* **HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 9th November, 2010
% Judgment Pronounced on: 7th January, 2011

\+ **WP(C) No.7517/2010**

AGR INVESTMENT LTD. ..... Petitioner
Through: Mr. S. Ganesh, Sr. Adv. with
Mr. Satyen Sethi, Mr. Arta Trana,
Advocates

Versus

ADDL. COMMISSIONER OF INCOME TAX
AND ANOTHER ....Respondents
Through: Mr. M.P. Sinha, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

By this writ petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for issue of a writ of certiorari for quashment of the notice dated 25th February, 2010 issued under Section 148 of the Income Tax Act, 1961 (for brevity 'the Act') for the assessment year 2003-04 and further to quash the order dated 28th June, 2010 whereby the objections raised by the petitioner have been rejected.

2. It is submitted by Mr. S. Ganesh, learned senior counsel along with Mr. Satyen Sethi and Mr. Arta Trana, learned counsel appearing for the petitioner, that the assessing officer has assumed jurisdiction to initiate the proceedings under Section 147 and issued notice under Section 148 of the Act solely on the basis of certain statements recorded by the Directorate of Investigation without forming an independent opinion. It is urged by him that the expression used in Section 147 of the Act is 'reason to believe' and not 'reason to suspect' and it is the settled legal position that there should be direct nexus or live link between the materials relied upon by the revenue and the belief that income has escaped assessment. It is contended that on a bare reading of the reason to believe, it is evident that the jurisdiction to reassess the income has been assumed on the basis of unspecific and vague information which cannot justify the formation of the belief or the reason to believe that income has escaped assessment. The entire foundation of the belief that the income has escaped assessment is that "certain investigations were carried out by the Directorate of Investigation, Jhandewalan" though no particulars had been given on what basis the Directorate of Investigation had come to the conclusion that accommodation entries were given to the petitioner. It is urged that no details of the persons who supposedly alleged that the transactions of the petitioner were bogus were provided and further the nature of the alleged accommodation entries have not been referred to in the reason to believe. In essence, the submission in this regard is that there is complete absence of material which can be said to have a live link with or be the basis of formation of the purported belief or reason to believe that the

petitioner's income had escaped assessment. The allegation that the transactions entered into by the petitioner were bogus is totally without any substance in the absence of any materials/details provided. It is further submitted by the learned counsel for the petitioner that the reasons recorded must show application of mind by the assessing officer to the material produced before him on the basis of which the reason to believe is formed that income has escaped assessment and in the absence of such application of mind which is evincible from the reasons recorded, the order is vulnerable in law. It is contended by him that the assessing officer has merely blindly accepted what was allegedly intimated to him by the Directorate of Investigation without even attempting to ascertain the basis of the Directorate's assertion that accommodation entries were given to the petitioner. It is his further submission that the objections raised by the petitioner have not been disposed of in conformity with the decision rendered by the Apex Court in ***GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors.,*** **(2003) 179 CTR 11 (SC)** inasmuch as there is no consideration of the basic and fundamental objections raised by the petitioner which go to the very root of the matter and would clearly reveal that no addition whatsoever could have been made to the petitioner's income. It is canvassed by him that the decision of the Apex Court in ***GKN Driveshafts (India) Ltd.*** (supra) requires that the assessee's objections to the reopening should be considered and disposed of in conformity with the rules of natural justice.

3. To bolster his submissions, the learned counsel for the petitioner has commended us to the decisions in ***ITO v. Lakhmani Mewal Das,*** **[1976] 103 ITR 437 (SC),** ***General Mrigendra Shum Sher Jung Bahadur Rana v. ITO,*** **[1980] 123 ITR 329,** ***United Electrical Co. Pvt. Ltd. v. CIT,*** **[2002] 258 ITR 317,** ***CIT v. SFIL Stock Broking Ltd.,*** **[2010] 325 ITR 285 (Del),** ***Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India,*** **AIR 1976 SC 1785** and ***Union of India v. Mohan Lal Capoor,*** **AIR 1974 SC 87**.

4. Mr. M.P. Sinha, learned counsel appearing for the revenue, supported the order passed by the competent authority contending, interalia, that the assessing officer has applied his independent mind and has not been solely guided by the information given by the Directorate of Investigation. It is proponed by him that the objections raised by the petitioner has been appositely dealt with and by no stretch of imagination it can be said to be a cryptic order passed in a mechanical manner. The learned counsel for the revenue would submit that what is basically contended by the learned counsel for the assessee – petitioner pertains to sufficiency of material which should not be gone into at this stage. It is put forth by him that the same has to be delved into at the time of assessment and the petitioner would be afforded adequate opportunity of hearing to explain the same. The learned counsel has further submitted that the decisions which have been placed reliance upon by the learned counsel for the petitioner are distinguishable on facts and, hence, the same really do not render much assistance to him.

5. To appreciate the controversy, it is appropriate to refer to the initial notice dated 25th February, 2010 which was sent by the assessing officer. On a perusal of the said notice, it is evident that there has been escapement of taxable income for the assessment year 2003-04 within the meaning of Section 147 of the Act. It is worth noting, there is a cavil between the revenue and the petitioner how the objections have been dealt with by the competent authority of the revenue. It is averred in the petition that the petitioner, on receipt of the notice, submitted that the return of income filed under Section 139(1) of the Act may be treated as filed in response to the notice under Section 148 of the Act and the reasons recorded for assuming jurisdiction to re-assess the income be furnished so that objections referring to the assumption of jurisdiction may be filed. On 15th March, 2010, the reason to believe, as recorded, was provided to the petitioner wherefrom it is reflectible that the jurisdiction was assumed on the basis of the report of the Directorate of Investigation that certain persons had given statement that the petitioner had received accommodation entries. On 20th May, 2010, the assessee requested to provide copies of the statement and the report of the DIT (Investigation) to enable him to raise objections. However, as is manifest, by letter dated 21st June, 2010, the petitioner raised the following objections:

> "(i) During the year the petitioner has neither received any gift nor any share application money nor any loan.
>
> (ii) There was no change in share capital during the year as compared to immediately preceding year. The petitioner being a public limited listed company is regulated by the

rules and regulations of SEBI and cannot accept share application money or issue share capital except with the prior approval of SEBI.

(iii) Neither any loan was borrowed nor has any payment been repaid during the year. Reference was made to clause 23(a) of Tax Audit Report.

(iv) It was explained that during the year, investment in shares held by the petitioner was sold. From the audited balance sheet, it is evident that the petitioner was having shares of three limited companies, namely, Lakshmi Float Glass Limited, Bawa Float Glass Limited and KPF Finances Limited of the face value of Rs.1,40,00,000/-. It was these shares that were sold at the face value only. It is out of sale of these shares that sale to the extent of Rs.27,00,000/- has been alleged in the reasons as accommodation entry.

(v) Amount received on sale of investments was utilized to give loans and the same appear in the balance sheet under the head 'loans and advances'."

6. Upon receipt of the said objections, the same were dealt with vide Annexure P-2 dated 28th June, 2010. In paragraph 3, the authority concerned referred to its earlier decision and reproduced the same. We think it appropriate to reproduce the relevant portion of the same whereby the objections have been rejected:

"REASONS RECORDED IN WRITING FOR
REOPENING THE CASE UNDER SECTION 148
M/s AGR INVESTMENT LTD.
ASSESSMENT YEAR 2003-04

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:

Beneficiary's Name	Beneficiary's Bank Name	Beneficiary's Bank Name	Value Entry Taken
AGR Investment Ltd.	SBI	Pahar Ganj	400000
AGR Investment Ltd.	SBI	Pahar Ganj	300000
AGR Investment Ltd.	SBI	Pahar Ganj	300000
AGR Investment Ltd.	SBI	Pahar Ganj	500000
AGR Investment Ltd.	SBI	Pahar Ganj	700000
AGR Investment Ltd.	SBI	Pahar Ganj	500000
		Total	2700000
Instrument No. by which entry taken	Date on which Entry taken	Name of Account Holder of entry giving account	
141581	23-May-02	SAAR Enterprises Pvt. Ltd.	
141852	28-May-02	SAAR Enterprises Pvt. Ltd.	
141957	28-May-02	Tulip Engg. Pvt. Ltd.	
141854	9-Jun-02	SAAR Enterprises Pvt. Ltd.	
141955	9-Jun-02	Tulip Engg. Pvt. Ltd.	
141959	20-Jun-02	Tulip Engg. Pvt. Ltd.	
Bank from which entry given	Branch of entry giving bank	A/c No. entry giving account	
Corpn. Bank	Paschim Vihar	52116	
Corpn. Bank	Paschim Vihar	52116	
Corpn. Bank	Paschim Vihar	52174	
Corpn. Bank	Paschim Vihar	52116	
Corpn. Bank	Paschim Vihar	52174	
Corpn. Bank	Paschim Vihar	52174	

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.

xxx
xxx

i) The reasons recorded by the Assessing Officer amply "demonstrate" that income has escaped assessment, there is adequate "reason to believe" that income has escaped assessment, as the report of DIT(Inv) has specifically pointed out that the receipts are bogus; they are mere accommodation entries and this channel has been utilized by the assessee to introduce its own unaccounted money in its books of accounts. In this respect, it would be pertinent to cite here the case of IPCA Laboratories Ltd. vs. DCIT (2001) 251 ITR 420 (Bombay).

ii) It would be pertinent to state here as under:-

Assessee must disclose all primary facts fully and truly – The words 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year' postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision on the question before the assessing authority lies on the assessee – Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191 (SC); Indian Oil Corporation v. ITO [1977] 106 ITR 1 (SC); ITO v. Lakhmani Mewal Das (supra)."

7. The questions that emerge for consideration are whether there has been application of mind or change of opinion, whether the objections have been properly dealt with and whether there is a mere suspicion or reason to believe. Regard being had to the aforesaid issues, we think it appropriate to refer to certain citations in the field.

8. In **Raymond Woolen Mills Ltd. v. Income Tax Officer & Ors., *[1999] 236 ITR 34 (SC)***, while dealing with the validity of commencement of re-assessment proceedings under Section 147 of the Act, the Apex Court has held that there is prima facie some material on the basis of which the Department could re-open the case. The sufficiency or correctness of the material is not a thing to be considered at that stage.

9. The High Court of Gujarat in ***Praful Chunilal Patel v. Assistant Commission of Income Tax,*** **[1999] 236 ITR 832** has opined that in terms of the provision contained in Section 147, the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the assessing officer has a cause or justification to think or suppose that income has escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words 'reason to believe' cannot mean that the assessing officer should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and if he likes from any information that he receives. If he discovers or finds or satisfies himself that the taxable

income has escaped assessment, it would amount to saying that he had reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief, though justified for the purpose of initiation of the proceedings under Section 147, may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such income has escaped assessment, the assessing officer is not required to base his belief on any final adjudication of the matter.

10. In ***Ganga Saran & Sons P. Ltd. v. ITO & Ors.*, [1981] 130 ITR 1 (SC)**, it has been held thus:

> "It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the ITO can assume jurisdiction to issue notice under S. 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and, secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the ITO would be without jurisdiction. The important words under S.147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under

S.147(a). It there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

11. In ***Birla VXL Ltd. v. Assistant Commissioner of Income Tax,*** **[1996] 217 ITR 1 (Guj.)**, a Division Bench of the Gujarat High Court has opined thus:

"Explanation 2 to Section 147 of the Act, as appended to newly substituted section 147 makes certain provisions, where in certain circumstances, the income is deemed to have escaped assessment giving jurisdiction to the Assessing Officer to act under the said provision. Another requirement which is necessary for assuming jurisdiction is that the Assessing Officer shall record his reasons for issuing notice. This requirement necessarily postulates that before the Assessing Officer is satisfied to act under the aforesaid provisions, he must put in writing as to why in his opinion or why he holds belief that income has escaped assessment. "Why" for holding such belief must be reflected from the record of reasons made by the Assessing Officer. In a case where Assessing Officer holds the opinion that because of excessive loss or depreciation allowance income has escaped assessment, the reasons recorded by the Assessing Officer must disclose that by what process of reasoning he holds such a belief that excessive loss or depreciation allowance has been computed in the original assessment. Merely saying that excessive loss or depreciation allowance has been computed without disclosing reasons which led the assessing authority to hold such belief, in our opinion, does not confer jurisdiction on the Assessing Officer to take action under sections 147 and 148 of the Act. We are also of the opinion that, howsoever wide the scope of taking action under section 148 of the Act be, it does not confer jurisdiction on a change of opinion on the

> interpretation of a particular provision from that earlier adopted by the assessing authority. For coming to the conclusion whether there has been excessive loss or depreciation allowance or there has been underassessment at a lower rate or for applying the other provisions of Explanation 2, there must be material that have nexus to hold opinion contrary to what has been expressed earlier. The scope of section 147 of the Act is not for reviewing its earlier order suo motu irrespective of there being any material to come to a different conclusion apart from just having second thoughts about the inferences drawn earlier.
>
> [Emphasis added]

12.\ In ***Sheo Narain Jaiswal & Ors. v. Income Tax Officer & Ors.,*** **[1989] 176 ITR 352 (Patna)**, it was held that reassessment proceedings can be initiated under Section 147(a) of the Act if the Income-tax Officer has reason to believe that there has been escapement of income and that the said income escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that period or year. Both the conditions are conditions precedent for the assumption of jurisdiction under Section 148 of the Act.

13. In ***Phool Chand Bajrang Lal & Anr. v. Income Tax Officer & Anr.,*** **[1993] 203 ITR 456 (SC)**, the Apex Court has held thus:

> "From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains

chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief…"

[Emphasis supplied]

14. In ***Anant Kumar Saharia v. Commissioner of Income Tax & Ors.,*** **[1998] 232 ITR 533 (Gauhati)**, it was held as follows:

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

[Underlining is ours]

15. In ***Bombay Pharma Products v. Income Tax Officer*, [1999] 237 ITR 614 (MP)**, it was held as follows:

> It is also established that the notice issued under Section 148 of the Act should follow the reasons recorded by the Income-tax Officer for reopening of the assessment and such reasons must have a material bearing on the question of escapement of income by the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Whether such reasons are sufficient or not, is not a matter to be decided by the court. But the existence of the belief is subject to scrutiny if the assessee shows circumstances that there was no material before the Income-tax Officer to believe that the income had escaped assessment."
>
> [Emphasis added]

16. In **H*.A. Nanji & Co. v. Income Tax Officer*, [1979] 120 ITR 593 (Calcutta)**, it has been held that at the time of issue of notice of reassessment, it is not incumbent on the ITO to come to a finding that income has escaped assessment by reason of the omission or failure of the assessee to disclose fully and truly all material facts necessary for assessment. It has been further held that the belief which the ITO entertains at that stage is a tentative belief on the basis of the materials before him which have to be examined and scrutinised on such evidence as may be available in the proceedings for reassessment. The Division Bench held that there must be some grounds for the reasonable belief that there has been a non-disclosure or omission to file a true or correct return by the assessee resulting in escapement of assessment or in under-assessment. Such belief must be in good faith, and should not be a mere pretence or change of opinion on inferential facts or facts extraneous or irrelevant to the issue and

the material on which the belief is based must have a rational connection or live link or relevant bearing on the formation of the belief.

17. In ***N.D. Bhatt, Inspecting Assistant Commissioner, Income Tax & Another. v. I.B.M. World Trade Corporation, [1995] 216 ITR 811(Bombay),*** it has been held thus:

> "It is also well-settled that the reasons for reopening are required to be recorded by the assessing authority before issuing any notice under section 148 by virtue of the provisions of section 148(2) at the relevant time. Only the reason so recorded can be looked at for sustaining or setting aside a notice issued under section 148."

18. In ***Hindustan Lever Ltd. v. R.B. Wadkar, [2004] 268 ITR 332 (Bom),*** a Division Bench has opined thus***:-***

> "…. the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must

disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment."

[underlining is ours]

19. In ***Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd, [2007] 291 ITR 500 (SC)***, it has been ruled thus:-

"Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. 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. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by

> the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO, [1991] 191 ITR 662, for initiation of action under Section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, 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 by the Assessing Officer is within the realm of subjective satisfaction."
>
> [Emphasis supplied]

20. In this context, we may refer with profit to a Division Bench decision of this Court in ***SFIL Stock Broking Ltd.*** (supra), wherein the Bench was dealing with the validity of the proceedings under Section 147 of the Act. The Bench reproduced the initial issuance of notice and thereafter referred to the reasons for issue of notice under Section 148 which was provided to the assessee. Thereafter, the Bench referred to the decisions in ***CIT v. Atul Jain, 299 ITR 383 (Del), Rajesh Jhaveri Stock Brokers Pvt. Ltd*** (supra), ***Jay Bharat Maruti Ltd. v. CIT, 223 CTR 269 (Del)*** and ***CIT v. Batra Bhatta Company, 174 Taxman 444 (Del)*** and eventually held thus: -

> "9. In the present case, we find that the first sentence of the so-called reasons recorded by the

Assessing Officer is mere information received from the Deputy Director of Income Tax (Investigation). The second sentence is a direction given by the very same Deputy Director of Income Tax (Investigation) to issue a notice under Section 148 and the third sentence again comprises of a direction given by the Additional Commissioner of Income Tax to initiate proceedings under Section 148 in respect of cases pertaining to the relevant ward. These three sentence are followed by the following sentence, which is the concluding portion of the so-called reasons:-

> "Thus, I have sufficient information in my possession to issue notice u/s 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of reasons recorded as above."

10. From the above, it is clear that the Assessing Officer referred to the information and the two directions as „reasons' on the basis of which he was proceeding to issue notice under Section 148. We are afraid that these cannot be the reasons for proceeding under Section 147/148 of the said Act. The first part is only an information and the second and the third parts of the beginning paragraph of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the Assessing Officer had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, we find that the Tribunal has arrived at the correct conclusion on facts. The law is well settled. There is no substantial question of law which arises for our consideration."

[Emphasis is ours]

21. At this juncture, it is profitable to refer to the authority in ***GNK Driveshafts (India) Ltd. v. Income Tax Officer and Others, (2003) 179 C54 (SC) 11*** wherein their Lordships of the Apex Court have held thus:-

> "5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

21. In ***Sarthak Securities Co. Pvt. Ltd. v. ITO, Writ Petition No.6087/2010, decided on 18th October, 2010***, a Division Bench of this Court, after reproducing Section 147 of the Act and relying on certain decisions in the field, expressed the view as follows:

> "23. `The obtaining factual matrix has to be tested on the anvil of the aforesaid pronouncement of law. In the case at hand, as is evincible, the assessing officer was aware of the existence of four companies with whom the assessee had entered into transaction. Both the orders clearly exposit that the assessing officer was made aware of the situation by the investigation wing and there is no mention that these companies are fictitious companies. Neither

> the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind. True it is, at that stage, it is not necessary to have the established fact of escapement of income but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof is not germane at this stage but the formation of belief must be on the base or foundation or platform of prudence which a reasonable person is required to apply. As is manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence is not disputed. What is mentioned is that these companies were used as conduits. In that view of the matter, the principle laid down in Lovely Exports (P) Ltd. (supra) gets squarely attracted. The same has not been referred to while passing the order of rejection. The assessee in his objections had clearly stated that the companies had bank accounts and payments were made to the assessee company through banking channel. The identity of the companies was not disputed. Under these circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It is totally unwarranted."

22. The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the assessing officer treated them as objections and made a communication. However, on a scrutiny of the order, it is perceivable that the authority has passed the order dealing with the objections in a very careful and studied manner. He

has taken note of the fact that transactions involving Rs.27 lakhs mentioned in the table in Annexure P-2 constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The assessing officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the DIT (INV-V) as regards the transactions entered into by the assessee company with number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner in the original assessment and sought to be done in a different manner in the proceeding under Section 147 of the Act. The reason to believe has been appropriately understood by the assessing officer and there is material on the basis of which the notice was issued. As has been held in ***Phool Chand Bajrang Lal*** (supra), ***Bombay Pharma Products*** (supra) and ***Anant Kumar Saharia*** (supra), the Court, in exercise of jurisdiction under Article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In ***SFIL Stock Broking Ltd.*** (supra), the bench has interfered as it was not discernible whether the assessing officer had applied his mind to the information and independently arrived at a belief on the basis of material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the

factual matrix in the case at hand. In the case of ***Sarthak Securities Co. Pvt. Ltd.*** (supra), the Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into transactions and the assessing officer was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee company through the banking channel. Regard being had to the aforesaid fact situation, this Court had interfered. Thus, the said decision is also distinguishable on the factual score.

23. In the case at hand, as we find, the petitioner is desirous of an adjudication by the writ court with regard to the merits of the controversy. In fact, the petitioner requires this Court to adjudge the sufficiency of the material and to make a roving enquiry that the initiation of proceedings under Sections 147 and 148 of the Act is not tenable. The same does not come within the ambit and sweep of exercise of power under Article 226 of the Constitution of India. It is open to the assessee to participate in the re-assessment proceedings and put forth its stand and stance in detail to satisfy the assessing officer that there was no escapement of taxable income. We may hasten to clarify that any observation made in this order shall not work to the detriment of the plea put forth by the assessee during the re-assessment proceedings.

24. Consequently, the writ petition, being sans substratum, stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J.

JANUARY 7, 2011
Pk/dk