

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 390, 399, 400 & 401/Kol/2022
Assessment Years : 2011-12 to 2013-14 & 2015-16

Ashika Stocking Broking Ltd. (PAN: AACCA 7156 Q)	Vs.	DCIT, Central Circle-2(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. DR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax(Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 25.05.2022 for the AY 2011-12 to 2013-14 & 2015-16.

ITA No.390/Kol/2022 A.Y.2011-12:

- Issue raised in ground nos. 1 to 5 is a legal issue wherein the assessee has challenged the order of Id CIT(A) upholding the reopening of assessment u/s 147 of the Act by the Ld. CIT(A) as made by the AO without application of mind.
- Facts in brief are that the assessee filed return of income on 29.09.2011 declaring total income of Rs. 4,59,00,910/- which was processed u/s 143(1) of the Act. Thereafter a survey operation u/s 133A of the Act was conducted on 19.05.2015 by

DDIT(Inv), Unit-2(2), Kolkata at the office/business premises of the assessee and it was found during the course of survey that the assessee company has made transactions in penny stocks on behalf of its clients and received commission on these transactions in addition to the normal income. During the course of survey it was also accepted by the director of the assessee company in his statement that the assessee has provided accommodation entries in penny stocks to various individual/entities thereby giving accommodation in the form of long term capital/ short term capital gain/loss through penny stocks through the platform of registered stock exchange. Accordingly the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2018 which was complied with by the assessee by submitting vide letter dated 25.09.2018 that the original return of income filed on 29.09.2011 may be treated as return filed in response to notice u/s 148 of the Act. The assessee has also requested to supply the reasons recorded which were duly provided to the assessee by the AO vide letter dated 30.11.2018. During the course of assessment proceedings, the AO called for various details/explanation from the assessee which were duly furnished by the assessee. Finally the AO on the basis of statement recorded u/s 131 of Shri Anuj Agarwal of M/s Korp Securities Ltd. came to the conclusion that assessee has received 50 paisa per Rs. 100/- which comes to Rs. 1,42,39,422/- according to the AO and was added to the income of the assessee. Besides an addition of Rs. 10,00,000/- was also made to the income of the assessee on the ground that another information was received from DDIT(Inv), Unit-4(3), Kolkata that Mr. Dipu Singh having address at No. 581, Rabindra Sarani, Kolkata 700001 had opened bank accounts No. 2061 and 2609 on 01.06.2010 and 28.05.2010 respectively with Dhanlaxmi Bank Ltd., Brabourne Road, Kolkata in the name of M/s Rosevalley Trade Links Ltd. and M/s Starmark Trade Link Pvt. Ltd. The AO noted that Mr. Dipu Singh is the authorized signatory to both the bank accounts. The AO examined the bank statement of Mr. Dipu Singh and after analyzing the same found that the said bank accounts have been frequently used for depositing of unaccounted cash or funds and thereafter were used to be transferred to the beneficiaries. It was found that the assessee has received Rs. 10,00,000/- on 14.10.2010 which was not

shown in the books of account of the assessee for financial year 2010-11 relevant to AY 2011-12. Accordingly the same was added as unexplained cash credit to the income in the assessment framed u/s 143(3)/147 of the Act dated 18.12.2018.

4. The Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“3.2 I have carefully considered the facts of the case and submission of the appellant. In this case, information was received from the Investigation Wing. This information was collected during survey conducted at the assessee Group. During survey, Investigation Wing had recorded the statements of the key persons of the Group who had admitted about their role in providing accommodation entries in penny stocks. Statements of some of the executives of the assessee Group were also recorded. In their statements, they admitted about doing transactions on behalf of entry operators. Several of the clients of the assessee were paper/shell companies operated by the entry operators and these were used for doing transactions in penny stocks. There were adverse reports of SEBI against the assessee and some of its group companies regarding irregularities in share transactions. Investigation Wing had also recorded the statements of some of the entry operators who had accepted their roles in providing entries in collaboration with the assessee company. Thus, there was sufficient reasons to believe that income has escaped assessment and AO has duly applied his mind before initiating reopening proceedings. The case laws cited by the appellant are distinguishable on facts. There are several judgements where the Hon'ble Courts have upheld the reopening proceedings when reopening was done on the basis of information received from Investigation Wing. In the case of Etiam Emedia Ltd. Vs. ITO, 2(2) (2019) 101 taxmann.com 231 (Madhya Pradesh), the Hon'ble High Court has upheld the reopening proceedings where AO had specific information from the DIT(lnv) that assessee company was merely a dummy concern of a person who allegedly used dummy companies for routing his unaccounted money and further assessee also had certain amount of bogus share application. In the case of HVK International Pvt. Ltd. Vs. DCIT, C.C.3, (2016) 72 taxmann.com 208 (Gujarat) the Hon'ble High Court upheld the reopening of the assessment where AO had relied on the report of Investigation Wing and applied his mind to materials on record and formed his own belief that income chargeable the tax had escaped assessment. In the case of Rainbow Texchem Pvt. Ltd. Vs. ITO, Ward-2(1)(1), (2021) 129 taxmann.com 85 (Gujarat), Hon'ble High Court upheld the reopening proceedings when AO had issued reopening notice on the ground that information was received from Investigation Wing that during survey u/s.133A, several material was impounded revealing accommodation entries of tax bills and bogus loan connected to assessee. In the case of Vilas Vrajlal Parekh(HUF) Vs. ITO, Ward-1 (3) (2021) 129 taxmann.com 68 (Gujarat), the Hon'ble High Court upheld the reopening proceedings where AO issued reopening notice on the ground that information was received from AIMS module that shares sold by assessee were of penny stocks. The Hon'ble High Court upheld the reopening since information was specific with regard to transactions of penny stocks entered into by assessee and AO applied his mind to such information.

Thus, there are a number of judgements where the Hon'ble Courts have upheld the reopening of assessment proceedings on the basis of information received from Investigation Wing. In the current case also credible information was received from Investigation Wing AO has applied his mind and he was satisfied that income had escaped assessment as assessee has not fully disclosed its financial dealings. In the current case, information was received from Investigation Wing. Survey was conducted at assessee's premises as well as at the premises of

other group concerns. Several incriminating material was gathered during survey and post-survey inquiries. These were communicated to the AO. On his part, AO has duly applied his mind and reached the conclusion that assessee had earned undisclosed commission on transactions, in penny stocks. While arriving at this conclusion, AO has also considered the allegation that out of 84 penny stocks identified by Investigation Wing, assessee has done transactions in 65 scrips. These are listed in the satisfaction note. AO has also duly considered the adverse reports of SEBI which had highlighted the irregularities committed by assessee in share transactions. AO has also identified those clients of assessee, who have been found to be entry operators. Besides AO has also discussed about receipt of Rs. 10,00,000/- from a person who has admitted about giving accommodation entries. Thus after duly considering the information received from Investigation Wing, AO has reached the conclusion that income has escaped assessment and it is a fit case for reopening. Under the circumstances and in view of the above discussion, assessee's objections are not maintainable. Hence, this ground is dismissed."

5. The Ld. A.R vehemently submitted that the AO has reopened the case of the assessee u/s 147 of the Act on the basis of information received from DDIT(Inv), Unit-2(2), Kolkata on the basis of survey conducted on 19.05.2015 on the business premises of the assessee during which the wing has found that the assessee was engaged in the business of providing accommodation entries through penny stocks. The Ld AR stated that the assessee is a registered broker carrying all the transactions through recognized stock exchange platform and duly charging commission for rendering services to its clients qua the purchase and sale of securities. The Ld. Counsel submitted that the assessee has received commission which was duly disclosed in the books of account and therefore the reasons recorded by the AO u/s 148 of the Act that the income has escaped assessment to the tune of Rs. 1,42,39,422/- is wrong and against the facts on record while the commission earned by the assessee has duly been shown in the books of account. The Ld. A.R also submitted that even during the course of survey on the assessee ,nothing incriminating was found by the investigation wing against the assessee and the allegation by the investigation wing were wild and without any basis. The Ld AR while referring to the reasons recorded , stated that nowhere the AO has recorded that the assessee has entered into some specific transactions yielding bogus gain to beneficiaries through penny stocks on the stock exchange platform. The Ld AR referred to the reasons recorded and stated that the AO has recorded in the reasons that the assessee along with two other brokers and promoters of 4 listed companies were banned by SEBI vide order dated 2.12.2010 on account of price manipulations and rigging in the stock prices. The AO also noted in

the reasons that the a scam was brought to light in which several companies had colluded with brokers like Ashika Stock Broking Ltd to manipulate the stock prices on the stock exchange platform. The Id AR argued that such notings by the AO in the reasons recorded were totally wrong and devoid of merits as the assessee was exonerated by SEBI vide final report dated 16.03.2012 wherein based on the findings of the investigation no action was recommended against the 69 entities as contained Table III page 7 and 8 wherein the assessee's appeared at sr no. 67. The Id AR therefore stated that the very basis and foundation of the reasons is based upon wrong facts. The Id AR strongly contended that the AO has not applied his mind to the information received from the DDIT Kolkata and just acted on the borrowed satisfaction. Ld. A.R therefore prayed that the AO has not applied his mind while recording a reason which are factually incorrect and cannot be sustained. The Id AR relied on the following decisions in defense of his arguments namely i) *ACIT vs Meenakshi Overseas Pvt. Ltd. [2017] 82 taxmann.com 300 (Del)*, ii) *DCIT vs Great Wall Marketing Pvt. Ltd. in ITA No. 660/KOL/2011 for AY 2002-03 order dated 03.02.2016 and Balaji Health Care Pvt Ltd.Vs ITO ITA No.566& 567/JP/2018 A.Y. 2006-07 & 2007-08 order dated 30.01.2019.* The Ld . A.R therefore prayed that following the ratio in the above decisions and considering the fact of the case the reopening of assessment may kindly be quashed.

6. The Ld. D.R on the other hand submitted that the name of the assessee company was revealed during the course of survey conducted on the basis of credible information on the business premises of the assessee that the assessee was involved in arranging bogus long term/short term capital gain on the stock exchange platform in favour of its clients. The Id DR stated that the AO has fully considered the inputs from DDIT and after analyzing the same recorded reasons. The Id DR while opposing the averments of the Id counsel stated that fact that in the final report SEBI has not recommended any action against the assessee would not render the reasons as without any foundation and application of mind. The Id DR therefore prayed that the legal issue raised by the assessee may kindly be dismissed.

7. After hearing the rival contention and perusing the material on record, we find that the assessee is a registered stock broker trading in sale and purchase of securities on recognized Bombay Stock Exchange and charging commission in lieu of the said services. We note that the assessee has disclosed the commission received for trading on behalf of its clients. Further on the basis of survey conducted by the DDIT, Kolkata, it was found by the Investigation Wing that the assessee was involved in giving accommodation entries in the form of long term capital gain and short term capital gain in lieu of brokerage commission. We have also perused reasons recorded u/s 148(2) of the Act by the AO to reopen the assessment on the basis of DDIT Kolkata report and find that the reasons were recorded very vague manner, are full of infirmities and non application of mind. We note that the AO has recorded in the reasons that the assessee has failed to account for income of the assessee which has escaped assessment to the tune of Rs. 1,42,39,422/- as the assessee has charged commission @ 0.5% on the transactions value. According to the AO the total turnover or the total transactions carried out were Rs. 2,84,78,84,371/- and accordingly the commission comes to Rs. 1,42,39,422/- @ 05%. The AO stated that in para 5 the AO stated that income has escaped assessment. Similarly we note that the AO has relied on the SEBI report which has restrained and banned the assessee from doing any trade on the stock exchange platform vide order dated 02.12.2010 whereas as per final report dated 16.03.2012 of the SEBI the assessee has been exonerated from the said charges by recommending no action or proceedings against the assessee and the earlier order was vacated. We have also perused the order of Ld. CIT(A) in which Ld. CIT(A) has deleted the addition made by the AO of Rs. 10,00,000/- on the ground that the AO has failed to look into the information passed on by the DDIT to the effect that assessee received Rs. 10,00,000/- from two shell companies controlled by Shri Dipu Singh correctly. The Ld CIT(A) while deleting the addition has observed that the assessee has failed to do any verification in the matter as the AO has not been able to identify the bank account in which the money was received nor the AO pointed out from the books whether the money was received as share capital or share application or unsecured loans or under any other head. The Ld. CIT(A) has also stated that the

assessee has consistently been pleading before the AO that it has not received any money from two concerns managed and controlled by Dipu Singh. Thus this is abundantly clear from the above discussion that there has been complete non application of mind by the AO and he has not recorded his own satisfaction and acted on the borrowed satisfaction recorded by the DDIT, Kolkata. Therefore the said reasons have recorded on wrong facts, borrowed satisfaction and without application of mind and the reopening of assessment cannot be sustained. The case of the assessee finds support from the following decisions namely i) In the case of *ACIT vs Meenakshi Overseas Pvt. Ltd.(supra)* wherein it has been held as under:

“19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment..."

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.

25. At this stage it requires to be noted that since the original assessment was processed under Section 143 (1) of the Act, and not Section 143 (3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.

26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment.

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

28.1 In *Signature Hotels (P.) Ltd. (supra)*, the reasons for reopening as recorded by the AO in a proforma and placed before the CIT for approval read thus:—

"11. Reasons for the belief that income has escaped assessment.- Information is received from the DIT (Inv.-1), New Delhi that the assessee has introduced money amounting to Rs. 5 lakh during the F.Y. 2002-03 relating to A.Y. 2003-04. Details are contained in Annexure. As per information amount received is nothing but accommodation entry and assessee is a beneficiary."

28.2 *The Annexure to the said proforma gave the Name of the Beneficiary, the value of entry taken, the number of the instrument by which entry was taken, the date on which the entry was taken, Name of the account holder of the bank from which the cheque was issued, the account number and so on.*

28.3 *Analysing the above reasons together with the annexure, the Court observed: "14. The first sentence of the reasons states that information had been received from Director of Income-Tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lacs during financial year 2002-03 as per the details given in Annexure. The said Annexure, reproduced above, relates to a cheque received by the petitioner on 9th October, 2002 from Swetu Stone PV from the bank and the account number mentioned therein. The last sentence records that as per the information, the amount received was nothing but an accommodation entry and the assessee was the beneficiary.*

15. The aforesaid reasons do not satisfy the requirements of Section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except Annexure, which has been quoted above. Annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. Annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-Tax (Investigation) and arrive at a belief whether or not any income had escaped assessment."

28.4 *The Court in Signature Hotels (P.) Ltd. (supra) quashed the proceedings under Section 148 of the Act. The facts in the present case are more or less similar. The present case is therefore covered against the Revenue by the aforementioned decision.*

29.1 *The above decision can be contrasted with the decision in AGR Investment (supra), where the 'reasons to believe' read as under:*

"Certain investigations were carried out by the Directorate of Investigation, Jhandewalan, New Delhi in respect of the bogus/accommodation entries provided by certain individuals/companies. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions given by the Directorate after making the necessary enquiries. In the said information, it has been inter-alia reported as under:

"Entries are broadly taken for two purposes:

- 1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.*
- 2. To inflate expense in the trading and profit and loss account so as to reduce the real*

profits and thereby pay less taxes.

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

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

"The transactions involving Rs. 27,00,000/-, mentioned in the manner above, constitutes fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income/income from other sources of the assessee company, which has not been offered to tax by the assessee till its return filed.

On the basis of this new information, I have reason to believe that the income of Rs. 27,00,000/- has escaped assessment as defined by section 147 of the Income Tax Act. Therefore, this is a fit case for the issuance of the notice under section 148."

29.3 *The Court was not inclined to interfere in the above circumstances in exercise of its writ jurisdiction to quash the proceedings. A careful perusal of the above reasons reveals that the AO does not merely reproduce the information but takes the effort of revealing what is contained in the investigation report specific to the Assessee. Importantly he notes that the information obtained was 'fresh' and had not been offered by the Assessee till its return pursuant to the notice issued to it was filed. This is a crucial factor that went into the formation of the belief. In the present case, however, the AO has made no effort to set out the portion of the investigation report which contains the information specific to the Assessee. He does not also examine the return already filed to ascertain if the entry has been disclosed therein.*

30.1 *In CIT v. Highgain Finvest (P.) Ltd. [2007] 164 Taxman 142/[2008] 304 ITR 325 (Delhi) relied upon by Mr. Chaudhary, the reasons to believe read as under:*

"It has been informed by the Additional Director of Income Tax (Investigation), Unit VII, New Delhi vide letter No. 138 dated 8th April 2003 that this company was involved in the giving and taking bogus entries/transactions during the financial year 1996-97, as per the deposition made before them by Shri Sanjay Rastogi, CA during a survey operation conducted at his office premises by the Investigation Wing. The particulars of some of the transaction of this nature are as under:

<i>Date</i>	<i>Particulars of cheque</i>	<i>Debit Amt.</i>	<i>Credit Amt</i>
18.11.96	305002	5,00,000	

Through the Bank Account No. CA 4266 of M/s. Mehram Exports Pvt. Ltd. in the PNB, New Rohtak Road, New Delhi.

Note: It is noted that there might be more such entries apart from the above.

The return of income for the assessment year 1997-98 was filed by the Assessee on 4th March 1998 which was accepted under Section 143 (1) at the declared income of

Rs. 4,200. In view of these facts, I have reason to believe that the amount of such transactions particularly that of Rs. 5,00,000 (as mentioned above) has escaped the assessment within the meaning of the proviso to Section 147 and clause (b) to the Explanation 2 of this section.

Submitted to the Additional CIT, Range -12, New Delhi for approval to issue notice under Section 148 for the assessment year 1997-98, if approved."

30.2 The AO was not merely reproducing the information received from the investigation but took the effort of referring to the deposition made during the survey by the Chartered Accountant that the Assessee company was involved in the giving and taking of bogus entries. The AO thus indicated what the tangible material was which enabled him to form the reasons to believe that income has escaped assessment. It was in those circumstances that in the case, the Court came to the conclusion that there was prima facie material for the AO to come to the conclusion that the Assessee had not made a full and true disclosure of all the material facts relevant for the assessment.

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

32. In *Oriental Insurance Co. Ltd. v. CIT [2015] 378 ITR 421/235 Taxman 388/63 taxmann.com 171 (Delhi)* it was held that "therefore, even if it is assumed that, in fact, the Assessee's income has escaped assessment, the AO would have no jurisdiction to assess the same if his reasons to believe were not based on any cogent material. In absence of the jurisdictional pre-condition being met to reopen the assessment, the question of assessing or reassessing income under Section 147 of the Act would not arise."

33. In *Rustagi Engineering Udyog (P.) Ltd. (supra)*, it was held that "...the impugned notices must also be set aside as the AO had no reason to believe that the income of the Assessee for the relevant assessment years had escaped assessment. Concededly, the AO had no tangible material in regard to any of the transactions pertaining to the relevant assessment years. Although the AO may have entertained a suspicion that the Assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under Section 147 of the Act. A reason to believe - not reason to suspect - is the precondition for exercise of jurisdiction under Section 147 of the Act. "

34. Recently in *Agya Ram (supra)*, it was emphasized that the reasons to believe "should have a link with an objective fact in the form of information or materials on

record..." It was further emphasized that "mere allegation in reasons cannot be treated equivalent to material in eyes of law. Mere receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessments."

35. In the decision of this Court dated 16th March 2016 in W.P. (C) No. 9659 of 2015 (Rajiv Agarwal) it was emphasized that "even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment."

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

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law.

38. The question framed is answered in the negative, i.e., in favour of the Assessee and against the Revenue. The appeal is, accordingly, dismissed but with no orders as to costs."

8. Similar ratio has been laid down by the Co-ordinate Benches in the case of *DCIT vs Great Wall Marketing Pvt. Ltd.(supra)* and in the case of *Balaji Health Care Pvt Ltd.Vs ITO.(supra)*. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) on the legal issue and accordingly we set aside the order of Ld. CIT(A) by allowing the appeal of the assessee on legal issue.

9. Since we have allowed the legal issue, the other grounds raised by the assessee on merit are not being adjudicated at this stage. Accordingly grounds raised by the assessee is allowed.

10. The legal issue raised in other appeals in ITA No.399, 400 & 401/Kol/2022 A.Y. 2012-13, 2013-14 and 2015-06 is identical to one as decided by us in ITA No.

390/Kol/2022 A.Y.2011-12, therefore our decision in ITA NO. 390/Kol/2022 would, mutatis mutandis, apply to all these appeals as well. Consequently all the appeals of the assessee are allowed.

11. In the result, all the appeals of the assessee are allowed.

Order is pronounced in the open court on 31st August, 2023

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

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

Dated: 31st August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ashika Stocking Broking Limited, Trinity, 7th Floor, 226/1, AJC Bose Road, Kolkata-700020
2. Respondent – DCIT, Central Circle-2(1), Kolkata
3. Ld. CIT(A)- 20, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata