences found and seized during the course of search from their custody and control S.K. Jain Group:

Seizure of passbooks and/or cheque books in the name of approx. 200 persons/firms/companies i.e. entry provider companies..

Computer hard disks containing' confidential details namely User name password, ID of various companies etc.

Documents containing the details of funds transferred through cheque/RTGS/pay order to various entities/persons through these entries provider.

Seizure of daily cash -books wherein details of cash received from beneficiary companies/ persons through various middlemen/agents by Jain Brothers in lieu of accommodation entries provided to beneficiary on different dates. '

That entry provider companies were running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through entry provider companies.

That third party correspondence with entry provider companies were seized from the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

That S.K. Jain / Virendra Jain and there close associates were directors of these entry provider companies during relevant but different time period.

Seizure of documents had revealed that commission income were earned by Jain Brothers and mediator.

d. It was further proved that evidence relating to all the steps involved in providing accommodation entries by entry provider companies in lieu of cash payment to Jain Brothers on charging commission were seized from custody and control of Jain Brothers.

e. A perusal of documents as seized from the premises of Shri S.K. Jam Group and enclosed along with this note as Annexure has revealed that accommodation entry amounting to Rs. 50,00,000/- by assessee from S.K.Jain Group Companies were noted on the seized documents.

14. A careful scrutiny of information received from the investigation wing and subsequent analysis of report of investigation wing, copies of seized document and verification of assessment and appeal order in case of Jain Brothers lead to an irresistible conclusion that in business of providing accommodation entries in lieu of cash payment by beneficiary including assessee by charging commission, accordingly, an amount of Rs. 50,00,000/- represents unexplained credit u/s 68 of the Act in books of A/c of the assessee.

Income Chargeable to tax escaping assessment

15. Considering the above referred to credible information, incriminating seized document u/s 132 of the Act and enquiries and investigation subsequent to the information, I have reason to believe that an amount at least of Rs 50,00,000/-has escaped assessment in case the of the assessee for the relevant year.

16. Prior to 1989 section 147 provided for two grounds to reopen concluded assessments:

(i) On basis of information received by the Assessing Officer assessment could be re-opened. This had to be within four years.

(ii) Where facts material for assessment are not disclosed in the course of assessment, whether within or beyond four years.

Supervening these two requirements in the alternative, the initial condition is that the Assessing Officer has reason to believe that there is escapement of income. The first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only requirement is "reason to believe". For a period beyond 4 years further

requirement was the non-disclosure of material facts necessary for assessment by the assessee.

17. The assessment/re-assessment proceedings in this case for A.Y. 2009-10 period beyond four years but before the expiry of six years from the date of issue of notice this case assessment has been completed for the A. Y 2009-10 u/s. 143(3) on 30.1. However the assessee has not fully and truly disclosed all the material facts necessary assessment for the assessment year .

18. Moreover, as the case pertains to a period beyond four years from the end of assessment years at the time of issue of notice, necessary sanction has to be obtained from Chief Commissioner of Income Tax or Pr. Commissioner of Income Tax or Commissioner Income Tax, in view of the amended provision of section 151(1) w.e.f. 01.06.2015 necessary sanction in this regard is being obtained separately from Pr. Commissioner Income Tax, Delhi -7 before the issue of notice u/s 148."

3. In the reassessment proceedings, the assessee submitted that the return filed originally u/s. 139 may be treated as the return filed in response to notice u/s. 148. Thereafter, the Assessing Officer issued notice u/s. 143(2) on 03.05.2016 and the assessee filed objections against reopening of completed assessment on 09.06.2016 which were disposed of by the Assessing Officer on 04.08.2016 through speaking order. As per information received from the Investigation Wing, the assessee has received Rs.50.00 lacs from above five parties as share capital. Accordingly, to verify the transactions, notices u/s. 133(6) dated 06.09.2016 were issued at the addresses provided by the assessee asking for the details as mentioned in the notices for such transactions. In some cases, the notices returned back and in other cases, no reply was received as follows :

Name of Entry Operators	Comments
Ad Fin Capital Services P. Ltd.	No reply received
Shalini Holdings Ltd.	Notice returned back

Mani Mala Delhi Pro. P. Ltd.	No reply received
VIP Leasing & Finances P. Ltd.	No reply received
Virgin Capital Services P. Ltd.	Notice returned back

Various opportunities were given to the assessee and notices u/s. 131 were also issued to produce the directors, but neither they attended on the appointed date nor any reply received from the assessee. On 25.11.2016, Shri Sunil Jain attended and he asked to confront the relevant documents, which were seized on the search of S.K. Jain Group, which was already confronted earlier by the Assessing Officer. The onus for producing the directors as per summons issued was not discharged by the assessee. The last opportunity was also granted on 28.11.2016. But the assessee did not produce the directors. The Assessing Officer observed that the controller of the entry provider company has himself admitted for such accommodation entry and also the related documents were found during the search operation, which had already been confronted to the assessee during the assessment proceedings and for want of non-compliance of notices, the Assessing Officer added a sum of Rs.50 lacs u/s. 68 of the Act and also added 1.8% as commission for receiving accommodation entries of Rs. 50 lacs, thereby the Assessing Officer made addition of Rs.50,90,000/- and completed the assessment u/s. 144/143(3)/147 of the Act. Feeling aggrieved, the assessee appealed before the Id. CIT(A) and challenged the reopening of assessment as well as merits of addition and also submitted a written submissions relying on many case laws. The Id. CIT(A) after considering the submissions of the assessee and order of the Assessing Officer confirmed the action of the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Id. AR of the assessee reiterated the submissions made before the lower authorities and submitted on legal ground that the Assessing Officer had no jurisdiction to reopen the completed assessment beyond the period of four years without bringing anything on record as to the failure of assessee to disclose all material facts fully and truly necessary for assessment. He submitted that in the original assessment proceedings, the Assessing Officer raised questionnaire by issuing notice u/s. 142(1) dated 03.03.2011, requiring the details of share capital at Sl. No. 6 & 7, which was duly complied by the assessee and accepted by the Assessing Officer. There was no failure on the part of the assessee to disclose fully and truly all material facts for completing the assessment and therefore, the reopening of order beyond the period of four years is not justified at all. Reliance is placed on the following decisions :

(i). Sabh Infrastructure Ltd. v. ACIT (WP(C) 1357/2016 dated 25.09.2017 (Delhi H.C.)

(ii). CIT vs. Suren International (P) Ltd. (Appeal No. 289 of 2012) dated 07.05.2013 (Delhi High Court)

(iii). Allied Strips Ltd. vs. ACIT, (2016) 69 taxmann.com 444(Delhi).

5. He further submitted that reopening on the basis of information received from the investigation wing is also not justified because same issue had already been examined by the Assessing Officer in original assessment

proceedings. Therefore, it is a complete change of opinion. Therefore, the reopening is unjustified. The assessee also filed a paper book containing 161 pages and copies of submissions made before the Assessing Officer also.

6. On the other hand, the ld. DR relied on the order of the lower authorities and submitted that the assessee has not disclosed fully and truly all material facts during the course of assessment proceedings. Therefore, on the basis of information received from the investigation wing, the reopening is justified beyond four years. As per reasons recorded, S.K. Jain group had accepted clearly that they were engaged in providing accommodation entries and the assessee is one of the beneficiaries. The amounts accepted before the investigation wing, are reflected in the books of the assessee. The Assessing Officer at the time of original assessment proceedings did not make any enquiry regarding the share application money received by the assessee. During the course of re-assessment proceedings, the assessee was asked to produce the directors of the share applicant companies, but in spite of number of opportunities provided, he did not comply with it. The case laws cited by the assessee are on different footings and are not applicable in the present case.

7. After hearing both the sides and perusing the entire materials available on record, we observe from the paper book filed by the assessee and the submissions before the Assessing Officer, that in the notice issued u/s. 142(1)

dated 03.03.2011 (PB-46 to 49), at Sl. No. 6 & 7, the Assessing Officer sought following information :

- (i) Names of the shareholders and their shareholding in the prescribed format, as given in the notice.
- (ii) Details of share capital/share application money/share premium raised during the year alongwith confirmations, if any.
- (iii) Details of such share applicants giving their name, addresses, PAN, source of their investments, mode of transactions & bank statements.
- (iv) To establish these share applicant's creditworthiness and genuineness of their transactions.
- (v) Confirmed copy of ledger account from the concerned parties.

In response to the above questionnaire, the assessee had submitted the reply before the Assessing Officer along with ITRs, share application forms, acknowledgement of receipts of shares, bank statements of the share applicants, names and addresses of the share holders and value and quantity of shares etc. and other evidences as required by the Assessing Officer. The Assessing Officer had accepted the reply of the assessee and did not make any addition on this count. The case of the assessee has been reopened on the same issue regarding the share application money received from the above five parties on the basis of information received from Investigation Wing. The assessee, thus, had disclosed all material facts necessary for completion of

assessment. The Assessing Officer has not spelled out in the assessment order as to what material facts or evidences were not disclosed/produced by the assessee relating to share capital increased during the year under consideration. Therefore, in our considered opinion, the Assessing Officer was not justified to reopen the assessment only on the basis of information received from Investigation Wing, that too beyond period of limitation of four years. For this view of ours, we stand fortified by a recent decision of Hon'ble Delhi High Court in the case of Sabh Infrastructure Ltd. (supra), where, the Hon'ble jurisdictional High Court has held as under :

Analysis and Findings

10. The law on this subject is well settled. As held in Kelvinator (supra), the powers under [Section 147](#) of the Act have to be exercised after a period of four years only if there is a failure to disclose fully and truly all material facts and information, by the Assessee. This legal position has been reiterated recently by this Court in [Oracle India Pvt. Ltd. v. ACIT](#) 2017 SCC OnLine Del 9360, [Unitech Limited v. DCIT](#) 2017 SCC OnLine Del 9408, [BDR Builders and Developers Pvt. Ltd. v. ACIT](#) 2017 SCC OnLine Del 9425 and in judgment dated 30th August, 2017 in W.P.(C) 5807/2014 ([Swarovski India Pvt. Ltd. v. Deputy Commissioner of Income Tax](#)).

11. Thus, it is also now well settled that the reasons to believe have to be self explanatory. The reasons cannot be thereafter supported by any extraneous material. The order disposing of the objections cannot act as a substitute for the reasons to believe and neither can any counter affidavit filed before this court in writ proceedings.

12. In the present case, the reasons to believe contained the names of the very same five companies which were initially disclosed by the Petitioner during the assessment proceedings. The number of shares subscribed to by the said companies is the same and the amount received has been disclosed by the Assessee. There is no new material which has been found or mentioned in the reasons to believe which were not contained in the information provided by the Assessee prior to the conclusion of assessment under [Section 143](#) (3) of the Act.

13. In fact, the Petitioner, after initially submitting the details of the companies and the shares subscribed to, further provided confirmations from the said companies. The Petitioner also submitted copies of the balance sheets of the said companies for

the relevant AYs showing that these amounts were duly reflected therein. The said companies were also assessed to tax. Thus, it appears that the AO was satisfied with the details and information provided by the Petitioner.

14. A perusal of the order disposing of the objections reveals that it proceeds on the basis that the information sought for by the Petitioner which formed the basis for the reasons to believe, including the evidence collected, was required to be provided only in the further assessment proceedings. The said order overlooks the fact that the reasons for reopening do not mention as to what fact or information was not disclosed by the Petitioner. This is very vital and in fact goes to the root of the matter. An allegation that the companies are 'paper companies' without further facts is by itself insufficient to reopen assessments that stand closed after passing of orders under [Section 143](#) (3) of the Act.

15. The assessment proceedings, especially those under [Section 143](#) (3) of the Act, have to be accorded sanctity and any reopening of the same has to be on a strong and sound legal basis. It is well settled that a mere conjecture or surmise is not sufficient. There have to be reasons to believe and not merely reasons to suspect that income has escaped assessment. In this case, the reasons failed to mention what facts or information was withheld by the Petitioner. Merely relying upon the statement of Mr. Navneet Kumar Singhania that the companies in question were 'paper companies', by itself, is insufficient to reopen the assessment, unless the AO had further information that these companies were non-existent after making further inquiries into the matter. It is clear that the AO did not make any inquiry or investigation, if these companies were in fact 'paper companies'. No effort has been made to establish the connection between the statement of Mr. Navneet Kumar Singhania and the five companies.

16. Mr. Chaudhary's submission that this Court cannot dictate the manner and content of what is to be written in the reasons to believe is correct as a legal proposition. However, the Court has to examine the reasons to believe to see if it satisfies the rigour of the provisions. The observations of this court in *Multiplex* (supra) are relevant in this respect and are set out below:

"24. In our view, the question whether the Assessee could have been stated to disclosed fully and truly all material facts have to be examined in the light of facts of each case and also the reasons that led the AO to believe that income of an Assessee has escaped assessment. In a case where the primary facts have been truly disclosed and the issue is only with respect to the inference drawn, the AO would not have the jurisdiction to reopen assessment. But in cases where the primary facts as asserted by the Assessee for framing of assessment are subsequently discovered as false, the reopening of assessment may be justified".

17. In the facts of this case, the primary facts have not been shown to be false. The five companies do exist. They did subscribe to the share capital of the Petitioner. They did pay the money to the Petitioner. All the five companies are assessed to tax. These are the primary facts. The reasons to believe rely upon a letter received from the Investigation Wing and Mr. Chaudhary submits that this letter was in fact an investigation report. The report does not form part of the reasons and neither was it annexed to the reasons. Interestingly, even the counter affidavit is silent as to the material which has not been disclosed by the Petitioner. The counter affidavit merely states that the information was specific and the information would be provided to the Petitioner during the assessment proceedings. Thus, if the Revenue had any basis to show that the primary facts were incorrect, the same ought to have been set out in the reasons to believe. That has not been done in the present case.

18. Thus, the Petitioner cannot be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under [Sections 147](#) and [148](#) of the Act was erroneous. The notice dated 20th March, 2015 and the subsequent order dated 1st February, 2016 deserve to be and are hereby quashed.

19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under [Sections 147](#) and [148](#) of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to [Section 147](#) is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons

for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.”

There are several other decisions of Hon’ble Jurisdictional High Court on this issue. Therefore, respectfully following the decision of Hon’ble Jurisdictional High Court, as reproduced above, we are of the considered opinion that the Id. Authorities below fell in error in justifying the reopening of assessment beyond the period of four years from the end of assessment year in question. Accordingly, the appeal of the assessee deserves to be allowed only on this count. No arguments were made by either party on merits of the additions.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 23rd October, 2018.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 23rd October, 2018

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Copy of order forwarded to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi