IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

ITA No.1953/Kol/2017 **Assessment Year: 2007-08** **ITA No.1010/Kol/2018** **Assessment Year: 2007-08**		
M/s. Premier Vyapaar Pvt. Ltd PAN: AADCP 8876D	Vs.	Income Tax Officer, Ward 15(2), Kolkata
Appellant/Assessee		Respondent/Department

Date of Hearing	26.09.2018
Date of Pronouncement	02.11.2018

For the Appellant	Shri D.S. Damle, FCA & Shri Akka Dudhewewala, FCA, ld.ARs
For the Respondent	Shri P. K Srihari, CIT, ld.DR

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ORDER

PER SHRI A.T. VARKEY, JM

These appeals are preferred by the assessee against the separate orders of Ld. CIT (Appeals) , 5, Kolkata dated 05-07-2017/26-03-2018 for the assessment year 2007-08.

ITA No. 1953/Kol/2017 A.Y 2007-08 (by the assesse)

2. The main ground emphasized by the assessee is against the action of the ld. CIT(A) is erroneously decided the legal issue raised by the assesse that initiation of re-assessment proceedings u/s. 147 of the Act was bad in law.

3. Brief facts of the case are that this A.Y is the first year of operation of the appellant company. The appellant assesse was engaged in trading of sarees and also trading of commission on sale of sarees. During the A.Y under consideration, the appellant company achieved turnover of Rs.6,72,000/- and from the sale of sarees earned commission of Rs.13,750/- and also incurred loss of Rs.951.72 during this year. The assesse had filed its IT return on 24-10-2007 electronically determining total income at Rs. Nil. Later on, the

assessment was picked up for scrutiny and thereafter was completed u/s. 143(3) of the Act on 29-09-2009 determining the total income at Rs. 1,200/-. Subsequently, on receipt of an information from the office of the CIT-15, Kolkata that the appellant/assessee company has received accommodation entries to the extent of Rs.27,50,000/- from one party, Shri Madan Mohan Chowdhury, who was alleged to be an entry provider, then AO, Ward 1(4), Kolkata initiated proceedings u/s. 147 of the Act on 21-02-2014 and issued notice u/s. 148 on 21-03-2014 to the appellant company. Later the file relating to the appellant assessee was transferred to the present AO, Ward 15(2), Kolkata (according to assessee the change of jurisdiction was not intimated to it) and thereafter the AO issued notice u/s. 143(2) on 6-2-2015 requiring the assessee company to submit various documents and then the AO framed the re-assessment dt. 13-03-2015 which was passed u/s. 144 of the Act.

4. Aggrieved, the assessee preferred an appeal before the ld CIT(A), which was dismissed. Against the action of ld CIT(A), the appellant assessee has preferred this appeal before us.

5. At the outset the Ld. AR of the assessee drew our attention to ground no. 7 which we note is the legal issue assailing the assumption of jurisdiction by AO to reopen the original assessment completed u/s. 143(3) fter 4 years from the relevant AY. Since this issue goes to the root of the appeal the Ld. AR urged before us to decide this issue first. This plea of Ld. AR has been stoutly opposed by Ld. DR who drew our attention to the fact that this issue was never raised as a specific ground before the Ld. CIT(A) and, therefore, according to him, it should not be entertained while deciding this appeal. However, we cannot accept the Ld. DR's contention, for two reasons, one is that assessee had infact raised this issue and for that ld AR drew our attention to the written submission before ld CIT(A) placed at page 25 to 30 of paper book and moreover, we note that ground no. 7 raised by the assessee is against the legal validity of assumption of jurisdiction by AO to reopen original assessment framed u/s. 143(3) that too after 4 years from the relevant assessment year, which is purely a legal issue which goes to the root of the appeal itself and can be raised even for the first time before this Tribunal as held by Hon'ble Supreme Court in NTPC vs.CIT 229 ITR 383 (SC). Therefore, we are inclined to adjudicate this legal issue first. In order to adjudicate the legal issue raised before us, we need to understand the scheme of the assessment of income. The concept of the assessment is governed by the time barring rule and assessee acquires a right as to the finality of the proceedings. Quietus of the completed assessment can be disturbed only when there is information or evidence regarding undisclosed income or AO had information in his possession showing escapement of

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income. For that the Parliament in its wisdom has empowered the AO to re-open the assessment of earlier years in accordance with section 147 r.w.s 148 of the Act. The condition precedent for re-opening of assessment is that the AO should have reason to believe "*that income has escaped assessment*". Reason to believe postulates foundation based on information and belief based on reason Even after foundation based on information is there, still there must be reason to warrant holding a belief that income chargeable to tax has escaped assessment. The Hon'ble Supreme Court in the case of M/s. Ganga Saran & Sons Pvt. Ltd Vs. ITO reported in 131 ITR 1 (SC) held that expression " *reason to believe*" occurring in section 147 is stronger than the expression "*is satisfied*" and this legal requirement has to be met in the reasons recorded before re-opening. However, it has to be kept in mind that if an assessment (original assessment) has been made u/s. 143(3), the proviso to sec. 147 mandates that no action shall be taken under section 147 after the expiry of 4 years from the end of the relevant assessment year *unl ss there is failure on the part of the assessee to disclose fully and truly all facts necessary for his assessment for that assessment year*. Thus in a case where assessment was made u/s. 143(3) of the Act and are sought to be reopened after the expiry of 4 years from the end of the relevant assessment year, in order to assume jurisdiction u/s. 147 of the Act, one of the condition precedents is that recorded reasons should point out the failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. So, once the AO comes to a finding of fact that there was a failure or there was an improper disclosure on the part of the assessee, he has to record he same by incorporating it in the *reasons to believe* that income chargeable to tax has escaped assessment. Then only the AO can assume jurisdiction or else he cannot. So while determining the validity of the action of AO when he intends to re-open a scrutinized assessment after the expiry of 4 years from the end of the relevant assessment year is concerned, one has to keep in mind the aforesaid condition precedent which is the jurisdictional fact, necessary for the successful usurpation of jurisdiction. For that we need look into the reasons recorded for re-opening :-

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> *Reasons for belief that income has escaped assessment*
>
> *M/s Premier Vyapaar Private limited, PAN: AADCP8876D, Assessment Year: 2007-08,*
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> *In this case the assessee company filed its return of income for the Assessment Year: 2007-08, on 24/10/200 showing total income at 'NIL'. The return was processed U/s143{l) of the I.T. Act'1961 vide order date 30/01/2009.*
>
> *Thereafter the assessment was completed u/s143{3} of the LT. Act'1961 vide order dated 29.09.2009 at assessed total income of Rs.l,200/-.*

Subsequently information was received from the office of Ld. CIT, Kol.-15, Kolkata, vide letter dated· 10.04.2013 that this assessee company has received accommodation entries, to the extent of Rs.27,50,000/-, from one party namely Sri Madan Mohan Chowdhury, during the year ended, on 31.03.2097, who is alleged to be an entry provider. It is stated that Sri Madan Mohan Chowdhury, had given aforesaid accommodation entries to this assessee company, through cheque after making cash deposits in his bank account. The genuineness, creditworthiness of the aforesaid accommodation entries, received by the assessee has not been substantiated and has not been examined.

For the reasons stated above there is reason to believe that income of the assessee company for the year ended on 31.03.2008 in excess of Rs.1,00,000/- has escaped assessment."

6. We note that the original assessment u/s. 143(3) was passed on 29-09-09 and the notice proposing the AO's desire to reopen was issued on 21-03-2014, which is admittedly after the expiry of four years from the end of the relevant A.Y. under consideration. In such a scenario one of the additional condition precedent which also is required to be satisfied is that the reasons recorded should point out what was the material facts the assessee failed to disclose fully & truly necessary for assessment. A bare perusal of the reasons recorded which is set out above does not reveal any statement to the effect which would throw light as to what was found by the AO which can be construed to be a failure on the part of the assessee to disclose fully & truly the material facts necessary for the assessment during original assessment, which recording of which was *sine qua non* and had to be spelt out by the AO in the reasons recorded to validly assume jurisdiction u/s. 147 of the Act. In this case, from a plain reading of reasons recorded, we note that the AO has not satisfied this jurisdictional fact. Thus, usurpation of jurisdiction u/s. 147 to re-open the assessment completed u/s. 147, after four years has to be struck down for not satisfying the jurisdictional fact which is a condition precedent to legally assume jurisdiction to reopen assessment after 4 years from the end of the relevant assessment year. The judicial principle as set out in the foregoing finds support in the judgment of the Hon'ble Supreme Court in the case of Calcutta Discount Co Ltd (41 ITR 191) wherein the Apex Court had held as follows:

"Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under-assessment and (ii) his having reason to believe that such under-assessment has resulted from nondisclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of four years."

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7. Useful reference can also be made to the judgment of the Hon'ble Bombay High court in the case of Hindustan Lever Ltd. Vs. ACIT (supra). The relevant observations of the Hon'ble Court were as follows:

"19. In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was 31st March, 1997 and from that date if four years are counted, the period of four years expired on 1st March, 2001. The notice issued is dated 5th November, 2002 and received by the assessee on 7th November, 2002. Under these circumstances, the notice is clearly beyond the period of four years.

20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that 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 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 vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside."

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8. This judgment of the Hon'ble Bombay High Court was followed with approval by the Hon'ble jurisdictional Calcutta High Court in the case of Amiya Sales & Industries Ltd Vs CIT (supra). In the said judgement, the Hon'ble High Court held as under:

"In a case where assessment is made under section 143(3) and is sought to be reopened after the expiry of four years from the end of the relevant assessment year, in order to assume jurisdiction under section 147, one of the conditions precedent is that the recorded reasons should point out the failure on the part of the assessee to disclose fully and truly the material facts necessary for assessment. Once the Assessing Officer comes to a finding that there was failure or there was no improper disclosure on the part of the assessee, he forms the belief which is recorded and assumes jurisdiction under section 147.

In the instant case, the assessments for both the assessment years were made under section 143(3). There was no dispute that the notices under section 147 were issued beyond four years from the end of the relevant assessment years. Thus, in order to initiate action under section 147 after the expiry of four years from the end of relevant assessment years, there should have been either failure or non-disclosure on the part of the assessee. From the recorded reasons it was found that the Assessing Officer was seeking to reopen the assessments since there was an 'incorrect interpretation of accounts by the Assessing Officer' and for that 'the assessee got the benefit of loss' for the assessment year 1992-93 which was carried forward to the subsequent years.

In the instant case, it had nowhere been recorded that there was failure or improper disclosure on the part of the assessee. However, the Assessing Officer sought to reopen the assessments as there was incorrect interpretation of account by the Assessing Officer. The recorded reasons did not speak of any omission or failure on the part of the assessee. Thus, admittedly there was no failure on the part of the assessee to disclose fully and truly all material facts in the assessment. Incorrect interpretation of accounts by the Assessing Officer could not confer jurisdiction on the Assessing Officer to issue notices under section 148 for reopening the assessments as sought to be made in the instant case.

If there is no failure on the part of the assessee to disclosure fully and truly the material facts, wrong interpretation of accounts by the Assessing Officer leading to excessive relief cannot be a ground for reopening and thus cannot confer jurisdiction on the Assessing Officer. Explanation *2 cannot be read in isolation of section 147. It should be read in conjunction with the provisions in the section. The words for the purpose of this section appearing in* Explanation *2 show that the conditions precedent for reopening assessment as laid down in section 147 have to be complied with.*

In instant case, since the conditions for assuming of jurisdiction under section 147 were not fulfilled, the notices under section 148 were uncalled for and warranted interference by appearing orders. If an authority assumes jurisdiction illegally which is not vested under the law it would be fit and proper for the writ Court to intervene.

In the instant case, as there was no omission or failure on the part of the assessee to disclose truly and fully all material facts in the return, as the Assessing Officer sought

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to reopen the assessments due to wrong interpretation of accounts by the Assessing Officer which was not permissible under section 147 to assume jurisdiction, the assessee was justified in invoking the writ petition.

Thus, the instant petition was to be allowed and, consequently impugned notices under section 147/148 were to be quashed.

9. In the case of Assam Co. Ltd Vs Union of India (150 Taxman 571), the Hon'ble Gauhati High Court has held as under:

"43. As noticed hereinabove, except in W.P. (C) No. 1163 and W.P. (C) No. 1258 of 2003, the impugned notices had been issued before the expiry of four years from the end of the relevant assessment year. The attempt made on the part of the respondents to contend that the omission on the part of the assessees to mention in their return that the cess on green tea leaves was paid under the 1990 Act amounts to failure to make full and true disclosure of all material facts necessary for assessments has to be mentioned only to be rejected. There is no dispute that at the time of assessment, the assessees were permitted deduction on the above count and the composite income under rule 8(1) was accordingly computed. At no po nt of time was any reservation expressed by the respondent authorities as to the nature of the payment or the entitlement of the assessees to be extended the benefit of deduction thereof on the basis of the disclosure made in the returns. The respondent authorities thus have to be firmly held only to the reasons and/ or the grounds narrated in the impugned notices. Not only is this stand absent in the impugned notices, the same do not indicate as well as to what material facts had not b en fully and truly disclosed by the assessees.

44. The Apex Court while dwelling on the scope of the requirement to disclose fully and truly all material facts as comprehended in the proviso to section 147 held in Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC), that the duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts and it is not its responsibility to advise the Assessing Officer with regard to the inference which he should draw therefrom. If such officer draws any inference which appears to be subsequently erroneous, a mere change of opinion would not justify initiation of action for reopening the assessment, it held.

45. The same view was expressed in Associated Stone Industries (Kotah) Ltd. v. CIT [1997] 224 ITR 560[1] (SC). The Bombay High Court on the same issue in Hindustan Lever Ltd. v. R.B. Wadkar, Asstt. CIT (No. 1) [2004] 268 ITR 332[2], held that the reasons in support of the proposed action under section 147 of the Act must necessarily reveal all facts or materials that had not been disclosed by the assessee fully and truly necessary for assessment so as to establish the link between the reasons and evidence. It was further held that the reasons so recorded cannot be supplemented by any affidavit or oral submissions as otherwise the reasons which were lacking in the material particulars would receive supplementation by the time those are subjected to Court's scrutiny.

46. The notices admittedly do not exhibit as to what material facts were not truly and fully disclosed by the assessees necessary for assessment for the assessment years in

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question. The returns admittedly mention about the cess on green leaves paid and deductions as permissible were allowed. In view of the exposition of law on the point mentioned hereinabove, the inescapable conclusion is that the impugned notices in W.P. (C) No. 1163 of 2003 and W.P. (C) No. 1258 of 2003 are also not sustainable being barred by time.

10. Keeping in view the ratio laid down in these decisions and applying it to the appellant company's case, we find that in the audited accounts filed in the course of original assessment, the assessee had disclosed its transactions with Shri Chowdhury towards sale of saree's on commission to the extent of Rs.27,50,000/-. The commission charged @ 0.5% amounting to Rs.13,750/- was also disclosed and the same was also duly offered to tax. In view of the foregoing we note that even in the reasons recorded, the AO had not spoken any facts which would throw light that the disclosed facts of saree sales on commission could be taken as false or untrue or from which it could be inferred that there was any failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment of the assessee.

11. The jurisdictional fact for assumption of jurisdiction after four years as stated earlier is that the assessee had failed to disclose truly & fully the facts necessary for assessment. Hence the question which arises in the facts of the present case is, when the assessee had admittedly disclosed the facts about the commission income derived from sale of sarees of Rs.27,50,000/- to Shri Madan Mohan Chowdhury, then did the AO bring on record in the reasons recorded as to whether the said disclosure was not truly & fully made in the course of original assessment. On perusal of the reasons recorded by the AO, we note that the AO has not pointed out any failure or omission on the assessee's part to disclose fully and truly all material facts necessary for assessment.

12. Moreover the Ld. AR drew our attention to the fact that even in the proceedings conducted u/s 147/143(3), the AO never questioned the assessee regarding its transactions with Shri Madan Mohan Chowdhury. The Ld. AR also drew our attention to the notice issued by the AO u/s 142(1) dated 06.02.2015, which is at Pages 19 & 20 of the Paper-book. In the notice issued u/s 142(1), even though the AO had called upon the assessee to provide information & details on eleven issues, not a single requisition was directed in connection with the assessee's transactions with Shri Madan Mohan Chowdhury. These facts therefore supplement the assessee's case that the AO was himself never satisfied that income chargeable to tax had escaped assessment as a consequence of assessee's transactions with Shri Madan Mohan Chowdhury who had alleged provided benefit in the form of sum paid

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amounting to Rs.27,50,000/- in the form of sale consideration for sarees. We therefore find that no material was available either in the recorded reasons or in the assessment order on the basis of which it can be held that there was a failure on the part of the assessee in disclosing fully and truly all material facts necessary for assessment prior to completion u/s 143(3).

13. We note that in the case of Hindustan Lever Ltd vs R.B. Wadekar (supra) as also in Amiya Sales & Industries Vs ITO (supra), it has been emphasized by the Hon'ble Courts that reasons recorded by the AO prior to issue of notice u/s 148, must contain specific finding with regard to the alleged failure on the part of the assessee to disclose fully and truly all material facts. It has also been observed by the Hon'ble High Courts that the 'Reasons' recorded by the AO have to be read as it is. The AO has to speak through his 'Reasons' and should disclose his mind through 'Reasons' recorded by him. Thus, it is for the 'Reasons' as recorded by the AO which should prima facie disclose about his satisfaction that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the concerned assessment year prior o passing of the order u/s 143(3).

14. At the cost of repetition in the facts of the case before us and in the light of law as explained in aforesaid judgments, it is noted that nothing has been recorded by the AO in the 'Reasons' about any failure on the part of the assessee to disclose fully and truly all material facts necessary for the framing of original assessment. It has nowhere been mentioned by the AO which fact or material was not disclosed by the assessee. Thus, vital link between 'Reasons' and AO's findings about assessee's alleged failure has not been established. This vital link is the safeguard against arbitrary reopening of the concluded assessment. The 'Reasons' recorded cannot be supplemented by way of further observations in the assessment order or in any other manner. The validity of the reopening can be examined only on the basis of 'Reasons' as recorded by the AO alone and not in supplementary material. From the bare perusal of reasons as they are in the facts of the present case, there is nothing to indicate that there was omission on the assessee's part to disclose truly & fully all material facts in the course of original assessment. Further even in the course of proceedings u/s 147/143(3), no enquiry or requisition whatsoever was made by the AO calling for information in connection with the transactions with Shri Chowdhury, which also shows that all the facts & material were already available with the AO. Thus, taking into account all the facts and circumstances of the case, we find that the reopening has been done without complying with the mandatory jurisdictional condition precedent as stipulated in first proviso to section 147.

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15. We also find that after receipt of information from the Ld. CIT-15, Kolkata, no independent enquiry was also carried out by the AO himself before reaching his independent satisfaction that alleged escapement had actually occurred or that the assessee in fact was beneficiary of any sum received from Shri Chowdhury in the form of sale proceeds of sarees. In such a scenario, when the AO was in receipt of the information from the Ld. CIT-15, Kolkata he ought to have made enquiries to unravel the truth. It has to be remembered that information is not synonymous to truth. Just because a letter has been received from the Ld. CIT-15, Kolkata the AO cannot reopen the completed assessment u/s. 143(3) of the Act. The information given by Ld. CIT-15, Kolkata can only be a basis to ignite/trigger "reason to suspect" for which reopening cannot be made for further examination to be carried out by him in order to strengthen the suspicion to an extent which can form the belief in his mind that income chargeable to tax has escaped assessment. It has to be kept in mind that the allegation leveled by Ld. CIT-15, Kolkata can only raise suspicion in the mind of the AO which is not the sufficient/requirement of law for reopening of assessment. The 'reasons to believe' is not synonymous to 'reason to suspect'. 'Reason to suspect' based on an information can trigger an enquiry to find out whether there is any substance or material to substantiate that there is merit in the information adduced by the Ld. CIT-15, Kolkata and thereafter the AO has to take an independent decision to re-open or not. And the AO should not act on dictate of any other authority like in this case Ld. CIT-15, Kolkata because then it would be borrowed satisfaction. We therefore note that the reasons recorded by AO to re-open the assessment, does not stand the test as laid by plethora of judicial precedents which was necessary to assume jurisdiction u/s 147 of the Act. We may usefully refer to the following observations of the Hon'ble Delhi High Court in the case of Pr.CIT Vs RMG Polyvinyl (I) Ltd (supra).

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> *"12. Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 Pr. CIT v. Meenakshi Overseas [2017] 82 taxmann.com 300 (Delhi), this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had.

14. To compound matters further the in the assessment order the AO has, instead of adding a sum of Rs. 78 lakh, even going by the reasons for reopening of the assessment, added a sum of Rs. 1.13 crore. On what basis such an addition was made has not been explained.

15. For the aforementioned reasons, the Court is satisfied that no error was committed by the ITAT in holding that reopening of the assessment under Section 147 of the Act was bad in law."

16. Taking into account all the facts & circumstances of the appellant's case, and applying the judicial principles laid down by various Courts we are of the considered view that the reopening of assessment in the present case was done without satisfying the conditions precedent in Section 147 and for that reason the reopening is held to be *corum non judice*. Therefore, all proceeding subsequen ly made is 'null' in the eyes of law and so, we quash the notice of reopening u/s. 148 and subsequent orders of the AO and Ld. CIT(A) is also held to be null & void in the eyes of law. Accordingly the assessee succeeds on the legal issue challenged before us

17. Since the re-opening of assessment itself has been held to be bad in law and unsustainable, the assessee's other grounds of appeal challenging the Ld. CIT(A)'s power to cause enhancement in respect of sources not considered by the AO as also the merits of the case are not decided as these grounds have become only academic in nature and therefore not separately adjudicated.

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ITA No. 1010/Kol/2018 A.Y 2007-08 (by the assessee)

18. In the several grounds, the assessee objected to ex-parte order passed by the Ld. CIT(A) imposing penalty for concealing particulars of income. Since while deciding the assessee's appeal against the order u/s 147/143(3), we have held that the reopening of assessment u/s 147 was legally untenable and null in the eyes of law. Accordingly we have quashed the assessment order u/s 147/143(3), therefore all consequent action is non-est in the

eyes of law and so the levy of penalty by the AO/Ld. CIT(A) is also legally unsustainable and accordingly the order of AO and ld CIT(A) levying penalty u/s 271(1)(c) is accordingly cancelled.

19. In the result, both the appeals of assessee are allowed.

Order Pronounced in the Open Court on 2nd November, 2018.

Sd/-	Sd/-
M. Balaganesh	A.T. Varkey
Accountant Member	Judicial Member

Dated 02-11-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Premier Vyapaar Pvt. Ltd, Room No. 10, Gate No.4, Poddar Court, 18 Rabindra Sarani, Kolkata-700 001.
2. Respondent/Department: Income Tax Officer, Ward 15(2), Poddar Court, 4th Floor, 18 Rabindra Sarani, Kolkata-700 001.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPSTrue CopyBy

By Order
Assistant Registrar
ITAT Kolkata

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