IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, A.M & Shri A. T. Varkey, J.M]

I.TA No. 2288/Kol/2017 **Assessment Year: 2008-09**		
M/s. Cygnus Developers (India) Pvt. Ltd. (PAN: AACCC 5113 D)	Vs.	**DCIT, Central Circle 3(3), Kolkata**
Appellant		Respondent

Date of Hearing	11.04.2018
Date of Pronouncement	05.07.2018

For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri Saurabh Kumar, Addl. CIT, Sr. DR

ORDER

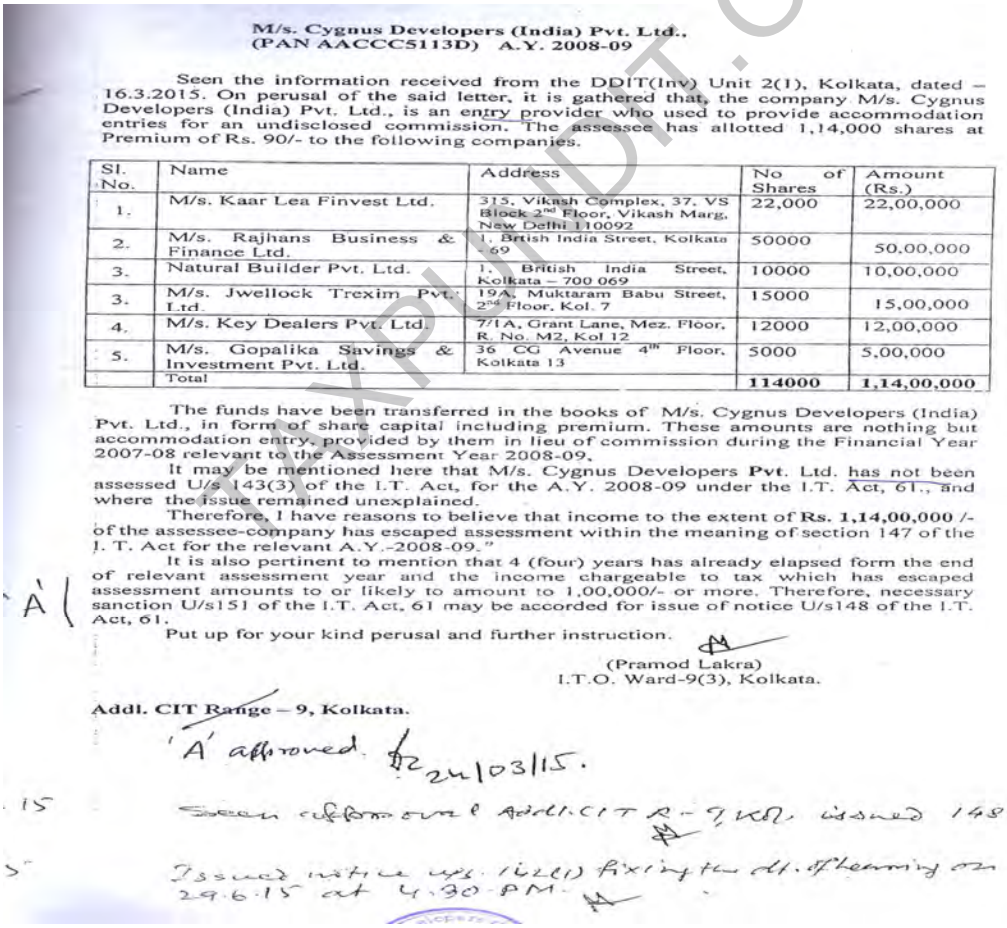
PER SHRI A.T. VARKEY, JM

This is an appeal preferred by the Assessee company against the order of the Commissioner of Income Tax (Appeals)-21, Kolkata dated 06.10.2017 for Assessment Year 2008-09.

2. First let us deal with the legal issues raised by the assessee. The main grievance of the assessee is against the action of the Assessing Officer in assumption of jurisdiction to reopen assessment u/s 147 of the Act on the basis of borrowed satisfaction, without applications of mind because according to assessee from the perusal of reasons recorded by the A.O to show escapement of income is riddled with inherent contradictions. The next legal issue raised through Ground No.4 is against the action of the higher authority granting approval u/s 151 in a mechanical manner without applications of mind. Since these two legal issues goes to root of the very question of jurisdiction of the A.O to reopen the assessment itself, we would like to adjudicate the same together. Therefore, we are

adjudicating the validity of the reopening as well as the validity of the approval granted by the higher authority u/s 151(1) of the Act.

3. The brief facts of the case are that the assessee company has filed its return for the Assessment Year 2008-09 on 28.09.2008. The return was processed u/s 143(1) of the Act. The A.O thereafter initiated proceedings u/s 147 of the Act for reopening the assessment by issuing notice u/s 148 on 25.03.2015 and recorded the following reasons for such reopening. The reasons recorded is placed at Page 87 of the Paper Book which is reproduced as under and from which the approval granted by Addl CIT Range-9, Kolkata is also discernible, which approval is also under challenge before us.



M/s. Cygnus Developers (India) Pvt. Ltd.,
(PAN AACCC5113D) A.Y. 2008-09

Seen the information received from the DDIT(Inv) Unit 2(1), Kolkata, dated – 16.3.2015. On perusal of the said letter, it is gathered that, the company M/s. Cygnus Developers (India) Pvt. Ltd., is an entry provider who used to provide accommodation entries for an undisclosed commission. The assessee has allotted 1,14,000 shares at Premium of Rs. 90/- to the following companies.

Sl. No.	Name	Address	No of Shares	Amount (Rs.)
1.	M/s. Kaar Lea Finvest Ltd.	315, Vikash Complex, 37, VS Block 2nd Floor, Vikash Marg, New Delhi 110092	22,000	22,00,000
2.	M/s. Rajhans Business & Finance Ltd.	1, British India Street, Kolkata 69	50000	50,00,000
3.	Natural Builder Pvt. Ltd.	1, British India Street, Kolkata – 700 069	10000	10,00,000
3.	M/s. Jwellock Trexim Pvt. Ltd.	19A, Muktaram Babu Street, 2nd Floor, Kol. 7	15000	15,00,000
4.	M/s. Key Dealers Pvt. Ltd.	7/1A, Grant Lane, Mez. Floor, R. No. M2, Kol 12	12000	12,00,000
5.	M/s. Gopalika Savings & Investment Pvt. Ltd.	36 CG Avenue 4th Floor, Kolkata 13	5000	5,00,000
	Total		**114000**	**1,14,00,000**

The funds have been transferred in the books of M/s. Cygnus Developers (India) Pvt. Ltd., in form of share capital including premium. These amounts are nothing but accommodation entry, provided by them in lieu of commission during the Financial Year 2007-08 relevant to the Assessment Year 2008-09.

It may be mentioned here that M/s. Cygnus Developers Pvt. Ltd. has not been assessed U/s 143(3) of the I.T. Act, for the A.Y. 2008-09 under the I.T. Act, 61., and where the issue remained unexplained.

Therefore, I have reasons to believe that income to the extent of **Rs. 1,14,00,000** /- of the assessee-company has escaped assessment within the meaning of section 147 of the I. T. Act for the relevant A.Y.-2008-09."

It is also pertinent to mention that 4 (four) years has already elapsed form the end of relevant assessment year and the income chargeable to tax which has escaped assessment amounts to or likely to amount to 1,00,000/- or more. Therefore, necessary sanction U/s151 of the I.T. Act, 61 may be accorded for issue of notice U/s148 of the I.T. Act, 61.

Put up for your kind perusal and further instruction.

(Pramod Lakra)
I.T.O. Ward-9(3), Kolkata.

Addl. CIT Range – 9, Kolkata.

'A' approved. 24/03/15.

Issued notice u/s. 142(1) fixing the dt. of hearing on 29.6.15 at 4.30 PM.

4. We have heard both the parties and perused the records. Firstly, we have to decide the short question whether or not, on the basis of the reasons recorded by AO, reassessment proceedings can be lawfully initiated; secondly, we have to examine whether

sanction granted under section 151 by the Addl. Commissioner of Income-tax is valid in the eyes of law.

5. Before we advert to the facts in this case, let us look into the well settled principles regarding reopening of assessment.

6. It is well settled in law that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis. Nothing can be added to the reasons so recorded, nor any thing can be deleted from the reasons so recorded. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, *inter alia,* observed that "…….It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons." Their Lordships added that "The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence….". Therefore, the reasons are to be examined only on the basis of the reasons as recorded by the AO for the purpose of reopening.

7. The next important point is that even though reasons, as recorded, may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need of an inquiry which may result in detection of an income escaping assessment. Undoubtedly, at the stage of recording the reasons for reopening the assessment, all that is necessary is the formation of *prima facie* belief that an income has escaped the assessment and it is not necessary that the fact of income having escaped assessment is proved to the hilt. What is, however, necessary is that there must be something which indicates, even if not establishes, the escapement of income from assessment. It is only on this basis that the Assessing Officer can form the belief that an income has escaped assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection to an

income escaping assessment, cannot be reason enough to hold the view that income has escaped assessment. It is also important to bear in mind the subtle but important distinction between factors which indicate an income escaping the assessments and the factors which indicate a legitimate suspicion about income escaping the assessment. The former category consists of the facts which, if established to be correct, will have a cause and effect relationship with the income escaping the assessment. The latter category consists of the facts, which, if established to be correct, could legitimately lead to further inquiries which may lead to detection of an income which has escaped assessment. There has to be some kind of a cause and effect relationship between reasons recorded and the income escaping assessment.

8. While dealing with this aspect of the matter, it is useful to bear in mind the observations made by Hon'ble Supreme Court in the case of ITO Vs Lakhmani Mewal Das [(1976) 103 ITR 437] that, "……the re sons for the formation of the belief must have rational connection with or relevant be ring on the formation of the belief. Rational connection postulates that there mus be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

9. It is necessary to examine whether there was any "reason to believe" to have had such an exercise. The term "reason to believe" cannot be considered or evaluated in a water tight compartment and scope and applicability may vary from case to case, depending upon the facts and circumstances. The power under sections 147 / 148 comes

into existence if he had reason to believe that income has escaped assessment. Formation of reason to believe that income escaped assessment has to be that of a prudent person. The reasons for such belief have to be recorded in writing on the basis of material in the possession of AO. While the words *"reason to believe"* are wide in their import, it cannot include a *mere suspicion or ipse dixit* of the AO. The belief of the AO should lead him to form an honest and reasonable opinion based on reasonable grounds. (ITO vs. Lakhmani Mewal Das – 103 ITR 437 at 448 (SC) and Navinchandra Mohanlal Parik vs. vs. WTO – 124 ITR 68). The reasonability of the grounds which led to the formation of belief warranting reopening is tested from the point of view whether or not they are germane to the formation of belief that income escaped assessment. The Hon'ble Supreme Court endorsing the Full Bench decision of the Hon'ble Delhi High Court in CIT vs. Kelvinator of India Ltd. 256 ITR 1 held in its order reported in 320 ITR 561, *".....that Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have link with the formation of belief."* Therefore if the fresh tangible material which the AO has in his possession is relevant to have nexus to the formation of belief then, of course, the AO would have the necessary juri diction to take action under the Act. What is required to be examined is not the adequacy or sufficiency of the grounds but the existence of belief. In our view, all that one has to examine is that whether there was some material which, gave rise to prima facie view that income has escaped assessment and the belief was formed in good faith or was it mere pretence for initiating action u/s 147/148 of the Act.

Pr. CIT vs. Tupperware India Pvt. Ltd (Delhi High Court) (10/08/151)

S. 147: Even as 143(1) assessment cannot be reopened in the absence of new/ tangible material.

(i) Though only an assessment u/s 143(1) and not 143(3) was made, the reopening order of the AO only refers to the report of Statutory Auditor under Section 44AB of the Act which report was already enclosed with the return filed by the Assessee. Therefore, factually,

there was no new material that the AO came across so as to have "reasons to believe that the income had escaped assessment".

(ii) The department's contention that the judgement in CIT vs. Orient Craft Ltd. (2013) 354 ITR 536 (Del) is contrary to the Full Bench verdict in CIT-VI v. Usha International Ltd. (2012) 348 ITR 485 and the issue should be referred to a larger Bench is not acceptable because the central issue examined in the decision of the Full Bench in Usha International Ltd. was as to what constituted a "change of opinion". The Court, therefore, does not consider the decision in Orient Craft Ltd. as being contrary to the decision in Usha International Ltd. In other words, there is no occasion for the Court to refer to a larger bench the question of the correctness of the decision in Orient Craft Ltd. which decision squarely applies to the facts of the present case (Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500 & Madhukar Khosla v. Assistant Commissioner of income Tax (2013) 354 1TR 356 referred)."

10. Now let us examine and analyze the reasons recorded by the AO to justify reopening the assessment after six and a half (6 1/2) years. From the perusal of the aforesaid reasons recorded by the A.O on 23.03.2015 to reopen the assessment and approval granted by the Addl. CIT Range – 9, Kolkata as *'A' approved* is now under challenge before us. From a reading of the reasons recorded by the A.O proposing to reopen the assessment for Assessment Year 2008-09, he has stated that he had received information from the DDIT (Inv.) from which he gathered that the assessee company is an entry provider who used to provide accommodation entries for an undisclosed commission. So, from the information gathered by the A.O from the letter dated 16.03.2015 from DDIT(Inv.) he learnt that the assessee company is an entry provider who used to provide accommodation entries for an undisclosed commission. It has to be kept in mind that an entry provider if established as a fact then the said entry provider will be doing illegal business of receiving cash from third parties and issuing cheque in lieu of commission. In such a scenario, if it is proved that the assessee has given cheques to third parties in lieu of commission, then the commission he earns can be chargeable to tax which is the income

component in the said business operation. So this particular fact which the A.O gathered information from the DDIT(Inv.) is that assessee company is engaged in the activity of an entry provider in lieu of undisclosed commission should be understood, so this is according to AO the business of assessee company.

11. Coming to the next averments of the A.O followed by the allegation needs to be carefully examined because it is a different and distinct allegation altogether that *"the assessee has allotted 1,14,000 shares at a premium of Rs.90/- to the following companies"* and that the funds have been transferred in the books of the assessee company in the form of share capital including premium and these amounts are nothing but *"accommodation entry provided by them in lieu of commission during the Financial Year 2007-08 relevant to the Assessment Year 2008-09"*. Thereafter, the A.O spells out the reason to reopen the assessment that since the assessment of assessee company was not scrutinized u/s 143(3) of the Act, this issue remained unexplained, therefore, he has reasons to believe that income has escaped assessment. From the perusal of the reasons recorded, the names of the companies subscribing the assessee's share capital for premium are stated as under:

Sl. No.	Name	Address	No. of Shares	Amount (Rs.)
1.	M/s. Kaar Lea Finvest Ltd.	315, Vikash Complex, 37, VS Block 2nd Floor, Vikash Marg, New Delhi 110092	22,000	22,00,000
2.	M/s. Rajhans Business & Finance Ltd.	1, British India street, Kolkata – 69.	50000	50,00,000
3.	Natural Builder Pvt. Ltd.	1, British India street, Kolkata – 69.	10000	10,00,000
4.	M/s. Jwellock Trexim Pvt. Ltd.	19A, Muktaram Babu Street, 2nd Floor, Kol. 7	15000	15,00,000
5.	M/s. Key Dealers Pvt. Ltd.	7/1A, Grant Lane, Mez. Floor, R. No. M2, Kol 12	12000	12,00,000
6.	M/s. Gopalika Savings & Investment Pvt. Ltd.	36 CC Avenue 4th Floor, Kolkata 13	5000	5,00,000
	Total		114000	1,14,00,000

12. When we analyse this aforesaid averment set out at Para 4 (supra) by the A.O states that the assessee had allotted 1,14,000 shares to these six (6) companies and by the said process it had received share application money, which we note has nothing to do with giving entry provider activity of the assessee company as alleged in the first sentence, which activity of assessee company the A.O had gathered from the letter of DDIT(Inv.).

Thereafter AO takes note of the said share-allotment and further records that the funds have been transferred in the books of the assessee company in the form of share capital including premium and these amounts are nothing but *"accommodation entry provided by them in lieu of commission during the Financial Year 2007-08 relevant to the Assessment Year 2008-09"*. Then, the A.O realized that since the assessment of assessee company was not scrutinized u/s 143(3) of the Act, this issue remained unexplained and therefore, he has reasons to believe that income has escaped assessment. This i.e. second part of activity of allotment of share to six share subscribers in the year under consideration since was not scrutinized u/s. 143(3) of the Act, the issue could not be explained by assessee leading him to suspect that income has escaped assessment, is nothing but an attempt to reopen the assessment for a roving inquiry. For saying so, there are two reasons one is that even if for argument sake let us assume that the assessment for the relevant assessment year was scrutinized u/s. 143(3) of the Act and the assessee was able to convince the AO about identity, creditworthiness and genuinity of the transaction, then also if the AO had in his possession an investigation report from DDIT (Inv.) dated 16.03.2015 from which there was tangible material to suggest that the entire allotment of share by the assessee was bogus and the assessee had ploughed back its own money through the six share subscribing companies in lieu of commission to those six legal entities, then it can be a foundation based on information and belief based on reason could have been attributed to arrive at "Reasons to believe" that income chargeable to tax has escaped assessment. Secondly, the reason given by the AO that since the assessment year under consideration has not been scrutinized u/s. 143(3), this issue has not been explained exposes the infirmity of the conclusion made by the AO himself in respect to the share allotment and the share capital with premium "*as nothing but accommodation entry provided by them in lieu of commission during the Financial Year 2007-08 relevant to the Assessment Year 2008-09"*. This conclusion made by the AO has no basis because if it was based on any tangible material/investigation report of DDIT (Inv.), then the AO's reasoning that because the assessee's case was not scrutinized u/s. 143(3), the issue has not been explained, would not have been stated by the AO, which clearly exposes the fact there was nothing in the report

of the DDIT (Inv.) which has stated about the assessee having introduced its own money through the six legal entities in the form of bogus share subscription. So, we can safely infer that the AO after going through the information from DDIT (Inv.) gathered that assessee is an entry provider who issued cheque in lieu of commission and thereafter must have gone through the assessment records of the assessee and after perusal of the return found that assessee had issued shares to six legal entities, which issue since has not been explained, so AO wanted to reopen and conduct reassessment which is nothing but saying that AO wanted to do scrutiny of this year's assessment scrutiny u/s. 143(3) after more than six and half years, which is not permissible. It has to be kept in mind that the concept of assessment is governed by the time barring rule and the assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed only when there is information or evidence regarding undisclosed income or AO had information in his possession showing escapement of income. It is also to be kept in mind that selection of assessment of an assessee for scrutiny is in the hands of Revenue and merely because AO did not scrutinize an assessment u/s. 143(3) which he has to do in this case within 31 December 2010 So anything which AO could not do directly cannot be allowed to be done indirectly without satisfying the jurisdictional fact for invoking jurisdiction to reopen u/s. 147 of the Act, which needs AO to have "reason to believe" escapement of income. It has to be kept in mind that reason to believe postulates a foundation based on information and belief based on reason. Even if there is foundation based on information, there still must be 'reason' warrant holding a belief that income chargeable to tax has escaped assessment.

13. We further note that the AO in the reasons recorded notes that since the assessee had allotted shares to six legal entities and because the assessment has not been completed u/s. 143(3) the issue remains unexplained, so he needs to reopen points clearly exposes the flawed conclusions made by the AO that the six share subscribing companies are also entry operators is based on assumptions and surmises. The source of information for assumption of fact by the A.O that the six share subscriber companies are entry operators, is not discernible from the reasons recorded. What is discerned from the reasons recorded as per

the information from the DDIT(Inv.) information is that the assessee company is an entry provider who used to provide accommodation entries for an undisclosed commission and what is not discernible from the reasons recorded is how the A.O has made a factual finding that the six companies which he has named in the reasons recorded are also entry operators without any material to which the source of this information can be attributed to is absent. It has to be kept in mind that the A.O can reopen an assessment subject to limitations prescribed, provided he has reasons to believe that there is an escapement of income. At the cost of repetition we say that the "reasons to believe" postulates a foundation based on information and a belief based on reasons. After a foundation based on information is made, there still must be some reasons which warrant the holding of a belief that income chargeable to tax has escaped assessment. The Hon'ble Supreme Court in the case of Ganga Saran and Sons (P) Ltd vs. ITO, (1981) 130 ITR 1 (SC) held that the expression "reasons to believe" as occurring in section 147 "is stronger" than the expression "is satisfied" and such a requirement has to be made before reopening an assessment of the earlier year. It may be noted that information adverse may trigger "reasons to suspect", then the A.O has to make reasonable inquiry and collect material which would make him believe that there is in fact an escapement of income. Here we find that as per the A.O himself, the A.O had received the information from DDIT(Inv.) dated 16.03.15 that the assessee company is an entry provider, which company used to provide accommodation entries in lieu of commission that is all. This information can be a foundation for the A.O to trigger a suspicion in his mind that assessee company may have undisclosed income from the said activity (entry operator) which needs a probe. So the A.O ought to have thereafter made some preliminary enquiries to dig further and in case he stumbles across transactions which were kept outside the books or which the assessee hided from the department in its return filed, then the A.O would have been justified to reopen after bringing the adverse facts which got revealed during his enquiry and which facts revealed had live nexus to the escapement of income. Here the information gathered by AO from the letter of DDIT(Inv.) is that the assessee company is an entry provider who used to provide accommodation entries in lieu of undisclosed commission. Here also it has

to be noted that it is not the case of the A.O that assessee had not disclosed correctly the income/commission earned by it which fact has been gathered by him after perusal of the letter he got from DDIT(Inv.) and therefore, there is reason to believe escapement of income. Thus we note that it is also not the case of the A.O. that escapement of income has been alleged because of the assessee's alleged entry provider activity. However, the fact of the assessee allotting of 1,14,000 shares at a premium to six companies who are in turn entry providers which source of information is not discernible from the reasons recorded. As discussed earlier, when the A.O says that the shares allotted at a premium of Rs.90/- to six companies and they are also entry operators means that the assessee's own money has been routed through these companies in lieu of commission which allegation/information has not been attributed by the A.O to the information from the DDIT(Inv.) because, the AO himself says that due to non-scrutiny of assessment u/s. 143(3) this issue remained unexplained, which means he wishes the assessee to explain the share capital collected during this year. So the second allegation that the assessee had ploughed its own money through the six legal entities and that they are also entry operators are based on suspicion, conjecture and surmises. It has to be kept in mind that the assessee company had filed its return of income on 28.09.2008 along with the figures duly incorporated from the balance sheet and the return was processed u/s 143(1) of the Act. The assessee company for the relevant Assessment Year 2008-09 has reflected in its balance sheet the allotment of shares to these six legal entities which figures got incorporated in the specific column given in the return of income itself. This information the assessee company itself has stated in its balance sheet, which information cannot be said to be a new information.

14. In the light of the facts and circumstances discussed above, we note that only based on the "Approval" of the ADIT (Inv.) dated 24.03.2015, the AO has issued notice. It has been held by the Hon'ble Supreme Court in Anirudhsinhji Karansinhji Jadeja & Anr. vs. State of Gujarat – (1995) 5 SCC 302, that "if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authority's instructions, then it will

be a case of failure to exercise discretion all together." It has to be kept in mind that satisfaction recorded should be "independent" and "not borrowed" or "dictated" satisfaction. Thus, we find there was no fresh tangible material for the AY 2008-09 with the AO and he has simply issued notice on borrowed belief of ADIT (Inv.).

15. The well settled law is that before reopening an assessment under section 147 of the Act or, in other words, before usurping the jurisdiction to reopen, the AO has to pass the 'fresh tangible material filter' in his 'reasons to believe' which can uncover the undisclosed income pertaining to the assessment year of the assessee which AO proposes to reopen, without passing through the said filter which should emerge from the reasons recorded to reopen, will oust the jurisdiction of the AO and thus it is a settled law that fresh tangible material as said before constitute the jurisdictional fact which is *sine-qua non* to empower the AO to reopen the assessment. In the absence of the said jurisdictional fact renders the reopening '*coram non judice*' and the reassessment 'null' in the eyes of law. So the original assessment can be reopened only if there is any new tangible material which comes in his hands which could have a rational connection or nexus which could have a relevant bearing on the formation of the belief, as laid down by the Hon'ble Supreme Court in the case of ITO Vs Lakhmani Mewal Das [(1976) 103 ITR 437] that, "……the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment." Further reliance can be placed on the detailed judgment in the case of Madhukar Khosla vs. ACIT 367 ITR 165 (Delhi)

wherein it has been held by the Hon'ble High Court that the reopening is not permitted under the law unless it is based on fresh tangible material and that if the "reasons to believe" are not based on new, "tangible materials", the reopening amounts to an impermissible review. It has been further observed that : "The foundation of the AO's jurisdiction and the raison d'etre of a reassessment notice are the "reasons to believe". Now this should have a relation or a link with an objective fact, in the form of information or facts external to the materials on the record. Such external facts or material constitute the driver, or the key which enables the authority to legitimately re-open the completed assessment. In absence of this objective "trigger", the AO does not possess jurisdiction to reopen the assessment. Here, in the instant case before us, there is nothing to show what triggered the issuance of notice of reassessment – no information or new facts which led the AO to believe that full disclosure had not been made (Kelvinator of India Ltd [(2010)320 ITR 561 (SC)] and Orient Craft Ltd [(2003)354 ITR 536 (Delhi)] followed, Usha International [(2012)348 ITR 485 (Del) (FB)] referred)".

16. In the present case, from a perusal of the reasons given by the AO to reopen, it is clearly discernable that there was no new material which has come to the hands of the AO in respect to the AY 2008-09 before him. From the reasons recorded, we do not find a shred of new material which can be held material which constitutes the driver or the key which enables the AO to legitimately reopen the assessment though processed u/s. 143(1) of the Act and in absence of this objective "trigger", the AO does not possess jurisdiction to reopen the assessment, as held by Hon'ble jurisdictional High Court in the case of Madhukar Khosla (supra).

17. Now let us examine the sanction granted u/s 151 of the Act by the Addl.CIT and see whether that has been granted in a mechanical manner or due application of mind was there before granting approval for reopening after 6 ½ years.

18. We find that on the format which has been reproduced, the Additional CIT has simply written "A" approved after two days i.e. 24.03.2015 which does not in any manner shed any light as to whether there was any application of mind at all by the aforesaid senior

officer, who was duty bound to have looked in to carefully the reasons recorded by the AO and seen the facts spelled out by the AO which would justify reopening of assessment. When a superior authority is given power by the legislature, to grant sanction to do an act by an authority below him, then that power needs to be exercised with due care and circumspection and after due application of mind. Mechanical manner of giving sanction like in this case have not been approved by the Hon'ble Supreme Court in a similar case in Chhugamal Rajpal vs. S.P. Chaliha & Ors. – 79 ITR 603 (SC) and Hon'ble High Court of Madhya Pradesh in Arjun Singh vs Asstt. Director of Income Tax (M.P.) reported in (2000) 246 ITR 363 (MP). Thus, as discussed above, we are not satisfied that AO had any material before him which satisfies the requirements of section 147. Therefore, AO could not have issued notice u/s 148. Further, the report submitted by him u/s 151 is riddled by contradictions as stated earlier and the reasons of the AO is borrowed satisfaction and, therefore, there is clear non-application of mind by AO. We are also of the opinion that the Additional Commissioner has mechanically accorded permission. If only he had carefully read the report and analysed the facts along with the information from the DDIT (inv.), it could have clearly brought out the contradiction and exposed the non-application of mind by the AO, then, he would not have granted permission to reopen. The safeguard against reopening u/s 151 of the Act has been done by the superior authority very lightly and as held by the Hon ble Supreme court in Chugamal Rajpal (supra), the authorities substituted form over substance. Thus, we hold that the sanction granted by the Addl. Commissioner u/s 151 is invalid and so the notice of the AO dated 25.03.2015 is bad in law and has to be necessarily struck down and, therefore, the order of the AO without jurisdiction is null in the eyes of law. The other grounds are academic and so not adjudicated.

19. In the result, appeal of assessee is allowed.

Order pronounced in the Court on 05/07/2018

Sd/-	Sd/-
[J. Sudhakar Reddy]	[A. T. Varkey]
Accountant Member	Judicial Member

Dated : 05.07.2018

[RS, Sr. PS]

Copy of the order forwarded to:

1. Appellant/Assessee –M/s. Cygnus Developers (India) Pvt. Ltd, 51, Nalini Seth Road, Kolkata – 700 007.
2. Revenue/Respondent- DCIT, Central Circle 3 (3), Kolkata
3. CIT(A)- 21, Kolkata (sent through e-mail)
4. CIT – , Kolkata
5. CIT(DR), Kolkata Benches, Kolkata (sent through e-mail)

/True copy/

By Order

Senior Private Secretary
Head of Office, DDO, Kolkata Benches, Kolkata.