* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 31.05.2025

\+ **ITA No. 529/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 .....Appellant

versus

M/S K.R. PULP AND PAPERS LTD. .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Sanjay Kumar, Ms. Monica Benjamin and Ms. Easha Kadian, Advocates.

For the Respondent : Mr. Gautam Jain and Mr. Manish Yadav, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The Appellant [‘**Revenue**’] has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [‘**the Act**’], *inter alia,* impugning an order dated 31.03.2022 [‘**impugned order**’] passed by the learned Income Tax Appellate Tribunal [‘**ITAT**’] in ITA No.5064/Del/2017 in respect of Assessment Year [‘**AY**’] 2009-10.

2. The Revenue had filed the aforementioned appeal against the order dated 22.05.2017 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi ['**CIT(A)**'], whereby the Respondent's ['**Assessee**'] appeal against the Assessment Order dated 31.12.2016 passed by the Assessing Officer ['**AO**'] under Section 143(3) read with Section 147 of the Act, was allowed and the additions made by the AO under Section 68 of the Act were deleted.

FACTUAL MATRIX

3. The Assessee is a public limited company and is engaged in the manufacturing of kraft paper and brown paper usually used for packaging. The Assessee filed its return of income on 26.09.2009 declaring an income of ₹1,95,97,146/- for the Financial Year ['**FY**'] 2008-09 relevant to AY 2009-10.

4. The Assessee's return was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Act were issued raising queries regarding deduction claimed by the Assessee under Section 80IA of the Act. The AO framed an assessment order dated 22.11.2011 determining the Assessee's income at ₹5,84,39,170/- instead of ₹1,95,97,146/- by disallowing the deduction of ₹3,88,42,085/- claimed under Section 80IA of the Act. However, the said deductions were thereafter allowed by the CIT(A) and the learned ITAT. Subsequently, on 29.03.2016, the case was reopened under Section 147 of the Act, and a notice under Section 148 of the Act was issued to the Assessee. In response, the Assessee, by the letter dated 31.03.2016, requested that the return originally filed on 26.09.2009 be treated as the return filed in response to the notice under Section 148 of the Act.

5. Thereafter, statutory notices were issued under Sections 143(2) and 142(1) of the Act. Upon completion of the reassessment proceedings, the AO passed an order under Section 147 read with Section 143(3) of the Act on 31.12.2016, assessing the total income of the Assessee at ₹27,28,32,150/-. The reassessment included an addition of ₹25,32,35,000/- under Section 68 of the Act on account of unexplained share capital and share premium received by the Assessee during the previous year relevant to the AY.

6. The Assessee preferred an appeal before the CIT(A), challenging the validity of the reassessment proceedings as well as the addition made under Section 68 of the Act by the assessment order dated 31.12.2016. By order dated 22.05.2017, the CIT(A) deleted the addition and quashed the reassessment proceedings holding that the reasons recorded for reopening the assessment did not refer to any material, much less any incriminating material, found as a result of the search conducted in the group cases, or during post-search investigation, that could establish that the Assessee had received bogus share capital. The CIT(A) also found that the reasons recorded by the AO were general, vague, and not confronted to the Assessee, while further observing that the AO had mechanically relied upon the information from the Investigation Wing without independently applying his mind. On these grounds, the CIT(A) held that the assumption of jurisdiction under Section 147 of the Act was not sustainable and treated the reassessment order as *void ab initio*.

7. The CIT(A) further recorded that the AO had not brought any material on record to show that the share capital received had emanated from the coffers of the Assessee. Referring to the decisions of this Court in ***CIT v.***

Value Capital Services Pvt. Ltd.: (2008) 307 ITR 334 and that of the Bombay High Court in ***CIT v. Gagandeep Infrastructure Pvt. Ltd.***: 2017 SCC OnLine Bom 3796, the CIT(A) held that in the absence of such material, the amount received could not be treated as unexplained income of the Assessee. The CIT(A) also noted that a substantial number of the investor companies were registered as Non-Banking Financial Companies ['**NBFCs**'] with the Reserve Bank of India ['**RBI**'] who were filing returns of income, and had been in existence prior to the incorporation of the Assessee. On this basis, the CIT(A) concluded that there was no basis to treat them as paper companies and deleted the addition in its entirety.

8. Aggrieved by the order of the CIT(A), the Revenue filed an appeal before the learned ITAT. The learned ITAT *vide* the impugned order dismissed the appeal of the Revenue. The learned ITAT noted that the reopening had been initiated beyond the period of 4 (four) years from the end of the relevant AY, and the original assessment was already completed under Section 143(3) of the Act. The learned ITAT also held that the reasons recorded by the AO did not set out as to how the Assessee had failed to make a full and true disclosure of material facts necessary for the assessment. In the absence of the same, the learned ITAT held that the reopening was contrary to the first proviso to Section 147 of the Act. It further noted that the Revenue had not brought any material on record to controvert the findings of the CIT(A). Since the order of the CIT(A) was based on binding judicial precedents, the learned ITAT upheld the same and dismissed the Revenue's appeal. The learned ITAT also held that in view of its finding that the reassessment order was *void ab initio*, the other grounds

challenging the deletion on merits had become academic and required no adjudication.

9. Aggrieved by the impugned order, the Revenue has filed the present appeal before this Court contending that the learned ITAT has simply relied upon the order passed by the CIT(A), without considering the assessment order dated 31.12.2016.

QUESTION OF LAW

10. This appeal was admitted *vide* order dated 05.04.2024 and the following question was framed for consideration:-

> "C. Whether in the circumstances of the case and in law, the Ld. ITAT is correct in treating the assessment order passed under Section 147 read with Section 143(3) of the Income Tax Act, 1961 as void-ab-initio even though the Assessing Officer had formed his reason to believe for escapement of income based on enquiries conducted by the Department & statements of the Directors of the investors companies, thereby following the procedure laid down in the Act before issuing notice under Section 148 of the Income Tax Act, 1961?"

SUBMISSIONS BY THE REVENUE

11. Learned Counsel for the Revenue submitted that the reopening of assessment was validly initiated under Section 147 of the Act based on specific and tangible material gathered during investigation proceedings conducted after a search and seizure action under Section 132 of the Act on 08.07.2015 in the case of the Assessee group. It is contended that the reassessment proceedings were initiated after the AO duly recorded reasons to believe that income had escaped assessment, and such reasons were not

based on a mere change of opinion, but on new information received from the Investigation Wing.

12. It was further submitted that although the original assessment for AY 2009-10 was completed under Section 143(3) of the Act on 22.11.2011, the AO, at that stage, had only examined the details of share capital and premium received on a test-check basis. The Assessee had submitted certain documents including share application forms, bank statements, and PAN of the investing companies, which were accepted at face value, were without any suspicion on the nature of those transactions.

13. It is was submitted that during the post-search enquiries, the Investigation Wing found that the Assessee had received share capital with exorbitant premium amounting to ₹36,64,35,000/- from a large number of Kolkata and Delhi-based companies which, upon enquiry, were found to be non-existent or operating as accommodation entry providers. The search and investigation revealed that the Directors of these companies admitted in their statements that they were engaged in the business of providing accommodation entries including share capital, unsecured loans, and other similar transactions in exchange for commission. These statements were recorded and analysed, and the trail of funds was also traced. It was found that the supposed investing companies had weak financials, negligible or nil income, and that the share capital received by the Assessee was routed through multiple layering of bank accounts after initial cash deposits.

14. It was further submitted that the Assessee's contention that all necessary material had already been disclosed during the original assessment is without merit. The Revenue argued that the disclosure must be both full

and true, and a disclosure, which is merely formal and misrepresents the true character of the transaction, cannot be considered true disclosure in law. In support, reliance is placed on the judgment of the Supreme Court in ***Sri Krishna Pvt. Ltd. v. ITO & Ors.****:* (1996) 221 ITR 538, wherein it was held that false or misleading disclosures attract reopening jurisdiction under Section 147 of the Act.

15. The Revenue also relies on the decision of this Court in ***CIT v. Multiplex Trading and Industrial Co. Ltd.****:* (2015) 378 ITR 351, wherein it was acknowledged that tangible material received after the conclusion of assessment proceedings regarding bogus entries can provide a valid basis for reopening the assessment. Similarly, in ***CIT v. Jansampark Advertising & Marketing P. Ltd.****:* (2015) 375 ITR 373 (Del), it was held that mere production of documents like PAN and bank statements does not establish creditworthiness or genuineness of the transaction. Reference is also made to ***CIT v. Titan Securities Ltd***.: (2013) 357 ITR 184 (Del), where the Court emphasised that documentary evidence must be assessed in light of the Revenue's findings on the money trail and the nature of entities involved.

16. It was submitted that the reassessment order dated 31.12.2016 passed under Section 147 read with Section 143(3) of the Act, wherein the AO made an addition of ₹25,32,35,000/- under Section 68 of the Act after considering the Assessee's submissions and reducing the proposed addition of ₹36,64,35,000/- clearly demonstrates due application of mind and compliance with procedural requirements. The Revenue contends that the findings recorded by the CIT(A) and upheld by the learned ITAT, to the effect that the reasons recorded do not indicate the manner in which the

Assessee failed to disclose material facts, are erroneous and overlooked the substance of the material unearthed during investigation.

17. It was also submitted that the question before this Court is not whether the Assessee's claim was ultimately correct, but whether there existed *prima facie* material to justify reopening. In this context, reliance was placed on ***Raymond Woollen Mills Ltd. v. ITO, Centre Circle XI, Range Bombay & Ors.***: (1999) 236 ITR 34 (SC), where the Supreme Court held that sufficiency of material is not to be assessed at the stage of reopening and that existence of some relevant material is sufficient.

18. In view of the above, the Revenue submitted that reopening of the assessment under Section 147 of the Act was in accordance with law and the order passed by the AO could not have been treated as *void ab initio*. Therefore, the findings of the CIT(A) and learned ITAT are contrary to law and deserve to be set aside by allowing the present appeal.

SUBMISSIONS BY THE RESPONDENT

19. The learned Counsel for the Assessee submitted that the assumption of jurisdiction under Section 147 of the Act in the present case does not satisfy the conditions laid down in the first proviso to Section 147 of the Act, and accordingly, the reassessment proceedings are liable to be held as *void ab initio*. The Assessee had filed its return of income for AY 2009-10 on 26.09.2009 declaring income of ₹1,95,97,146/-. During the original assessment proceedings, the AO had called for details of subscribed and paid-up capital *vide* questionnaire dated 21.06.2011. In response, the Assessee had submitted the details of subscribed and paid-up share capital as on 31.03.2009, share application forms, bank statements, PAN, Income Tax

Return [‘**ITR**’] acknowledgments and proof of identity of the shareholders. Based on this, the assessment was completed and the AO did not make any addition on account of share capital. The order of assessment was framed under Section 143(3) of the Act on 22.11.2011, wherein the income was determined at ₹5,84,39,170/- against the returned income of ₹1,95,97,146/-, by disallowing deductions claimed under Section 80IA of the Act. Upon appeal, this addition was deleted by the CIT(A) and the learned ITAT had also affirmed the said decision of the CIT(A).

20. It was submitted that nearly 6 (six) years later, the notice dated 29.03.2016 under Section 148 of the Act was issued pursuant to a search conducted under Section 132 of the Act on 08.07.2015. It was further submitted that no incriminating material was found during the search in respect of the share capital transactions now sought to be reopened. While relying on the deletion of the addition by the CIT(A), it was submitted that the reasons for addition did not disclose how the Assessee failed to disclose relevant material facts during the original assessment. The documents and details forming the basis of the original assessment that had been duly submitted and stood accepted in the order under Section 143(3) of the Act.

21. It was further submitted that certain references were made in the reasons recorded for various enquiries, but the same were never confronted to the Assessee despite specific requests made *vide* letters dated 11.11.2016 and 29.12.2016.

22. The learned Counsel for the Assessee placed reliance on the decision of the Supreme Court in ***New Delhi Television Ltd. v. DCIT****:* (2020) 424 ITR 607, to submit that where the assessee had disclosed all primary facts

and the AO had formed his view, subsequent proceedings on the same material are not sustainable merely because the revenue now seeks to draw a different inference.

23. The learned Counsel for the Assessee submitted that the reasons for reopening must specify which fact or information was not disclosed. Reliance is placed on the judgment of this Court in ***Sabh Infrastructure Ltd. v. ACIT****:* (2017) 398 ITR 198, affirmed by the Supreme Court in ***ACIT v. Sabh Infrastructure Ltd.****:* 461 ITR 339 (SC), for the same.

24. The Assessee further submitted that during the original assessment proceedings, all relevant documentation was submitted and verified by the AO. In particular, the Assessee had provided confirmations, PAN, bank statements, and identity documents of all 58 shareholders. It is urged that these facts were never disputed during the original assessment and no material has been brought on record by the Revenue to suggest that the disclosures were false or incomplete at that stage.

25. It is also submitted that the Revenue has relied upon certain decisions, such as ***Sri Krishna Pvt. Ltd. v. ITO & Ors.*** *(supra)*, ***CIT v. Jansampark Advertising & Marketing Pvt. Ltd.*** *(supra),* and ***CIT v. Titan Securities Ltd****. (supra)*, which do not apply to the facts of the present case. In those cases, proviso to Section 147 of the Act was not dealt with and, therefore, they are inapplicable to the facts of the present case.

26. In view of the above, it was submitted that the learned ITAT rightly concluded that the reassessment proceedings were invalid in law. The reasons recorded by the AO do not satisfy the mandatory requirement of disclosing how and in what manner there was a failure on the part of the

Assessee to disclose fully and truly all material facts necessary for assessment. Hence, the present appeal deserves to be dismissed.

ANALYSIS

27. The limited question before this Court for determination is - whether the learned ITAT was correct in ruling that the Assessment Order passed by the AO was *void ab initio* even though the AO had formed his reason to believe for escapement of income based on enquiries conducted by the Income Tax Department and the statements of the Directors of the investors' companies.

28. Pertinent to the present controversy are the reasons recorded by the AO in the Assessment Order dated 31.12.2016, the relevant extract of which is reproduced as under:-

> "…Further from the perusal of the above noted companies, it is seen that either the companies are Delhi based or the companies are having Kolkata based address. Also from the enquiries conducted by the assessment charge it is seen that most of the 133(6) notices sent to these companies were either returned back, unserved or no information at all has come from these companies. Further, on the bank statements furnished it is seen that these companies were just rotating funds and no worthwhile business has been seen. On perusal of the return of income, they all are showing either Nil or negligible income which again speaks volumes about the creditworthiness of these companies.
>
> Assessee company received fresh investment money through companies/entities based in Kolkata or Delhi.
>
> xxxxxx
>
> Copies of balance sheets and P&L a/ c. were not provided in most of the companies and the source of fund was not explained. In any case, these companies are not going to invest in the assessee

company which has neither yielded dividend nor there is any appreciation in share price.

Further, from the above, it can be seen that

(a) In the cases of most of the share applicants no confirmation was filed.
(b) It is not known whether these share applicants exist or not.
(c) Although, PANs of these share applicants have been given but whether they are regularly filing the returns of income, it is not known whether these share applicants exist or not.
(d) Although, PANs of these share applicants have been given but whether they are regularly filing the returns of income is not known.
(e) The capacity of the share holders to apply for share of the assessee company is in grave doubt as these are apparently persons of no means and have subsequently sold the shares to the promoters of the company at a ridiculously low price.
(f) The genuineness of the transactions is also in doubt as the source of deposits in the bank account before issue of the cheques have not been explained.
(g) The assessee company is a private limited company and in such companies nobody is going to invest until unless that person is known to the management and he had some expectation in form of dividend from the company or gain on account of appreciation in share price both of which are absent in the instant case.

From the above, mentioned facts as well as after considering the facts/submission of the assessee, it is found that the above mentioned companies are not doing any business activity which justify for investment in assessee company are only passing funds it is clear from bank state of the party, it can be said that the above mentioned companies are paper company and provide bogus share premium to assessee company. And the entries are nothing but accommodation entries and the total amount of share application money as detailed in the table above amounting to Rs.25,32,35,000/- is added to the assessee's total income u/s. 68of the I.T. Act, 1961. Penalty u/s 27l(l)(c) of the I.T. Act, 1961 is initiated for furnishing concealment of income/ inaccurate particulars of income…."

29. In the case of ***CIT v. Multiplex Trading*** *(supra)*, this Court held as under:-

> "10. The first and foremost issue to be addressed is whether the Assessing Officer could assume jurisdiction to reopen the assessment based on the information received from the Investigation Wing of the Department. It is now well settled that the Assessing Officer can reopen the assessment if he has reason to believe the assessee's income has escaped assessment. However, his reasons to believe must not be based on surmises, conjectures or occasioned by change in opinion but must be based on some tangible and credible material on the basis of which a reasonable belief could be formed that income of an assessee has escaped assessment. The language of section 147 requires the Assessing Officer to have a reason to believe and not a reason to suspect. The reason to believe that income of an assessee has escaped assessment must be bona fide and reasonable. It is also settled that the material on which the Assessing Officer forms his opinion must not be the same material which had been considered at the time of the initial assessment, as in that case, the proceedings under section 147 of the Act would amount to reviewing the assessment order merely on a change of opinion, which is not permissible.
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> 11. By virtue of the proviso to section 147 of the Act, an assessment, which has been concluded under section 143(3) of the Act—that is, the return filed by the assessee was scrutinised and verified by the Assessing Officer—cannot be reopened after the expiry of four years from the end of the relevant assessment year unless the condition as specified under the proviso to section 147, is met; that is, the income of an assessee has escaped assessment on account of failure on the part of the assessee to make a return, either under section 139(1) of the Act or pursuant to a notice under section 142(1) of the Act, or is occasioned by the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment."

30. In the case of ***CNB FINWIZ LTD. v. DCIT, CIRCLE 6(1)****:* Neutral Citation 2025:DHC:4035-DB, this Court held as under:-

> "43. As explained by the Supreme Court in **The Income-Tax Officer, I Ward, District VI, Calcutta and Ors. v. Lakhmani Mewal Das** and several other decisions, "reasons to believe" cannot be conflated with "reasons to suspect" that an assessee's income has escaped assessment. Whilst it is not necessary for the AO to arrive at a firm conclusion that the assessee's income for the relevant assessment year has escaped assessment – that conclusion is to be drawn during the assessment proceedings – it is necessary that the AO has reasons to believe based on tangible material that has a live nexus with the belief that income has indeed escaped assessment. Concluded and closed assessments cannot be reopened merely on suspicion."

31. In the present case, the AO did not have any tangible material at the stage of issuance of the notice under Section 148 of the Act. His reasons for issuing the notice was based on certain information from Investigation Wing. The AO did not have any specific details regarding the income that was alleged to have escaped assessment. The AO also did not undertake any enquiries to ascertain the facts that lead to form the reasons to believe that the Assessee's income had escaped assessment. It is also material to note that no incriminating material was found during the search conducted under Section 132 of the Act in the case of the Assessee and its related entities. The only information stated to have been found during the search was that the Assessee had issued shares at a premium during the previous year relevant to AY 2009-10.

32. In the aforesaid context, the CIT(A) faulted the assumption of jurisdiction by the AO under Section 147 of the Act for issuance of the

notice. The CIT(A) accepted the Assessee's contention in this regard. The relevant extract of the CIT(A) reasoning is set out below:-

> "27.7 Apart from the above the assumption of jurisdiction u/s 147 of the Act is stated to be based on the enquiries conducted by Inspectors of the Investigation Wing at Delhi and Kolkata to form an opinion albeit prima-facie that appellant company has received share capital with exorbitant premium from large number of non descript companies mainly based in Kolkatta and Delhi from the period between 1.4.2008 to 31.3.2009. It is a matter of record that such enquiries had not been confronted to the appellant during the course of assessment proceedings through specifically requested vide replies dated 10.11.2016 and 29.12.2016 by the appellant company. In such circumstances all such enquiries cannot mechanically be made a basis to assume jurisdiction. The appellant has highlighted the following aspects in respect of the reasons recorded:
>
> i) That the reasons recorded do not contain name of any single entity which was inquired by the Investigation Wing, the reasons only mention that during pre and post search proceedings it was found that the group companies have received share capital with exorbitant premium from large number of non descript companies mainly based in Kolkata and Delhi from the period between 1.4.2008 to 31.03.2009.
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> ii) Further the reasons just mention that share capital with exorbitant premium was received from large number of non descript companies, but no definite / specific amount of premium has been mentioned in the reasons.
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> iii) Further it has been mentioned in the reasons that enquiries were also conducted by the Inspectors of the Investigation Wing at Delhi and Kolkata; but no date of report of such inquiry has been mentioned and further no list of entities were mentioned which were subject to such inquiries.
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> iv) Further only a generic statement was mentioned that most of the entry providing companies were not found existing at the given offices in Kolkata; the reasons nowhere mention the name of the entities nor the address

on which such inquiry was conducted, even so the date of such inquiry has not been mentioned.
v) Also it is mentioned that all entry giving companies have been covered under various searches conducted by Kolkata Investigation Wing and all the companies were found bogus and non-existent but hereto a vague statement has been mentioned without any definite details in terms of number of companies on which search was conducted, the period of search etc.
vi) Also the reasons refer to statement of entry providers along with bogus directors, wherein it has been admitted that they are in the business of providing accommodation entries and the assessee company is one of them which has received shares capital at exorbitant premium from large numbers of these non- descript companies mainly based in Delhi and Kolkata amounting. The reasons do not mention the name of the entry provider who confirmed that assessee company had received accommodation entries. Further no date of such statement has been mentioned, nor have the modes of such receipt or any details in terms of cheque number of bank been mentioned.
vii) Further the reasons do not mention the modus operandi of alleged routing of unaccounted money of the assessee through shareholder companies.

It was highlighted that reasons recorded suffer following factual infirmities and errors which prove that the reasons have been drafted without application of mind:

"During the year under consideration assessee has issued share capital including share premium to the tune of Rs.36,64,35,000/- to various parties, out of which Rs.11,32,00,000/- was received in the immediately preceding previous year i.e. during the financial year 2007-08, detail of Share Application Money was already submitted during the course of assessment proceedings vide submission dated 05.08.2011. However, the Ld. AO has mentioned that assessee has received Rs.36,64,35,000/- as share application money during the year and issued the shares at exorbitant premium.

> Further the table contains the detail of share issued by the assessee company during the year under consideration and not the amount received by the assessee company as mentioned in the reasons. During the year under consideration assessee has received share application of only Rs.25,32,35000/- and Rs.11,32,00,000/- was received during the financial year 2007-08 relevant to assessment year 2008-09.
> The column of total amount of the table as produced in the reason works out to Rs.15,43,75,000/- as against Rs.36,64,35,000/- mentioned in the reasons recorded, hence it could not be understood that why the total amount of Rs.36,64,35,000/- be treated as income which escaped assessment in the reasons.
>
> In the table produced in the reasons at S. No.1 the total amount is mentioned as Rs.3,62,00,000/- and the security premium as Rs.27,00,000/-, however the security premium should be Rs.2,89,60,000/-, further at S. No. 31, 36 and 40 the total amount mentioned is Rs.10,00,000/- and security premium Rs.80,00,000/-, it is also not written correctly."
>
> 27.8 In essence it is apparent reasons contain scanty, general, vague observations and not refer to any objective, tangible relevant material. Further even the figures adopted are factually incorrect and do not pertain to the instant year. No specific evidence has been highlighted to arrive at an opinion that either the companies are bogus and non existent or the money received represented unaccounted income. Though the reasons refer to the search but do not refer to any incriminating material detected as a result of search so as to form a prima facie opinion contrary to the claim made in the original return and accepted in the original assessment u/s 143(3) of the Act. Drawing of list of shareholders based on a Investigation wing report has not been judicially accepted as a foundation for assuming jurisdiction u/s 147 of the Act."

33. It is also not in dispute that during the original proceedings, the AO had issued a questionnaire dated 21.06.2011, whereby the AO called upon

the Assessee to submit the details of subscribers, paid up capital and also the details of shares allotted during the year under consideration. The Assessee had furnished the response to the said questionnaire and had submitted the share application money, share application form, proof of identity, copy of PAN and copy of ITR as well as the bank statements of the share applicants. Thus, the identity as well as the creditworthiness of the applicants was duly scrutinized. The copy of the ITR of the share applicants would reflect their capacity to subscribe to the shares. Thus, the income declared by the companies could not furnish any reasons for the AO to believe that the Assessee's income had escaped assessment.

34. In the given circumstances, the CIT(A) found that the AO had issued the notice merely on the basis of the information from the Investigation Wing without examining the foundation and accuracy of such material.

35. We also consider it apposite to refer to paragraphs 27.18 and 27.19 of the order passed by the CIT (A) and is reproduced below:-

> "27.18 The AO in the order of disposing of objection dated 26.8.2016 has observed that after search and seizure operation, new facts shows that assessee has taken bogus share premium. He has also stated that AO is fully authorized to see all the issues in light of facts and findings from search and seizure operation and other information and take necessary action. All require procedure followed by AO. However from the reasons recorded it is apparent that no material much less incriminating material was detected as result of search on the appellant or gathered during the assessment proceedings to allege, observe or assume that the same has taken bogus share capital. The reference to inquiries is vitiated for being vague and general and non specific, apart from the fact they have not been confronted to the appellant.

> 27.19 In nutshell, the AO did not apply his own mind to the information and examine the foundation / accuracy of such material of the information. The AO accepted the plea on the basis of vague information in a mechanical manner. The reasons recorded reflect that the AO did not independently apply his mind to the information received from the Investigation Wing to arrive at a belief that income of the assessee company had escaped assessment."

36. We find no infirmity with the said view. It is well settled that a notice under Section 148 of the Act could not be issued on mere suspicion. In order for the AO to form reasons to believe, it is necessary for the AO to examine the information and satisfy himself regarding the same.

37. In the present case, the reasons recorded by the AO did not specify the names of any particular share applicants, the details of the cheques or the amount paid. It is also necessary to note that issue of share capital, and the details of various share holders had already been examined during the assessment proceedings. Therefore, the AO was required to have some additional information, beyond what had already been examined, in order to form reasons to believe that the Assessee's income had escaped assessment.

38. It is material to note that the CIT(A) had also examined the issues on merits and had found that the allegations that the Assessee had obtained share capital from unsubstantiated subscribers, was not established.

39. We consider it apposite to refer to the following extract of the CIT(A)'s decision. The same is set out below:-

> "28.1 The assessee company is engaged in the business of manufacturing of kraft paper and brown paper usually used for packing. It had received share capital and share

premium to the tune of Rs.25,32,35,000/- from the 58 shareholders as stated in para 12.6 above. The AO asked the assessee to details of share capital pending allotments, detail of share capital premium received during year including complete detail of party i.e. name, address, PAN, Number of share allotted, total amount, allotment letter and transaction mode. He has also directed to detail of share capital/premium received during FY 2008-09 alongwith the highlight entry in bank statement in which amount received in order to prove identity, creditworthiness and genuineness of the transaction. The assessee admittedly produced several documentary evidence before the AO in order to prove the above ingredients of section 68 of the Act i.e. the assessee furnished address of the share applicants, CIN No., Incorporation date of company, PAN, Authorized capital, paid up capital, names of Directors, certificate issued by Registrar of Companies and return filed before ROC, net worth of all the companies, confirmation, copy of bank statement, copy of acknowledgement of filing of income tax return with audited accounts, copy of company master data, share certificates, share application form for all the investing companies. The AO did not doubt the genuineness of the aforesaid documentary evidence. The AO has not made any inquiry on these documentary evidences either from respective AO, ROC and bankers of shareholder companies. These evidences clearly prove that all the investor companies are existing and genuine companies registered with Registrar of Companies as well as assessed to income tax. No material is produced on record that during the course of search in the case of the assessee any material was found to prove that appellant company received any accommodation entries from shareholders. The AO without rebutting the above evidence relied upon statements of Shri Praveen Kumar Aggarwal, Shri Bhagwan Das Agarwal and Shri Jivendra Mishra recorded by Investigation Wing Kolkatta and Inspector reports to draw adverse inference against the appellant company. None of the above evidences have been confronted to the appellant. Statements of the above three persons were not recorded at assessment stage and in

> absence of cross examination cannot be used against the assessee. The Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE 62 taxmann.com 3 while deciding an issue regarding not allowing the cross examination has held that not allowing the assessee to cross examine the witness by the adjudicating authority though statements of those witnesses were made a basis of the impugned order amounted to a serious flaw which makes the order a nullity as it amounted to violation of principles of natural justice. Also in the case of Kishanich and Chellaram v. CIT 125 ITR 713 (SC) in which it was held that any material collected at the back of the assessee and not confronted and no opportunity given to cross-examine, such material cannot be relied upon against the assessee. ....."

40. As noted above, the CIT(A) also faulted the AO for drawing an adverse inference against the Assessee on the basis of certain statement without confronting the Assessee with the statements of 3 (three) persons recorded by the Investigation Wing. It is material to note that the said statements were not recorded during the assessment proceedings and the Assessee had no opportunity to cross examine those 3 (three) persons.

41. The AO was also persuaded to take an adverse inference on the basis that some of the share applicants had not responded to notice under Section 133(6) of the Act. However, the learned counsel for the Revenue fairly conceded that the Assessee had pointed out that summons under Section 133(6) of the Act had been issued at incorrect addresses and had also furnished the correct addresses, but no further summons were sent at that addresses.

42. The learned ITAT did not interfere with the CIT(A)'s finding on merits. The learned ITAT accepted the CIT(A)'s finding that the AO's

assumption of the jurisdiction was invalid. The learned ITAT also noted that in the original assessment proceedings, which culminated in the assessment order dated 22.11.2011, the AO had disallowed the Assessee's claim of deductions under Section 80IA of the Act.

43. The Assessee had filed an appeal before the CIT(A) and succeeded. The Revenue had thereafter, appealed the said decision before the learned ITAT, but was unsuccessful. Thus, it is noted that the assessment order had been passed after examining the details of the finances of the Assessee during the relevant period. The learned ITAT also noted that during the assessment proceedings, the Assessee had submitted the details of all the share capital. Therefore, the reasons for reopening did not record as to the Assessee's failure to disclose truly and correctly the material facts for completion of the proceedings. The relevant extract of learned ITAT's finding in this regard is set out below:-

> "8.1 Before deciding the appeal on merit, we would first like to decide the validity of the reassessment proceedings. As stated earlier, the assessment year involved in the instant case is A.Y. 2009-10 and the original assessment was completed under section 143(3) on 22.11.2011. We find the assessee in response to Question No.10 issued by the A.O. during original assessment proceedings has given the following reply in respect of subscribed and paid-up share capital.
>
> 8.2. We find the AO after analyzing the various details filed by the assessee had passed the order u/s 143(3) without drawing any adverse inference in respect of the share capital/ share premium during original assessment proceedings. However, we find the AO in the reasons recorded had merely stated that there is failure to disclose fully and truly all material facts necessary for completion of assessment which do not satisfy the statutory

> preconditions provided in Section 147 of the Income Tax Act, 1961. It has been held in various decisions that the reasons must indicate how and why the assessee had failed to make full and true disclosure of the material facts and mere repetition or quoting the language of the proviso is not sufficient. The basis of the averment or statement should be either stated or should be apparent or explained from the record. However, in the instance case, as mentioned earlier, the reasons do not specify which material facts the assessee did not disclose during the original proceedings."

44. The learned ITAT also found that there were factual errors in the reasons recorded in as much it is submitted the figure of share capital / share premium was ₹36,64,35,000/-. However, the same is also included the sum of ₹11,32,00,000/-, which was also added the capital raised in the previous year relating to AY 2008-09, which was accepted by the assessment order passed under Section 143(3) of the Act. Additionally, the learned ITAT also noted that the assessments for AY 2010-11 to AY 2015-16 had been framed under Section 153A of the Act, pursuant to the search conducted under Section 132 of the Act on 08.07.2015. The addition of ₹3,50,00,000/- was made on account of unexplained share capital in respect of AY 2010-11, but that addition was deleted by the learned ITAT by an order dated 11.01.2022 passed in ITA No.6177/Del/2018 on the ground that there were no incriminating material on the basis of which the said additions could have been sustained.

45. The learned ITAT concurred with the CIT(A) that the material on which the AO relied upon could not be utilized for making an addition as the

Assessee was never confronted with the same. The learned ITAT's conclusion in this regard are set out below:-

> "8.7 We find although certain references were made in the reasons recorded to various enquiries conducted, however, they were never confronted to the assessee despite specific requests made vide reply dated 11.11.2016 and 29.12.2016, copies of which are placed in Paper Book at Pages 180 and 374 of Volume-I respectively. It has been held in various decisions that if any material collected at the back of the assessee is not confronted and no opportunity is given to cross examine the same, then such material cannot be utilized for making addition."

46. In the above conspectus of facts as obtaining in the present case, the learned ITAT concluded that there was no failure on the part of the Assessee in disclosing fully and truly all material facts necessary for completion of the assessment. In the given facts, there was no explanation recorded as to how the Assessee failed to make full, true and all material disclosure of all the facts, and therefore, upheld the impugned order passed by the CIT(A). The conclusion of the learned ITAT must be read in the context that the fact the Assessee had furnished all information including the details of the share applicants, PAN number as well as their ITRs to establish the genuineness and creditworthiness of the entities. The reassessment proceedings would indicate that same was examined during the original assessment proceedings. The learned ITAT's finding regarding the requirement of clear recording as to how the Assessee had failed to truly disclose all material facts, is required to be understood in the aforesaid context.

47. In view of the above and the concurrent findings of the CIT(A) as well as the learned ITAT, the question is answered in favour of the Assessee and against the Revenue.

48. The appeal is, accordingly, dismissed.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 31, 2025
'SMS'