

(2014) 05 GUJ CK 0022
In the Gujarat High Court

Case No : Special Civil Appln. No. 4299 of 2014

Yogendra Kumar Gupta

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Income Tax Act, 1961 - Section 131(1)(a), 133A, 139, 142, 142(1)

Citation : (2014) 05 GUJ CK 0022

Hon'ble Judges : Akil Abdul Hamid Kureshi, J; Sonia Gokani, J.

Bench : Division Bench

Advocate : Manish J. Shah, for the Appellant; Mauna M. Bhatt, for the Respondent

Judgement

Sonia Gokani, J.?The present petition has been preferred under Art.226 of the Constitution of India challenging the notice of reopening issued under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) in connection with the assessment year 2006-07 in the following factual background:

1.1 The petitioner for the said assessment year submitted a return of income reflecting his total income at Rs. 64,65,144. A notice under 143(2) of the Act followed by a notice under section 142(1) of the Act were issued on 21-6-2007 and 19-9-2008 respectively. In the said notices, details of unsecured loans received by the petitioner were required to be furnished. Yet another notice under section 143(2) of the Act dt. 19-9-2008 had followed. All the details as directed by the respondent had been furnished, which included the details of unsecured loans vide communication dt. 27-11-2008.

1.2 Yet another notice dt. 3-12-2008 called for genuineness and creditworthiness of all the parties whose names appeared in the list of unsecured loans and deposits, which were required to be furnished along with complete address and PAN. The petitioner vide communication dt. 15th Dec, 2008 provided not only the

addresses, PANs and details of the amount with dates, but the confirmation letters as well. After the entire exercise, scrutiny assessment under section 143(3) was completed on 22nd Dec, 2008 and the assessing officer made disallowances under ss. 14A and 94(7) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The petitioner aggrieved by such order challenged the same before the Commissioner (Appeals) and the same is pending before the Commissioner (Appeals).

1.3 In the meantime, the impugned notice under section 148 of the Act dt. 28-3-2013 came to be issued, beyond the period of four years from the end of relevant assessment year on the ground that the assessing officer had a reason to believe that the income had escaped the assessment, directing the petitioner to file the return within 30 days from the date of receipt of the notice since he proposed to assess the escaped income.

1.4 A request was made vide communication dt. 9th April, 2013 seeking a copy of the reasons recorded. However, it was insisted on the part of the respondent that the petitioner needs to file his return in response to the notice under section 148 of the Act and then only the reasons recorded under section 148(2) of the Act could be provided. Accordingly, the petitioner declared that the original return of income filed by him on 31-12-2006 be considered as return filed in response to such a notice. A notice under section 143(2) of the Act came to be issued on 17-1-2014 and the reasons were also furnished on 18-2-2014, which read as under:

"As per information contained in the report of the Dy. CIT, C.C., XXVIII, Kolkata forwarded vide letter No. CIT(C)-Kol/CBI/2012-13, dt. 4-3-2013, it is noticed that assessee company has obtained accommodation entry in the form of loans and advances from Basant Marketing (P.) Ltd., Kolkata.

The assessee has taken accommodation entry of Rs. 8,71,00,000, in the form of loans and advances from Basant Marketing (P.) Ltd., Kolkata. Therefore I have reason to believe that an amount of Rs. 8,71,00,000 has escaped the assessment within the meaning of section 147 of the Income Tax Act."

1.5 Yet another correspondence dt. 5th March, 2014 for the post-notice period deserves reproduction at this stage, which is in the form of a show-cause notice, which reads as under:

"During the year under consideration, loans and advances of Rs. 8,71,00,000 has been received by the assessee from M/s. Basant Marketing (P.) Ltd. As per the information received from Dy. CIT (Central) XXVIII, Kolkata, dt. 12-2-2013, M/s. Basant Marketing (P.) Ltd. has provided accommodation entries to various beneficiaries during the year and the assessee is one of them. Further, it has been stated that M/s. Basant Marketing (P.) Ltd. is a dummy company of Arun Dalmiya on the basis of substantial material found during the search by CBI, Mumbai. Therefore, you are required to show-cause as to why the amount of Rs. 8,71,00,000 received from M/s. Basant Marketing (P.) Ltd. during the year should

not be treated as cash credit under section 68 of the Income Tax Act, 1961."

1.6 The petitioner filed reply to the same by stating that he intended to file writ petition against the invalid notice.

1.7 The petitioner vide its letter dt. 13-3-2014 requested the respondent to supply a copy of the letter received from the Dy. CIT, Kolkata, on the basis of which she had formed the reason to believe. However, soon thereafter on 14-3-2014, the objections have been filed to the reasons recorded essentially challenging such notice on the ground that there was nothing to indicate that the petitioner had not fully and truly disclosed all the material facts necessary for assessment. It was the say of the petitioner that the original assessment got completed after scrutiny, where alleging the genuineness of the transactions, no additions have been made in respect of unsecured loans. It was also the say of the petitioner that the confirmation letters furnished pursuant to the notices issued along with substantiating documents also take away the very basis of such notice. The sworn affidavit of the director of Basant Marketing (P.) Ltd. also specifically stated that all the transactions of loans given to the petitioner were genuine and given through banking channels. We notice that there was no statement of Commissioner (Appeals) that the loans given to Basant Marketing (P.) Ltd. are true and all loans given by Basant Marketing (P.) Ltd. to the present petitioner are genuine.

1.8 It is averred by the petitioner that despite such eloquent objections backed by documentary evidence, the objections were disposed of by holding that the same were not tenable and, therefore, the present petition.

2. On issuance of notice, the respondent appeared and filed an affidavit-in-reply inter alia, urging that the alternative efficacious remedy is available by way of an appeal to the Commissioner (Appeals) and thereafter, to the Tribunal and, therefore, the present petition may not be entertained.

2.1 On merits, the fact is not controverted that after scrutiny, the return of the petitioner was finalized on 22-12-2008, where disallowances were made under sections. 14A and 94(7) of the Act.

2.2 It is, however, contended that on receipt of information by way of report of the Dy. CIT (Central)-XXVIII, Kolkata, on having found that the assessee had taken accommodation entries of Rs. 8.71 crores in the form of loans and advances from Basant Marketing (P.) Ltd., which was a dummy company engaged in money laundering business and, therefore, the assessing officer held that the income of the assessee chargeable to tax had escaped the assessment.

2.3 It is the say of the respondent that the assessing officer was in receipt of the information contained in the report of the Dy. CIT, Kolkata, dt. 4-3-2014, which was in the nature of the tangible material and on the basis of such information, after due application of mind, the assessing officer recorded reasons for reopening the assessment. It is alleged that there is an omission or failure on the

part of the assessee to disclose fully and truly all material facts, which were necessary for the assessment. On definite and reliable information, the assessing officer has formed an opinion and reasonable belief. However, no response was made to the subsequent show-cause notice dt. 5-3-2014. Accordingly, it is urged that the petition may not be entertained.

3. The learned counsel Shri J.P. Shah, appearing with the learned counsel Mr. M.J. Shah for the petitioner, fervently argued that all the facts have been fully inquired at the time of original assessment as the same was scrutiny assessment. All receipts admittedly are by cheques. Not only the names of the parties, but their PANs and other details confirmed the genuineness of the transactions. In absence of any omission or failure on the part of the petitioner to furnish any material particulars, the very notice must fail. He further urged that the information passed over to the assessing officer is in pre-inquiry stage. There was no case of accommodation entry at all. Therefore, it was incumbent upon the assessing officer to make preliminary inquiry before issuance of the notice. The entire issue has remained in realm of suspicion. Since no authority has gone beyond the reason to suspect, the Court must intervene. He urged that the object of the Apex Court in directing the Revenue authority to provide the reasons recorded and to dispose of the same cannot be perceived as an empty formality. Relying on the decision of the Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, , he further urged that the availability of the efficacious remedy is no ground in the instant case where there is nothing to indicate that the petitioner did not disclose fully and truly all material facts and, therefore, the very assumption of jurisdiction on the part of the assessing officer is erroneous. The petitioner is not required to undergo the entire ordeal. He has sought to rely on the following decisions:

(1) Commissioner of Income Tax -II, Central Revenue Building, New Delhi Vs. Kamdhenu Steel and Alloys Ltd., .

(2) Patel Alloy Steel (P.) Ltd. v. Asstt. CIT (2013) 35 taxmann.com 353 (Guj.)

(3) CIT v. Shardaben K. Modi (2014) 365 ITR 169 (Guj.) .

4. Mr. Manish M. Bhatt, learned senior counsel appearing with the learned counsel Mrs. Mauna Bhatt for the Revenue, submitted that this is a case of the petitioner not furnishing truly and fully all material facts and, therefore, even if the original assessment has been concluded on scrutiny, the notice of reopening cannot be hampered at this stage. He further urged that on the basis of the information contained in communication of the Dy. CIT, Kolkata, indicating that the petitioner obtained accommodation entry in the form of loans and advances from Basant Marketing (P.) Ltd., Kolkata, the assessing officer on having reason to believe that the income chargeable to tax has escaped the assessment, the Court need not interfere. Reliance is placed on the following decisions:

(1) Dishman Pharmaceuticals and Chemicals Limited Vs. Deputy Commissioner of Income Tax (OSD), .

(2) M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, .

5. We have, thus, heard both the sides and also undertaken the exercise of closely examining the material on record. At this stage, it is needed to be noted that we deemed it necessary to call for the original file with regard to the satisfaction of the assessing officer in forming the belief that the income chargeable to tax escaped the assessment, reference to which shall be made at an appropriate stage in this judgment.

6. This being a challenge to the reopening notice issued under section 148 of the Act, having been issued on completion of period of four years from the end of relevant assessment year, the law on the subject requires reproduction at this stage.

7. Section 147(1) of the Act reads as under :

"147 Income escaping assessment--(a) If the ITO has reason to believe that by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of ss. 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be for the assessment year concerned (hereafter in ss. 148 to 153 referred to as the relevant assessment year)."

[Note : Section 147 as reproduced is old section 147, as existed prior to amendment with effect from 1-4-1989--Ed.]

8. Section 147, thus, permits the reopening of the assessment to the assessing officer on his forming a belief that the income chargeable to tax has escaped the assessment. For the assessing officer to be authorised to reopen any assessment beyond the period of four years, he could so do it if the assessee fails to make a return under section 139 of the Act or in respect of a notice under sub-section (1) of section 142 or he fails to disclose fully and truly all the material facts necessary for such assessment. We are concerned, in the present case, with the reopening of the assessment beyond the period of four years from the end of relevant assessment year, where it is averred that a notice under section 148 of the Act was the result of the assessee not having disclosed fully and truly all the material facts. In the original assessment, if the assessment is framed after the scrutiny under section 143(3) of the Act, the reassessment would be permissible under the law on completion of four years of period from the end of relevant assessment year, for any income chargeable to tax having escaped the

assessment only on account of failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. Of course, the satisfaction of the assessing officer is a must that such income had escaped the assessment by reason of any failure on the part of the assessee, otherwise the assumption of the jurisdiction under section 147 of the Act would be invalid. The Apex Court in the case of Phool Chand Bajranglal (supra) was considering the question of reassessment beyond the period of four years in the case of an assessee firm which had parted such an amount from Kolkata based company. The assessee also had filed confirmatory letters from the said company in support of its loan transactions. Interest paid to the Kolkata company by the assessee was permitted by the assessing officer for nearly five years. However, on the basis of some communication received from the ITO based on Kolkata, the genuineness of the loan transactions had been questioned. The managing director of the Kolkata company admitted that the company was a mere name lender and no amount had been advanced during last three assessment years. Such transactions being bogus on the basis of these information, reassessment proceedings were initiated. When such notice was challenged before the Apex Court, it held that this was not a case of the ITO drawing any fresh inference which she could have framed at the time of original assessment on the basis of the material placed before her by the assessee relating to the loan by the Kolkata company. It was the case of acquiring fresh information specific in nature and reliable, relating to the concluded assessment, which went to falsify the statement made by the assessee at the time of original assessment and, therefore, he would be permitted under the law to draw fresh inference from such facts and material. The Court also went to an extent of saying that there are two distinct and different situations where the transaction itself on the basis of subsequent information is found to be bogus transaction and in such event, mere disclosure of the transaction cannot be said to be true and full disclosure and the ITO would have jurisdiction to reopen the concluded assessment. The subsequent information on the basis of which the ITO acquired the reason to believe that the income chargeable to tax had escaped on account of omission on the part of the assessee to fully and truly disclose primary facts which was reliable, specific and relevant and not vague or unspecific, the reopening was permitted. It would be apt to quote some observations of the Apex Court in the case of Phool Chand Bajrang Lal (supra), which read as under:

"... one has to look to the purpose and intent of the provisions. One of the purposes of section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice to turn around and say you accepted my lie, now your hands are tied and you can do nothing. It would, be travesty of justice to allow the assessee that latitude."

9. In the case of Dishman Pharmaceuticals & Chemicals Ltd. (supra), this Court was dealing with reopening of the assessment beyond the period of four years from the end of relevant assessment year, where this Court has upheld the

reassessment proceedings by holding and observing that the assessing officer must have reason to believe that the income chargeable to tax had escaped the assessment and that the same occasioned on account of either failure on the part of the assessee to make return of his income or disclose fully and truly all the material facts. Both these conditions are conditions precedent and must be satisfied simultaneously before the ITO can assume jurisdiction to reopen the assessment at the end of relevant assessment year. If the reasons recorded do not disclose the satisfaction of these two conditions, reopening notice must fail.

However, it was further held that there is no set format in which such reasons must be recorded. It is not the language but the contents that assume importance. It also further states that such reasons must emerge from the reasons recorded and cannot be supplied through an affidavit filed before the Court.

10. What amounts to subjective satisfaction on the part of the assessing officer when he holds the reason to believe, has been discussed at length in various judicial pronouncements.

10.1 In the case of Central Provinces Manganese Ore Co. Ltd. Vs. I.-T.O., Nagpur, , the assessee was a non resident company, whose head office was in London and one office was in India. The proceedings of reassessment under section 148 had been initiated. The customs authority came to know that the assessee had declared very low prices in respect of all the consignments of manganese ore exported by it. On due investigation, it found that the assessee systematically under-invoiced the same. In the challenge to reopening assessment, the Supreme Court sustained such notice on the ground that the appellant had not produced their books of accounts kept at London or the original contracts of sale entered into with the buyers and no reasons were given for supply of manganese ore at a rate lower than the market rate and, therefore, the charge of under-invoiced was found per se to have been satisfied leading to satisfying the second condition under section 147(a) of the Act that there was failure on the part of the assessee to disclose fully and truly all the material facts at the time of original assessment.

10.2 The Apex Court in the case of Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., , has held that at the stage of issuance of notice of reopening, the assessing officer must have a reason to believe and not the established fact of escapement of income in the following manner:

"The expression reason to believe in section 147 would mean cause or justification. If the assessing officer has cause or if the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income.

At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively-prove the escapement is not the concern at that stage. This is so because the formation of belief is within the realm of subjective satisfaction of the assessing officer."

10.3 In the case of Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, , the Court held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at such stage.

10.4 Reference also needs to be made of decision of Andhra Pradesh High Court rendered in the case of GVK Gautami Power Ltd. (Formerly Known as Gautami Power Ltd.) Vs. The Assistant Commissioner of Income Tax (OSD) Central Range-1 and The Deputy Commissioner of Income Tax, , wherein the Andhra Pradesh High Court has held and observed as under :

"17. All that is necessary to give special jurisdiction is that the ITO had, when he assumed jurisdiction, some prima facie grounds for believing that there had been some non-disclosure of material facts. Whether these grounds are adequate or not, for arriving at the conclusion that there was non-disclosure of material facts, would not be open for the Courts investigation. [Calcutta Discount Co. Ltd. (supra)]. At the stage of examining the validity of the notice under section 148/147, the enquiry is only to see whether there are reasonable grounds for the ITO to believe, and not whether the omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind. [Sri Krishna (P.) Ltd. (supra)]."

10.5 Delhi High Court in the case of Acorus Unitech Wireless Private Limited Vs. Assistant Commissioner of Income Tax, , was examining the reassessment notices issued and the proceedings conducted under section 148 of the Act. The writ petitioner, a company incorporated under the Companies Act, was served with a notice of reopening. It requested for a copy of the reasons which led to the reopening. Reasons had been supplied after a gap of about nine months. It was by way of a letter that the reasons to believe that the income chargeable to tax had escaped assessment, were provided. A request was made by the company to provide a copy of the report prepared by the Director of IT (Inv.) in respect of the 2G spectrum cases. However, the Revenue contended that the material relied on by the Revenue in respect of 2G spectrum is confidential and cannot be disclosed and the Revenue asked the petitioner to file its objection to the reasons recorded and supplied reasons to the petitioner by way of a communication. In such a challenge, the High Court upheld the claim of the Revenue for privilege/confidentiality of the 2G spectrum by holding that the law requires that the information upon which the assessing officer records his satisfaction that income has escaped assessment, if is communicated to the

assessee, without the disclosure of any specific documents, the proceedings initiated under section 147 would not be rendered void. In the words of Delhi High Court:

"22. In this context, the Court will now turn to the question of whether the disclosure of the 2G Spectrum Report is mandatory, and whether the failure to supply it is fatal to the present proceedings. The law only requires that the information or material on which the assessing officer records his or her satisfaction is communicated to the assessee, without mandating the disclosure of any specific document. While the 2G Spectrum Report has not been supplied in this case on grounds of confidentiality, the reasons recorded have been communicated and do provide independent of the 2G Report details of the new and tangible information that support the assessing officer's opinion. These facts are capable of justifying the satisfaction recorded on their own terms, as discussed above. In this context, there is no legal proposition that mandates the disclosure of any additional document. This is not to say that the assessing officer may in all cases refuse to disclose documents relied upon by him on account of confidentiality, but rather, that fact must be judged on the basis of whether other tangible and specific information is available so as to justify the conclusion irrespective of the contents of the document sought to be kept confidential. In cases such as the present, however, where the information and facts communicated by the assessing officer are themselves in accordance with the minimum requirement under section 147/148, the petitioner cannot compel the disclosure of other documents that the assessee may have also relied upon."

10.6 Delhi High Court in the case of Kamdhenu Steel & Alloys Ltd. (supra), was dealing with the case of additions made by the assessing officer under section 68 of the Act on account of unexplained share application money, where it has taken into account the decision rendered by the very Bench in the case of Commissioner of Income Tax and Others Vs. Oasis Hospitalities (Pvt.) Ltd. and Others, wherein it is held that the initial burden of proving the genuineness is upon the assessee, however, once he proves the identity of creditors/share applicants by either furnishing PAN or copies of the bank accounts and shows the genuineness of the transaction by showing money in the banks, is by account payee cheques or draft, etc. then the onus to prove the same would shift to the Revenue; and then the question which assumes importance at this stage is to what the Revenue is supposed to do to dislodge the initial burden discharged by the assessee.

In a matter before the Delhi High Court, registered letters written to the company returned undelivered and the assessing officer believed that these companies were not existing at the given address. Thereafter, no attempt was made to find out from the office of the ROC the address of those companies from where the registered letters were received back undelivered. No effort was made to examine as to whether those companies were filing IT return and if yes, then what kind of returns were filed. From the bank statement filed by the assessee,

the assessing officer could have found out the addresses of the applicant-companies in the bank, who opened the bank accounts and their signatories. Such kind of inquiries were absent. The Court held that mere failure on the part of the creditors to respond to the Departments notice could never be a basis to conclude that the assessee had undisclosed income and initiate proceedings under section 68 of the Act on the ground that the assessing officer failed to carry his suspicion to logical conclusion by further investigation and more steps could have been taken by the Revenue in order to find out causal connection between the cash deposited in the bank accounts of the applicant companies and the assessee, the Court held that very important link was missing and, therefore, the additions were deleted.

We must notice at this stage that the assessee had approached the High Court being aggrieved by the additions made by the assessing officer after their having failed before the Tribunal by way of appeals and, therefore, the Court noticed absence of any efforts on the part of the assessing officer to establish not only link but also having wrongly concluded in absence of any sufficiency of material that the transactions were bogus due to non-existence of the company. This Court is dealing with the case of reopening of the assessment at the stage where the objections of the assessee have been disposed of and the assessing officer had formed the belief of income chargeable to tax having escaped the assessment on the basis of material made available by Dy. CIT, Kolkata, on investigation.

10.7 This Court in the case of Patel Alloy Steel (P.) Ltd. (supra) was dealing with the notice issued beyond a period of four years from the end of relevant assessment year, where also the question was with regard to failure on the part of the assessee to disclose fully and truly all the material facts. The Court quashed the notice on the ground that there was no allegation on the part of the Revenue that there was any failure on the part of the assessee to disclose fully and truly all the material facts. The assessing officer noted that the assessee had paid interest to IDBI. The copy of the ledger account of interest paid was also with the assessing officer and these details of borrowings of interest were part of the assessment proceedings. The Court noticed that on verification of records, the assessing officer had based his reasons, which were the part of original assessment. In absence of anything to indicate that there was failure on the part of the assessee to disclose fully and truly all the material facts, such notice was quashed.

10.8 The same was the case in the case of Shordaben K. Modi (supra). There was no independent material and the statements recorded of the some (sic) of the assessee, was made the basis of reopening. The Court held that in absence of any evidentiary value of the statement recorded under section 133A of the Act, use of such statement cannot be permitted without any corroborative evidence and the only piece of document was such statement. Accordingly, the notice issued under section 148 of the Act was not permitted to be proceeded.

11. At this stage, we may record that this Court had an occasion to deal with identical question, which culminated into the judgment rendered on 25-3-2014 in the case of Lalita Ashwin Jain v. ITO while dealing with Special Civil Application Nos. 1626 and 1627 of 2014. Various judicial pronouncements on the very issue were regarded and, therefore, it would be apt to borrow the relevant aspects from the said judgment without once again discussing the very law:

"11.2 In case of Phool Chand Bajrang Lal v. ITO (supra), the Apex Court was dealing with a case of reassessment. In the original assessment, the assessee firm claimed that it had borrowed certain amount from a Calcutta based company. The ITO directed the assessee to file a copy of account of the said Calcutta company to support the loan transaction and in reply thereto, assessee produced a confirmatory letter from the said company confirming payment of loan to the assessee. For nearly five years i.e., assessment years 1993-94 to 1968-69, such deduction of interest, as claimed by the assessee having been paid to the Calcutta company, continued to be allowed by the ITO. Later on, ITO entertained some doubts about genuineness of loan transaction, and therefore, a communication was sent to ITO stationed at Calcutta. It was realized that the managing director of the said Calcutta company had confessed that he was only a name lender and had not advanced any loan to any party during the three assessment years. Thus, these transactions were found to be bogus on the basis of subsequent information received. In the light of these facts, the Apex Court held and observed thus:

15. In the present case, as already noticed, the ITO, Azamgarh, subsequent to completion of the original assessment proceedings, on making an enquiry from the jurisdictional ITO at Calcutta, learnt that the Calcutta company from whom the assessee claimed to have borrowed the loan of Rs. 50,000 in cash, had not really lent any money but only its name, to cover up a bogus transaction and after recording this satisfaction as required by the provisions of section 147 of the Act proposed to reopen the assessment proceedings. The present is, thus, not a case where the ITO sought to draw any fresh inference, which could have been raised at the time of original assessment on the basis of the material placed before him by the assessee relating to the loan from the Calcutta company and which he failed to draw at that time. Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made by the assessee at the time of original assessment is different from drawing a fresh inference from the some facts and material which was available which the ITO at the time of original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the true and full facts in the case and the ITO would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for

further enquiry and investigation into the genuineness to the loan transaction but in our opinion his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under section 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the ITO acquired reasons to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or nonspecific.

19. Again, in *A.L.A. Firm Vs. Commissioner of Income Tax, Madras*, a three Judges Bench of this Court, to which one of us [S.C. Agrawal, J.] was a party, after an elaborate discussion of the subject opined that the jurisdiction of the ITO to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previously concluded assessment, reason to believe, that income chargeable to tax had escaped assessment. It was held that even if the information be such that it could have been obtained by the ITO during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the ITO to initiate reassessment proceedings, if the twin conditions prescribed under section 147 of the Act are satisfied.

20. From a combined review of the judgments of this Court, it follows that an ITO acquires jurisdiction to reopen 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, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts 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 ITO, 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 nonspecific information. To that limited extent, the Court may look into the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the ITO at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the ITO arrives at a conclusion, after

satisfying the twin conditions prescribed in section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted *Burlop Dealers case* (supra) as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.

21. We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 of the Act and is against the settled law by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of section 147, appears to us to be, to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say you accepted my lie, now your hands are tied and you can do nothing. It would be travesty of justice to allow the assessee that latitude.

22. In our opinion, therefore, in the facts of the present case the ITO, Azamgarh, rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the assessee had not disclosed the material facts truly and fully and therefore income chargeable to tax had escaped assessment. He, therefore, correctly invoked the provisions of sections 147(a) and 148 of the Act. The High Court was, thus, perfectly justified in dismissing the writ petition. There is no merit in this appeal which fails and is dismissed but with no order as to costs.

11.3 In case of *P. Munirathnam Chetty and P. Satyanarayana Chetty Vs. Income Tax Officer, C-Ward and Another*, the ITO in a proceedings under section 147 of the Act accepted the book results of the assessee firm. However, later on, from the order of the sales-tax authorities, the assessing officer noticed that the assessee had failed to disclose fully and truly all material facts as the turnover of the assessee was at much higher figure and penalty also was levied by the sales-tax authorities for such suppression of turnover and therefore, the proceedings under section 147 of the Income Tax Act were initiated. The CIT also granted sanction by saying "yes". The Court held that this was not a case where the ITO thought that it was a case for investigation nor was there any documentary evidence to support his report. Merely because the CIT said yes against the question as to whether such was a fit case for issuance of the notice under section 148, he was alleged of having acted mechanically. The Court, therefore, observed and held that in order to obviate such impression and to infuse more confidence in the assessee, the CIT ought to have atleast briefly stated the reasons as to why the sanction was accorded for proceedings under section 147

of the Act.

11.4 In case of *K.C.P. Ltd. v. ITO* (supra), the assessee had sold certain machinery and had shown three fourths of sale price as profits. The assessment was accordingly finalized. Depreciation also was allowed at the time of original proceedings. However, later on, it was realized that the same was in excess due to assessee's failure to disclose availment of initial depreciation. Therefore, the reassessment proceedings were initiated for withdrawing excess depreciation. The Court held that the assessee's contention that it was under no obligation to disclose the factum of availment of initial depreciation since the form of return prescribed at the relevant time did not contain any column requiring the assessee to furnish such information could not be accepted. Every assessee is expected to know the law that it was not entitled to claim normal depreciation above the prescribed ceiling. If that was done and if that had crossed the ceiling by availing the depreciation, he could be said to have omitted or failed to disclose fully and truly all material facts necessary for the purpose of assessment.

12.4 The Apex Court in case of *ITO v. Lakhmani Mewal Das* (supra), held that in case of reassessment proceedings, the reasons recorded for formation of belief, as contemplated under section 147(a) must have rational connection with or relevant bearing on the formation of belief and rational connection postulates that there must be direct nexus or live link between material coming to ITO's notice and formation of his belief that there has been escapement of assessee's income from assessment in a particular year because of his failure to disclose fully and truly all material facts.

12.5 In a case before the Apex Court, the ITO had completed original assessment by allowing deduction of interest paid to certain creditors. However, when one of the creditors had confessed that he was doing only name lending and that other creditors were only name lenders, the reopening proceedings were initiated. There was absence of any material to indicate that the confession made by the creditor related to the loan to the assessee and not to someone else. In absence of such confession related to the period which was subject-matter of assessment, the Court found absence of live link or close nexus with the material and the belief of the ITO, and therefore, the Apex Court quashed the order of the High Court by holding that such material could not have led to formation of belief that the income of the assessee had escaped assessment on account of assessee's failure or omission to disclose fully and truly all material facts.

12.6 Delhi High Court in case of *Signature Hotels (P.) Ltd. v. ITO* (supra) was concerned with the reassessment proceedings where information was given by the Director of IT (Investigation) that the amount received by assessee from other company was nothing but accommodation entry and assessee was beneficiary. In absence of any application of mind on the part of the assessing officer for his having formed a belief that the income chargeable to tax has escaped assessment which is a mandatory requirement, the Court held that the

jurisdiction assumed by the assessing officer for the purpose of reassessment proceeding was invalid. The Court also held that. "The reasons to believe would mean cause or justification of the assessing officer to believe that the income has escaped assessment and does not mean that the assessing officer should have finally ascertained the said fact by legal evidence or reached a conclusion, as this is determined and decided in the assessment order, which is the final stage before the assessing officer."

12.7 Delhi High Court in case of Central India Electric Supply Company Ltd. v. ITO (supra) was dealing with a case of reopening. Such reassessment proceedings were initiated alleging that there was non disclosure of primary facts on the part of the assessee company which was engaged in generation and supply of electricity from its units. Its units were acquired by the State Government in 1964 and compensation thereof was paid in the same year. The assessee had made claim for higher compensation and the matter was finally settled by the Supreme Court nearly after 10 years and the enhanced compensation was availed to the assessee in the assessment year 1979-80.

12.8 The assessing officer was of the belief that since the income had accrued to the assessee under the head of long-term capital gain given on transfer of assets in respect of its two units, such income was to be taxed in the very assessment year i.e., 1964 when the transfer took place. Considering the fact that the Supreme Court pronounced its judgment which settled the dispute of enhanced compensation, the Delhi High Court held that there was no lack of disclosure by assessee with respect to enhanced compensation and therefore, reopening of assessment for the relevant assessment year was held without jurisdiction.

13. In light of the discussion held hereinabove, the twin conditions required for the satisfaction of the ITO, in the event of reopening of assessment beyond the period of four years is that (i) there must be a reason to believe that income chargeable to tax had escaped assessment; and (ii) he also must have reason to believe that such escapement of income is on account of omission or failure on the part of the assessee to disclose fully and truly all material facts for assessment of the income of the assessee for the year under consideration.

14. Once the assessing officer has a reason to believe that such income has escaped assessment, the same as per the statutory requirement under section 147(1)(b) has to be more than rupees one lakh or should likely to be more than rupees one lakh. And on having formed such belief, sanction of the CIT for reopening needs to be obtained under section 151(2) of the Act, who also is required to apply his mind to such proposal before according sanction, rather than acting mechanically. For examining the application of these statutory provisions, in the present case, it is necessary to revert to the facts. Admittedly, the assessee had made disclosure in respect of the investment made in three companies and the assessment was completed under section 143(3) on 1-7-2008, after scrutiny. In the reasons recorded for reopening assessment under section 147, the assessing officer has noted the fact that the return of the

assessee for the assessment year 2006-07 was filed on 6-12-2006 where he declared his come at Rs. 1,46,710, such return was processed under section 143(1) and her case was selected for scrutiny through CASS and accordingly, the assessment order was passed on 1-7-2008 assessing her income at Rs. 1,51,890. From the sources of investment, the assessing officer is of the belief that the companies who funded the investment were found to be bogus.

The investments were not found to be recorded in the books of account of the assessee as they were squared off during the financial year itself and the explanation offered by the assessee was not found to be satisfactory, in as much as, the statement recorded under section 131(1)(a) of Shri Ashwin C. Jain husband of the petitioner on 8th Feb., 2013 wherein he admitted that such names sake transactions had been undertaken by him were in the names of his family members. With regard to the three companies viz., New Generation Finvest (P.) Ltd.; SRS Vijay Sales (P.) Ltd. and M/s. Ami Securities, he stated inter alia that he was in contact with one Shri Rajesh Jain of Delhi and one Shri Amrutlal of Mumbai who introduced him to the said companies for the purpose of providing him with margin funding for I.P.O. applications. However, he had no clue with regard to the whereabouts of both these persons. He also failed to furnish details of loan amounts, refunds and profit extended by the said parties to him. The ITO on the basis of these details formed his belief that the assessee's income had escaped assessment within the meaning of section 147 of the Act. This was thus a case where there were no full and true disclosures by the assessee.

17.5 Considering the main ground of challenge whether in the circumstances reflected in the reasons recorded would lead this Court to hold that there was no suppression on the part of the assessee in disclosing fully and truly all material facts. This aspect has two limbs--firstly, whether in fact there was a full and true disclosure on the part of the assessee, and secondly, whether from the material the assessing officer had with him, he in fact had formed a reason to believe that the income chargeable to tax had escaped the assessment.

17.6 The assessee at the time of original assessment in a scrutiny provided details of all the three companies. And as per the reasons recorded, the investment made by the assessee were funded by the companies which were found to be bogus. These details were culled out from the statement on oath given by the husband of the petitioner under section 131(1)(a) on 8-2-2013. The assessment as noted hereinabove was concluded on scrutiny on 1-7-2008. Undoubtedly, the assessee provided details of companies since the investment was funded by such companies at the time of assessment. However, later on, very existence of the companies was in doubt in as much as one Shri Rajesh Jain of Delhi and Shri Amrutlal of Mumbai were the persons through whom the husband of the petitioner was introduced to such companies and when whereabouts of these two persons were inquired, he had pleaded ignorance. The assessing officer, therefore, noted that the source of investment in such

circumstances remained unexplained as the companies are found to be bogus and in the books of account of the assessee, such investments were not found and were squared off during the financial year itself.

17.7 To such last portion of reasons recorded i.e., absence of reflection of such investment in the books of account and the same having been squared off during the finance year itself has been rigorously challenged by the petitioner. It is contended that this is completely bereft of facts, and therefore assumption of jurisdiction should be held invalid.

17.8 In our mind, even if the assessee is in a position to point out that such investments were part of his books of account and were not squared off in the years itself, the far more vital in the reasons recorded is the aspect of the companies from whose fund investments were made in the assessing officers belief are bogus, such details had been culled out from the statement recorded by none other than husband of the petitioner who also had stated that he had carried out the transactions in the names of his family members. It is not being disputed by the petitioner that her husband Mr. Ashwin Jain who gave his statement was not truthful in so contending.

17.9 As held by the Apex Court in *Phool Chand Bajrang Lal v. ITO* (supra) where transaction itself on the basis of subsequent information is found to be a bogus transaction, the Court held that mere disclosure of such transaction at the time of original assessment proceedings, cannot be said to be a disclosure of full and true facts and the assessing officer surely would have jurisdiction to reopen concluded assessment in such a case. The Apex Court also had observed in the said case that the assessing officer may start reassessment proceedings either because some fresh facts came 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 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 ITO, the sufficiency of reasons for forming the belief, is not for the Court to judge but 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 nonspecific information. To that limited extent, the Court may look the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by him and further whether that material had any rational connection or a live link with the formation of the requisite belief.

18. In the instant case also, these observations and findings would have a direct bearing. The assessing officer, at the time of making original assessment though made an enquiry, could not have found by further inquiry or investigation whether such transactions were genuine or not. However, on the basis of subsequent informations, he arrived at such conclusion after satisfying both the conditions prescribed under section 147 that the assessee failed to disclose fully

and truly all material facts at the time of original assessment and therefore, the income chargeable to tax had escaped assessment. The assessing officer certainly would assume jurisdiction under section 147.

19. The contention raised before us that the assessing officer had all the powers to further probe into the controversies of the transactions as reflected in the return at the time of original assessment proceedings also need not be gone into at this stage. As again held by the Court in case of Phool Chand Bajrang Lal (supra),....one has to look to the purpose and intent of the provisions. One of the purposes of section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice to turn around and say you accepted my lie, now your hands are tied and you can do nothing. It would, be travesty of justice to allow the assessee that latitude.

19.1 In the instant case also, we noticed that the assessing officer on the basis of material provided by the Investigating Wing; particularly the statement recorded under section 131(1)(a) notices the falsehood in the disclosure made by the assessee at the time of original assessment. Assuming that the dealing of the petitioner was only with one company and not all of the three companies, in wake of the information received by the assessing officer, when formed a belief that the investment made from the funding of such companies which are bogus, the assessing officer had rightly assumed the jurisdiction of initiating the reassessment proceedings assessing officer, on the basis of information subsequently having come to his knowledge, recognized untruthfulness of the facts furnished earlier, he surely cannot be said to have changed his opinion on the same facts. The Apex Court also, while analyzing what amounts to full and true facts in the case of Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, has held the ITO can issue notice under section 148 of the Income Tax Act, 1961, proposing to reopen an assessment only where he has reason to believe that on account of either the omission or failure on the part of the assessee to file the return or on account of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, income has escaped assessment. The existence of the reason to believe is intended to be a check, a limitation, upon his power to reopen the assessment. Section 148(2) imposes a further check upon the said power viz., the requirement of recording of reasons for such reopening by the ITO. Section 151 imposes yet another check upon the said power viz., the CIT or the Board, as the case may be, has to be satisfied, on the basis of the reasons recorded by the ITO, that it is a fit case for issuance of such notice. The power conferred upon the ITO by sections 147 and 148 is thus not an unbridled one. It is hedged in with several safeguards conceived in the interest of eliminating room for abuse of this power by the assessing officers. The idea was to save the assessee from harassment resulting from mechanical reopening of assessments but this protection avails only to those assessees who disclose all material facts truly and fully. The Apex Court, while referring to the decision of the Constitution

Bench in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , observed and held thus:

..... In that case, the alleged non-disclosure of material facts fully and truly--to put in the words of the Court--was the failure of the assessee to disclose the true intention behind the sale of the shares. The assessee had stated during the assessment proceedings that the sale of shares during the relevant assessment years was a casual transaction in the nature of mere change of investment. The ITO found later that those sales were really in the nature of trading transactions. The case of the Revenue was that the assessee ought to have stated that they were trading transactions and that his assertion that they were casual transactions, in the nature of change of investment, amounted to omission or failure to disclose fully and truly all material facts necessary for his assessment for that year within the meaning of s. 34. This contention of the Revenue was rejected holding that the true nature of the transaction, being a matter capable of different opinions, is not a material or primary fact but a matter of inference and hence, it cannot be said that there was an omission or failure of the nature contemplated by s. 34 on the part of the assessee. Now, what needs to be emphasized is that the obligation on the assessee to disclose the material facts--or what are called, primary facts--is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full fully and truly. A false assertion, or statement, of material fact, therefore, attracts the jurisdiction of the ITO under section 34/147. Take this very case : the ITO says that on the basis of investigation and enquiries made during the assessment proceedings relating to the subsequent assessment year, he has come into possession of material, on the basis of which, he has reasons to believe that the assessee had put forward certain bogus and false unsecured Hindi loans said to have been taken by him from non-existent persons or his dummies, as the case may be, and that on that account income chargeable to tax has escaped assessment. According to him, this was a false assertion to the knowledge of the assessee. The ITO says that during the assessment relating to the subsequent assessment year, similar loans from some of these very persons were found to be bogus. On that basis, he seeks to reopen the assessment. It is necessary to remember that we are at the stage of reopening only. The question is whether, in the above circumstances, the assessee can say, with any justification, that he had fully and truly disclosed the material facts necessary for his assessment for that year. Having created and recorded bogus entries of loans, with what face can the assessee say that he had truly and fully disclosed all material facts necessary for his assessment for that year. True it is that the ITO could have investigated the truth of the said assertion--which he actually did in the subsequent assessment year--but that does not relieve the assessee of his obligation, placed upon him by the statute, to disclose fully and truly all material facts. Indubitably, whether a loan, alleged to have been taken by the assessee, is true or false, is a material fact - and not an inference, factual or legal, to be drawn from given facts. In this case, it is shown

to us that ten persons (who are alleged to have advanced loans to the assessee in a total sum of Rs. 3,80,000 out of the total Hindi loans of Rs. 8,53,298) were established to be bogus persons or mere name lenders in the assessment proceedings relating to subsequent assessment year. Does it not furnish a reasonable ground for the ITO to believe that on account of the failure - indeed not a mere failure but a positive design to mislead - of the assessee to disclose all material facts, fully and truly, necessary for the assessment for that year, income had escaped assessment? We are of the firm opinion that it does. It is necessary to reiterate that we are now at the stage of the validity of the notice under section 148/147. The enquiry at this stage of the only to see whether there are reasonable grounds for the ITO to believe and not whether omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind."

12. In view of the discussion held hereinabove, advertng to the facts, in the present case, the scrutiny of return of income filed for the assessment year 2006-07 was undertaken. The notice under section 143(2) of the Act was issued. Due to change in incumbency, the assessing officer also issued notice under section 143(2) of the Act on 19-9-2008 along with notice under section 143(1) of the Act, calling for certain information. It was also noted during such scrutiny that the assessee was engaged in the business of trading in shares, securities and future option. The assessee also showed income from other sources i.e. from dividend. In respect of unsecured loans, various queries were raised and they have been also answered. Information was called for in respect of unsecured loans along with confirmations of accounts for all transactions above Rs. 20,000 as could be noticed from the communication dt. 19-9-2008. The details of all sundry creditors with PANs and addresses have been furnished. It also reflects that no loans or advances were taken, except of a sum of more than Rs. 20,000, otherwise than by way of account payee cheque or bank draft as per reply dt. 27-11-2008. The details furnished qua unsecured loans are exhaustive. Relevant part of further communication dt. 3-12-2008 by which additional details were called for, which reads as under:

"(1) Please furnish details as to how secured loans has acquired, mode of acquisition, details of assets pledged against such secured loans given on security, name and complete address of banks/institution from whom loans received and detail narration of year wise receipt of loan.

(3) Please furnish genuineness and creditworthiness of all the parties mentioned in the list of unsecured loans and deposits with complete address and PAN otherwise such loans will be considered as unexplained and introduced from your unexplained source and will be added to he total income."

13. This was replied to on 15-12-2008, the relevant part of which reads as under:

"(5) As stated in our earlier letter dt. 8th Dec, 2008 vide para 5, we are enclosing herewith the confirmation letters from the remaining loan accounts. We

have already filed confirmation letters obtained from the 5 parties mentioned in para 5 of our letter dt. 8th Dec, 2008.

- (a) Ashok Finstock Ltd.
- (b) Basant Marketing (P.) Ltd.
- (c) Dum Duma Comm (P.) Ltd.
- (d) Enrich Industries Ltd.
- (e) N.K. Kheshkanii & Co.
- (f) Narendra Kheshkani
- (g) Neela N. Bhatt
- (h) S.K. Kar
- (i) Shivalik Buildwell (P.) Ltd.
- (j) Suvomita Karh) Zen Yarns"

14. The confirmation of amount from 1-4-2005 to 31-3-2006 for a sum of Rs. 8.71 crores was also furnished by Basant Marketing (P.) Ltd. vide communication dt. 1-4-2008. This further reflects various dates on which the amount had been credited in the bank along with necessary details.

15. In the wake of these facts and material, the scrutiny assessment was finalized and that the demand was made under ss. 14A and 94(7) of the Act.

16. Ostensibly, thus, there was disclosure and the occasion would not arise to term this as the assessee not having disclosed fully and truly all the material facts necessary for assessment. However, in essence, if the unsecured loans obtained from Basant Marketing (P.) Ltd. from the material supplied by them, the Dy. CIT, Kolkata, reveals that the same was as a result of accommodation entry in the form of loans and advances from Basant Marketing (P.) Ltd. to the tune of Rs. 8.71 crores, the case of the assessee would surely be covered under the said provision of law as it would not amount to full and true disclosure on the part of the assessee.:

At this stage, the reasons recorded shall have to be regarded, which have been based on the information contained in the report of the Dy. CIT, Kolkata, dt. 24-3-2013, wherein it had been noticed that the assessee company obtained accommodation entry in the form of loans and advances from Basant Marketing (P.) Ltd. and, therefore, the assessing officer based his reason to believe that the income chargeable to tax had escaped the assessment.

17. In the post notice correspondence dt. 5-3-2014, it has been stated by the assessing officer that Basant Marketing (P.) Ltd. provided accommodation entry to various companies, where assessee company is one of them. Basant Marketing (P.) Ltd. is a dummy company of one Shri Arun Dalmia and substantial

material is found to base such reasons recorded during the search by CBI, Mumbai, and, therefore, the assessing officer issued a notice to show cause as to why the said amount of Rs. 8.71 crores received from Basant Marketing (P.) Ltd. should not be treated as cash credit under section 68 of the Act.

18. As mentioned hereinabove, we had called for the original file, which had revealed new, valid and tangible information supporting assessing officers opinion received from Dy. CIT, Kolkata, based on the material found during the search by the CBI, where Basant Marketing (P.) Ltd. is said to be a dummy company of one Shri Arun Dalmia.

What has been emphasised by the learned senior counsel appearing for the petitioner is that the assessing officer had attempted to fill in the gap by terming the amount received from Basant Marketing (P.) Ltd. as "accommodation entry", which she could not have done without further inquiry/verification. Yet another contention emphasised by the learned senior counsel is that the post-notice correspondence made after the reasons recorded could not have added anything which was lacking in the reasons themselves. He urged that in absence of any statement given by any director of Basant Marketing (P.) Ltd. stating that the assessee received and obtained accommodation entry in the form of loans and advances, the reasons lack basis. The director Mr. Dalmia of Basant Marketing Pvt. Ltd. as contended also does not reveal anywhere and, therefore, it is premature on the part of the assessing officer to so record the reasons.

It is further urged that the affidavit of Rishabh Dalmia stating on oath that the loan transactions with the petitioner are genuine for having been carried out only through cheques, prima facie vindicates that the entire exercise is based on suspicion. The entire thrust, therefore, is that issuance of notice is nothing but a fishing inquiry.

19. As discussed at length while adverting to the law, that sufficiency of reasons recorded by the assessing officer need not be gone into by this Court. Of course, the assessing officer when forms his belief on the basis of subsequent new and specific information that the income chargeable to tax has escaped assessment on account of omission on the part of the assessee to make full and true disclosure of primary facts, he may start reassessment proceedings as fresh facts revealed the non-disclosure full and true. Such facts were not previously disclosed or it can be said that if previously disclosed, they expose untruthfulness of facts revealed.

20. The assessing officer required jurisdiction to reopen under section 147 read with section 148 of the Act, where the information must be specific and reliable. As held by the Apex Court in the case of Phool Chand Bajrang Lal (supra), since the belief is that of the ITO, the sufficiency of reasons for forming the belief, is not for the Court to judge but is open to an assessee to establish that there exists no belief or that the belief is not at all a bona fide one or based on vague, irrelevant and non-specific information. To that limited extent, the Court may

look at the view taken by the ITO and can examine whether any material is available on record from which the requisite belief could be formed by the assessing officer and whether that material has any rational connection or a live link with the formation of the requisite belief. It is also immaterial that at the time of making original assessment, the assessing officer could have found by further inquiry or investigation as to whether the transactions were genuine or not. If on the basis of subsequent valid information, the assessing officer forms a reason to believe on satisfying twin conditions prescribed under section 147 of the Act that no full and true disclosure of facts was made by the assessee at the time of original assessment and, therefore, the income chargeable to tax had escaped assessment, his belief and the notice of reassessment based on such belief/opinion needs no interference.

In the present case, since both the necessary conditions have been duly fulfilled, sufficiency of the reasons is not to be gone into by this Court. The information furnished at the time of original assessment, when by subsequent information received from the Dy. CIT, Kolkata, itself found to be controverted, the objection to the notice of reassessment under section 147 of the Act must fail. At the costs of ingemination, it needs to be mentioned that at the time of scrutiny assessment, a specific query was raised with regard to unsecured loans and advances received from the said company, namely, Basant Marketing (P.) Ltd. based at Kolkata. These being the transactions through the cheques and drafts, there would arise no question of the assessing officer not accepting such version of the assessee and not treating them as genuine loans and advances. Furnishing the details of names, addresses, PANs, etc. also would lose its relevance if subsequently furnished information, which has been made basis for issuance of notice impugned, concludes that Basant Marketing (P.) Ltd. is merely a dummy company of one Shri Arun Dalmia, which provided the accommodation entries to various beneficiaries.

21. This Court has examined the belief of the assessing officer to a limited extent to inquiry as to whether there was sufficient material available on record for the assessing officer to form a requisite belief whether there was a live link existing of the material and the income chargeable to tax that escaped assessment. This does not appear to be the case where the assessing officer on vague or unspecific information initiated the proceedings of reassessment, without bothering to form his own belief in respect of such material. We need to notice that the Jt. Director, CBI, Mumbai, intimated to the Director of IT (Investigation), Mumbai. A case is registered against Mr. Arun Dalmia, Harsh Dalmia and during the search at their residence and office premises, the substantial material indicated that 20 dummy companies of Mr. Arun Dalmia were engaged in money laundering and the income-tax evasion. The said entities included Basant Marketing (P.) Ltd. also. From the analysis of details furnished and the beneficiaries reflected, which are spread across the country, the CIT, Kolkata, suspected the accommodation entry related to the assessment year 2006-07 as well, this information has been provided to Director General of IT, Kolkata, who

in turn, communicated to the Chief CIT, Ahmedabad. Further revelation of investigation as could be noticed from the record examined (file) deserves no reflection in this petition. Insistence on the part of the petitioner to provide any further material forming the part of investigation carried out against Dalmias also needs to meet with negation, as the law requires supply of information on which assessing officer recorded her satisfaction, without necessitating supply of any specific documents. The proceedings initiated under section 147 of the Act would not be rendered void on non-supply of such document for which confidentiality is claimed at this stage, following the decision of the Delhi High Court in case of Acorus Unitech Wireless (P.) Ltd. (*supra*). Assumption of jurisdiction on the part of the assessing officer is since based on fresh information, specific and reliable and otherwise sustainable under the law, challenge to reassessment proceedings warrants no interference.

22. Resultantly, the petition is dismissed. Notice is discharged. There shall be, however, no order as to costs.