IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI

Before Sh. N. S. Saini, Accountant Member

ITA No. 6628/Del/2018 : Asstt. Year : 2009-10

Kamal Kishoree Aggarwal, A-57, Ashok Vihar, Phase-I, New Delhi-110052	Vs	ACIT, Circle-34(1), New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. ACKPA3670L		

Assessee by : Sh. Pancham Sethi, FCA
Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing: 11.04.2019		**Date of Pronouncement: 12.04.2019**

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-12, New Delhi dated 13.07.2018.

2. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case, the order passed u/s 250(6) by the Ld. CIT(A) confirming the assessment order passed u/s 143(3) r.w.s. 147 by the Ld. Assessing Officer is bad in law.

2. The Ld. CIT(A) has erred both in law and on the facts of the case by upholding the action of the Ld. ASSESSING OFFICER to initiate reopening and reassessment of the case u/s 147 of the Income Tax Act 1961.

3. Ld. CIT(A) has erred in confirming the addition of Rs. 5,96,177/- made by Ld. AO u/s 143(3) r.w.s. 147 by treating certain share transactions as bogus.

4. Ld. CIT(A) has erred in not recognizing the fact that the Client Code Modification (CCM) was done to rectify the genuine errors held at the end of broker for which the assessee was not responsible.

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5. Ld. CIT(A) has erred in confirming the order of Ld. AO even when the Ld. AO failed to provide the details of the transactions where Client Code was modified.

6. Ld. Assessing Officer has erred both in law and on facts of the case in initiating penalty proceedings u/s 271(1)(c) read with section 274 of the IT Act, 1961.

7. The appellant craves leave to amend, delete or add any grounds of appeal before or during the course of hearing of the appeal."

3. In ground nos. 1 & 2 of the appeal, the assessee has challenged the reopening of assessment made u/s 147 of the Act is bad in law.

4. The Commissioner of Income Tax (Appeals) has decided the issue as under:

"(1) The above ground challenges the action of the LI Assessing Officer in resorting to provisions of section 148 of the Act as being bad in law as would be apparent from the detailed submissions being made hereinafter.

(2) S. 147 of the Act authorizes and permits an Assessing Officer to reassess the income chargeable to tax for any assessment year if he has "reason to believe that the said income for any assessment year has escaped assessment". The expression "escaped assessment" clearly connotes a very basic postulate that income for a particular assessment year went unnoticed by the Ld. Assessing Officer and because of it not being noticed by him for any reason, it escaped assessment. Accordingly, there should be a complete linkage and direct co-relation between the formation of reason to belief and the conclusion as to income escaping assessment so as to resort to the reassessment provisions.

(3) The provisions of the Act make it clear that the issue of a Notice under Section 148 of the Act seeking action under section 147 of the Act is dependent on "recording of a satisfaction" as to escapement of income as a threshold requirement i.e. "the Assessing Officer should

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have reason to believe that income chargeable for the relevant assessment year has escaped assessment". The language of the section makes it clear that while the powers of an Assessing Officer to initiate reassessment proceedings are very wide, at the same lime they are not plenary in nature. These powers are vitally controlled by the words 'reason to believe' employed by the section. The reasons for formation of belief for reopening an assessment must have a rational, intimate and direct connection or relevant bearing on the formation of the belief. The existence or otherwise of such a belief on the pan of the Assessing Officer, is not a mere question of limitation but the very foundation of his jurisdiction. Accordingly, the law clearly postulates the presence of the following four essential ingredients for the issue of a notice u/s 148 of the Act:

(a) existence of some material(s) and not mere fancy imagination, speculation or suspicion:
(b) an "application of mind" by the Assessing Officer to such material:
(c) a nexus between such materialist and the belief of escapement of income from assessment, and
(d) an inference based on reason drawn by the Assessing Officer that income has escaped assessment.

(4) In the instant ease a review of the reasons furnished for the issue of notice u/s 148 and consequent framing of the reassessment in the Appellant's case make it clear that the same are based on information received from the Pr DIT (Investigation), based on the results of surveys carried out on certain brokers, wherein it has been determined that the facility of Client Code Modification has been allegedly used as a means of tax evasion and not for "rectifying genuine errors" as permitted by SEB1

(5) White the name of the Appellant does not appear in any of the investigations carried out by different wings of the Income-tax Department, the mere fact that certain entities individuals could have misused the facility1 has prompted the id Assessing Officer, without any independent appraisal or judicious application of mind, to tar ad such transactions with the

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same brush and to taint the same to be irregular, bogus and even fraudulent

(6) A review of the reasons for issuing the impugned notice ids 147/148 of the Act for "alleged escapement of income" would reveal (hat they merely, in fact blindly, rely upon the information conveyed to the id Assessing Officer from independent sources Wings of the Department which has not been independently verified by any degree of application of mind or conducting any such enquiries.

(8) As already discussed herein be ore the basis for the validity of any action u/s 147/148 of the Act has to be some 'tangible, substantive and specific belief that the "income of a particular assessee" in question has escaped assessment. The information on the basis of which such an action has been taken should he specific in relation to the particular assessee. Merely on the basis of some general information and without any specific application of mind the issue of escapement of income cannot be determined and any action taken on the basis of the same is beyond the letter, spirit and intent of law.

(8) The relevant lega provisions in this regard specially call for a definite conclusion as to the "reason to believe" as opposed to "reason to suspect", hi the given case there was only a suspicion as to some income having escaped assessment which suspicion cannot by itself sus ain any action u/s 147/148 of the Act. The reliance on Enquiries/Investigations carried out in the ease of independent third parties may have led to some adverse findings which by itself cannot be ipso- facto applied to the Appellant whereby it is clear that the notice in question is merely based on a "reason to suspect" as opposed to a "reason to believe". The manner in which affairs are conducted by independent third parties, acting in their its own self-interest and the results of any proceedings carried out in their cases cannot, without any concrete evidence, lead to a formation of belief as to escapement of income in the ease of the Appellant.

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(9) In this connection attention is also invited to the decision of the Lordships of the Delhi High Court in the case of Signature Hotels Pvt. Ltd. vs Income Tax Officer and Another [(2012)] 20 taxmann.com 797 (Delhi)/ wherein it has been held as follows: -

> *"Held, allowing the petition. that the reassessment proceedings were initiated on the basis of information received from the Director of Income- tax (Investigation) that the petitioner had introduced money amounting to Rs 5 lakhs during financial year 2002-03 as stated in the annexure According to the information, the amount received from a company, S. was nothing but an accommodation entry and the Appellant was the beneficiary The reasons did not satisfy the requirements of section 147 of the Act There was no reference to any document or statement, except the annexure The annexure could not he regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company had a paid-up capital of Rs 90 lakhs and was ncorporated on Jan 4, 1989 and was also allotted a permanent account number in September. 2001. Thus, it could not be held to be a fictitious person The reassessment proceedings were not valid and were liable to be quashed."*

(10) In this connection reference may also he made to the following discussions wherein it has been held that any notice for reassessment issued on the basis of mere suspicion and without any independent application of mind is not valid.-

- *Commissioner of Income-tax v. Smt. Paramjit Kaur [(2008) 168 Taxman 39 (P&H)]:*
- *Sarthak Securities Co. Pvt. Ltd. v. Income Tax Officer [(2010) 195 Taxman 262 (Delhi)]:*
- *Commissioner of Income-tax v SFIL Stock Broking Ltd. [(2010) 325 ITR 285 (Delhi)]:*

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(11) The above view has also been recently affirmed by the Delhi High Court in the case of Pr. Commissioner of Income-tax v. G & G Pharma India Ltd [(2016) 384 ITR I47 (Delhi)] which their Lordships have dearly held that "prior to the reopening of the assessment, the AO has to. applying his mind to the materials concluded that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analyzing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity."

(12) The legal position arising out of the above judgement is that reassessment proceedings initiated merely on the basis of the information that came to the knowledge of an Assessing Officer, from an external source, without any independent application of mind by the Ld Assessing Officer, are void-ah-initio and deserve to be quashed and the same cannot be a ground for reassessment of income u/s 148 of the Act, in the instant case, the Ld Assessing Officer has merely relied an the investigation carried out by the Investigation Ming and the consequent report furnished by them without any independent application of his mind or conducting any independent field enquiry through exercise of power vested in him under the Act. This being the case the resort to the reassessment proceedings and the consequent addition made is unwarranted, void ab-initio and bad in law and deserves to be quashed and declared non-est.

(13) In addition it may also be noted that the conditions precedent justifying an issue of notice u/s 148 of the Act also include the existence of certain tangible material(s) and a definite nexus between the same and the conclusion as to escapement of income which clearly is absent in the instant case as would he evident from the discussions hereinafter The material in the instant case is enquiries conducted on certain brokers wherein it has been only allegedly and not with any degree of certainty determined that the facility of CCM has been allegedly misused. On the basis of the said investigation and its results Appellant has been, again allegedly, identified as one of the ultimate beneficiaries which

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forms the basis for drawing a conclusion as to escapement of income and issue of notice its 148 of the Act. It may be respectfully submitted that neither the manner of identification of the Appellant being an ultimate beneficiary nor the basis of arriving at the said conclusion been disclosed in any manner thereby pointing to the tenuous nature of the link between the material and the conclusion drawn. The said action pointing to the absence of a direct link between the various limbs of the entire process and the extremely suspect nature as to the conclusion drawn to call for the notice to be filed at the initial stage itself and the notice to be filed.

(14) In this connection reference may also be made to a recent decision of the Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax v Meenakshi Overseas Pvt. Ltd. [(2017) 395 HR 677 (Delhi)] wherein the following pertinent observations have been made.

> *"The reopening of the assessment under section 147 of the Income-tax Act, 1961 is a potent power not to be lightly exercised. It cannot he invoked casually or mechanically. The intent of the provision is the formation of belief by the Assessing Officer that income has escaped assessment The reasons recorded have to be based on some tangible material and that should he evident from a reading of the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow According to the first part of Section 147(1) it is a mandatory requirement that the Assessing Officer should have "reasons to belief" that any income chargeable to tax has escaped assessment. I he reasons must be self-evident and must speak for themselves.*
>
> *The Assessing Officer being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on objective criteria. The recording of reasons to believe and not the reasons to suspect is the pre-condition to the assumption of jurisdiction under, section 147. The reasons to believe must*

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demonstrate the link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."

(15) On the basis of the above their Lordships of the Hon'ble Delhi High have concluded as follows: -

"That while the report of the Investigation Wing might have constituted material on the basis of which the Assessing Officer formed the reasons to believe, the process of arriving at such satisfaction could not be a mere repetition of the report of investigation. In the assessee's case, the crucial link between the information made available to the /Assessing Officer and the formation of belief was absent. The "reasons to believe" recorded were not reasons but only conclusions and a reproduction of the conclusion in the investigation report received from Director (Investigation). It was a "borrowed satisfaction". The expression "accommodation entry" was used to describe the information set out without explaining the basis for arriving at such a conclusion. The basis for the statement that the entry was given to the assessee on his paying "unaccounted cash" was not disclosed. Who was the accommodation entry giver and how he could be said to be a "known entry operator" were not mentioned the source for all the conclusion li as the investigation report. The tangible material which formed the basis for the belief that income had escaped assessment must be evident from a reading of the reasons. The reasons failed to demonstrate the link between the tangible material and the formation of the reason to believe that income had escaped assessment. The Assessing Officer had not independently considered the tangible material which formed the basis for the reasons to believe that income had escaped assessment So error had been committed by the Appellate Tribunal in concluding that the initiation of the reassessment proceedings under section 147/148 to reopen the assessments for the assessment year 2004- 05 was not legal "

(16) In particular. Your Honour's attention is respectfully drawn to the following judicial

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pronouncements where their Lordships of the respective Courts have clearly held that the mu ice us NX of the Act was without jurisdiction as it lacked reason to believe that income chargeable to tax had escaped assessment since the reasons did not indicate the basis for the Ld Assessing Officer to come to a reasonable belief "that there had been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade and although there was material available to the effect that there was a client code modification done by the assessee's broker, there was no link from there to conclude that it was done with a view to escape assessment of a part of the assessee's income and prima facie, it was a case of reason to suspect and not reason to believe that income chargeable to tax had escaped assessment"

- *Coronation Agro Industries Lid v Deputy Commissioner of Income-Tax [(2017) 390 ITR 464 (Bom)]:*
- *Harikishan Sunderlal Yirmani v Deputy Commissioner of Income-Tax [(2017) 394 ITR 146 (Guj)].*

(17) In view of the above discussions since in the instant case, reasons for resort to the reassessment provisions owe their genesis to a "reason to suspect" and not "reason to believe", in the absence of a live link, (which can at best be described as lenons or speculative) between the information which forms the basis for formation of the belief and the Appellant, the reassessment proceedings are bad in law and deserve to be declared non-est and void ab-inilo:

7. Decision

7.1 The facts as recorded by the Assessing Officer are that the Assessing Officer received information from ADIT, Investigation, Unit-1(3), Ahmadabad regarding misuse of Client Code Modification facility by the Assessee in connivance with the broker. This facility was misused to transfer gains or losses from one person to another by changing the unique code allotted to a client. CCM Specially in the futures and options (F&O) segment was used as a device to evade taxes by modifying the

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client codes for booking artificially profits or losses at the fag end of the financial year. The misuse of the CCM mostly took place between 2009 and 2011 after which SEBI tightened its norms to curb the practice. Before the SEB1 actions, the Indian markets were seeing CCM to the tune of Rs.50000 to Rs.60000 Cr. a month, which came down to just about Rs. 100 Cr. after SEBI action. The probe also showed the quantum of such modifications was much higher during March, compared to other months, which hinted towards the tax evasion. A search & seizure action was conducted in the case of Amrapalli Group of Ahmadabad on 26.10.2012 on the analysis of CCM by ACFL (A group entity involved in broking) it was found that CCM was used as a tool to systematically shift profits and losses. On the deeper study it was found without exception that the persons who had got book profits in their books had obtained losses so to set off their book profits. The Investigation Wing, Ahmedabad collected information in this regard from Stock Exchanges / Commodity Exchanges. The Assessing Officer reopened the case of the Assessee on the basis of the information received from Pr. DIT, Investigation. The data received from NSE revealed that the Assessee had reduced its taxable income to the extent of Rs.5,96,176/- during FY 2008-09 relevant for AY 2009-10 by using CCM. The analysis of the data further reveled that in the case of the Assessee Client Code was modified 188 times during the year under consideration; ou of which 105 times. Client Code was modified when the Assessee was original client. It means the Client Code of the Assessee was substituted by some other Client Code after execution of the transaction. In remaining 83 cases, the Assessee's Client Code was placed as modified Client in place of original Client's Code. On page 5 & 6 of the Assessment Order, the Assessing Officer has given the details of CCM in the case of the Assessee and resultant loss of Rs.5,96,176/-. On page 7 & 8 of the Assessment Order, the Assessing Officer has given some details of original Client Code and modified Client Code demonstrating that the so called errors were not possible on the Qwerty Keyboard.

7.2 The Appellant has, inter alia, submitted that there should be a complete linkage and direct correlation between the formation of reason to believe and the conclusion as to the income escaping assessment. It is

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submitted that the reasons to believe for reopening the assessment must have a rational, intimate and direct connection or relevant bearing on the formation of belief. It is submitted that the name of the Appellant does not appear in any of the investigations carried out by different wings of the Income Tax Department. The mere fact that certain entities / individuals could have misused the facility, cannot be the basis for reopening the assessment in the case of the Assessee. The information supplied by the Investigation Wing has not been independently verified by any degree of application of mind. The relevant legal provisions specifically call for a definite conclusion as to the 'reason to believe' as opposed to 'reason to suspect'. In the given case there was only a suspicion that some income has escaped assessment. The Appellant has relied on certain decisions in his support. The decisions being part of Appellant's submission, quoted above, are not repeated here.

7.3 1 have gone through the facts of the case and the submission of the Appellant. I find that the Assessing Officer had definite information from the Investigation Wing, Ahmedabad in respect of Client Code Modifications the broker concerning the Assessee. The Assessing Officer has in detail narrated the facts in the Assessment Order. 1 he Assessing Officer not only extracted the facts from the report received by him, he applied his mind in the light of the findings of the Investigation Wing. Further, it was clear from the keyboard of the computer that, a person may type an adjacent alphabet when a genuine error is committed. But the data analysis shows that there are no such genuine errors in the case of identified beneficiaries. The entity from which the profits were shifted out and the losses were shifted in had taxable business income which was reduced due to shifting in of the losses. At the stage of reopening of the assessment, the sufficiency or correctness of the material is not a thing to be considered by the Assessing Officer, as held by Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. vs. ITO & Others (1999), 236 ITR 34 (SC). In this ease, the Apex Court held that in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was

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prima facie some material on the basis of which the department could reopen the case. It may be seen from the above discussion that the Assessing Officer prima facie had material to initiate reassessment proceedings in the case of the Assessee. In a recent judgment, the Hon'ble Punjab & Haryana High Court in the case of Rakesh Gupta vs. C1T, Punehkula (2018), 93 taxinann.com 271 held that reassessment on the basis of information received from Pr. DIT. Investigation that Assessee had received bogus loss from his broker by CCM. was justified.

7.4 In view of the above facts and in the circumstances, I uphold the action of the Assessing Officer to initiate reassessment proceedings by issuing the notice u/s 148 of the IT Act."

5. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the assessee filed its original return of income on 30.09.2009 disclosing total income at a loss of Rs.15,07,250/-. The said return of income was accepted u/s 143(1) of the Act.

6. Thereafter, the case of the assessee was reopened by issuance of notice u/s 148 of the Act The Commissioner of Income Tax (Appeals) upheld the validity of the said notice.

7. I find that the reasons recorded for issuance of notice u/s 148 was as under:

"REASONS FOR BELIEF THAT THE INCOME HAS ESCAPED ASSESSMENT IN THE CASE OF SHRI GOPAL GUPTA FOR THE ASSESSMENT YEAR 2009-10

As Survey Report in R/o client code modification (CCM) has been received from ADIT (Inv.) U-1(3) Ahmadabad disseminating of beneficiary clients who have taken contrived losses and shifted out profits during the F.Y. 2008-09 to 2011-12.

SEBI conducted a probe into "modification of client codes" by brokers, pursuant to observation by the Finance

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Ministry about many such modification taking place in derivatives transactions at the National stock exchange during March 2010.
The Ahmadabad Investigation Directorate carried out coordinated limited purpose survey u/s 133A of the Income Tax Act, 1961 at the premises of 12 brokers & few of their clients across India on 23.03.2015. The ADIT, Unit-1(3), Ahmadabad on the basis of data received from NSE & after considering the contention of brokers, has concluded the CCM has been used as a toll for tax evasion. Further, only settled trades have been considered to arrive at the beneficiaries by the ADIT, Unit -1(3), Ahmadabad.

One of the beneficiaries i.e. Shri Kamal Kishore Aggarwal, E-192, Ashok Vihar, New Delhi-110052, falls under the territorial jurisdiction of this circle who shifted out the profit of Rs.652089 and shifted in loss of Rs.1248265 thus he had reduced his income by Rs.596177/- through Client Code Modification (CCM) done through broker M/s Gaurav Investments & consultancy (Pvt.) Ltd. during the Finance Year 2008-09. Hence, I have reason to believe that income to the extent of contrived losses of Rs.596177/- have escaped assessment within the meaning of section 147 the Income Tax Act, 1961.

It is pertinent to mention that in the case of CIT Vs Nova promoters & Flnlease (P) Ltd.(\TA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

> *"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only prima facie belief or opinion that income chargeable to tax has escaped assessment"*

Here it would be worthwhile to mention that in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. Vs. ACIT (2007) 291 ITR 500/161 Taxman 316 (Supreme Court). The Hon'ble apex Court has held that:-

> *"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material*

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that would lead a person of normal prudence, acting reasonable, to an honest belief as to the escapement of income from assessment."

Also, in the case of Phool Chand Bajrang Lal Vs ITO 203 ITR 456 (SC). The Hon'ble apex Court has held that:-

"An assessment completed u/s 143(3) but later on information received which was indefinite, specific and reliable and the AO duly recorded the reasons for his belief that the assessee had not fully and truly disclosed particulars of his income and hence there was escapement of income. Held that the reopening of the case was valid."

Also, in the case of Raymond Woollen Mills Ltd 236 ITR 34 (SC). The Hon'ble apex Court has held that:-

"Assessee did not include certain direct manufacturing costs and fiscal duties in the valuation of closing stock. This came to light in the subsequent years assessment proceedings. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of issue of notice u/s 148."

Furthermore, in the case of Jyoti Goyal Vs. ITO (ITA NO. 1259/Del/2010), the Hon ble ITAT Delhi held that

"As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity of reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement with the finding of the Ld. CIT(A) that the reopening of assessment u/s 147 of the Act was valid."

In the present case, the live link between the material provided by the Investigation Wing, Ahmadabad and the reasons for belief that income has escaped assessment has

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been sufficiently demonstrated. Accordingly, necessary approval u/s 151 of the I.T. Act, 1961 is solicited to issue notice u/s 148 of the I.T. Act to re-open the assessment u/s 147 of the I.T. Act, 1961."

8. We find that in the case of M/s. Prashant Agencies Pvt. Ltd. and PPN Properties Pvt. Ltd. Vs ITO in ITA Nos. 3059 & 3060/Del/2018, order dated 16.01.2019, the Tribunal dealt with the similar issuance of notice u/s 148 of the Act by following the decision of the Hon'ble Bombay High Court in the case of Coronation Agro Industries Ltd. Vs DCIT 390 ITR 464 (Bom.). In that case, the reasons recorded were as under:

"M/s. Prashant Agencies Pvt. Ltd. Dated : 03.06.2016

Information has been received from Investigation wing Ahmadabad vide letter F No ADIT(Inv.) I (BVAHD/CCM/Dissemination-mail 15-16 dt. 11.03.2016 forwarding of survey report in respect of client code modification. Vide the letter it has been informed that client codes is a practice under which brokers change the client codes in safe and purchase orders of securities after the trades are conducted In this regard. SEBI has conducted prove into modification of client codes by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the National Stock Exchange during March 2010. in this it was found that client code modification is being used for tax evasion.

CCM is legally permitted to rectify inadvertent errors in punching the orders. however, there was concern that such modification could be misused for manipulative activities in the market. This has been established in the analysis of data by SEBI wherein it was established that Client Code Modification (CCM) done on NSE. F&O segment was of a nature that establishes that it was not for genuine purposes. This has been established true in the finding of the investigation unit while analysis the data for four years.

In this regard, survey has been conducted by Ahmadabad Investigation Directorate u/s 133A of the IT Act. 1961 at the premises of 12 brokers and few of them clients across

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India on 23.03,2015. In this survey also was found that Client Code Modification (CCM) is being used as a tool for tax evasion by the brokers After analysis of data it was concluded that 4890 assessee have availed contrived losses of Rs. 1206,18.25.287/- in the four years out of which Rs. 580,12,39.534/- pertains to A.Y. 2009-10. The list of such entities has been forwarded for the cases where losses are quantum of Rs. 1,00,000/- or more and of the cases where quantum of profit shifted is of Rs. 1,00,000/- or more. The entity M/s Parshant Agencies Pvt. Ltd. is one of the beneficiary availing such arrangements in the A.Y, 2009-10.

The details of such entry in respect of the above mentioned assessee is as follows :-

Sl.No.	*Pan no. & Name of the beneficiary*	*Name the broker*	*A.Y.*	*Ascertained losses out*	*Net reduction profit shifted income due CCM*	*Shifted*
1.	*AAACP5839K M/s Prshant*	*Crimson Financial Services*	*2009-10*	*0*	*(-) 2,07,040*	*(-) 207040*

The above facts clearly establish that such malpractices have been adopted change the client code deliberately to create losses. Since the above amount R.s. 2.Q7?040/- has escaped assessment for the A.Y. 2009-10, which was chargeable to tax I am satisfied that on account of failure on the part of the assessee to disclose truly and fully all the .material facts necessary for assessment for the above assessment year ***the*** *income chargeable to tax to the tune of Rs.2,07,040/- has escaped assessment within meaning e; Section 147 of the l.T. Act 1961.*

Since, four years has been expired from the end of the relevant assessment year, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction or Pr Commissioner of Income Tax —07, New Delhi in terms of the proviso to Section 151(1) of the IT Act 1961."

M/s. PPN Properties Pvt. Ltd. Dated : 23.06.2016

"Subject: *Providing reasonsrecorded for re-opening*

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of case u/s. 147 of the IT Act, 1961for A.Y. 2009-10-reg.

Please refer to your letter dated 03.06.2016 on the subject mentioned above.

In this regard, as requested by you the reasons recorded before issuance of notice u/s. 148 are reproduced as under:-

Information has been received from Investigation wing Ahmadabad vide letter No. ADIT (inv.) l(3)/AHD/CCM/Dissemination/e-mail/l5-16 dated 11.03.2016 forwarding of survey report in respect of client code modification. Vide the letter it has been informed that client codes is a practice under which brokers change the client codes in sale and purchase orders of securities after the trades are conducted, in this regard, SEB1 has conducted probe into modification of client codes by brokers, pursuant to observations by the Finance Ministry about many such modifications taking place in derivatives transactions at the National Stock Exchange during March 2010 In this it was found that client code modification is being used for tax evasion.

CCM is legally permitted to rectify inadvertent errors in punching the orders, however, there was concern that such modification could be misused for manipulative activities in the market. This has been established in the analysis' of data by SEC! wherein it was established that Client Code Modification (CCM) done on NSE, F&O segment was of a nature that establishes that it was not for genuine purposes. This has been established true in the finding of the investigation unit while analysis the data for four years.

In this regard, survey has been conducted by Ahmadabad Investigation Directorate u/s 133A of the IT Act, 1961 at the premises of 12 brokers and few of their clients across India on 23.03.2015. In this survey also was found that Client Code Modification (CCM) is being used as a tool for tax evasion by the brokers-. After analysis of data it was concluded that 4890 assessees have availed contrived losses of Rs. 1206,18,25,287/- in the four years out of which Rs. 580,12,39,534/- pertains to A.Y. 2009-10. The list of such entities has been forwarded for the cases

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where losses are quantum of Rs. 1,00,000/- or more and of the cases where quantum of profit shifted is of Rs. 1,00,000/- or more. The entity M/s PPN Properties Pvt. Ltd. is one of the beneficiary availing such arrangements in the A.Y. 2009-10.

The details of such entry in respect of the above mentioned assessee is as follows:

SI. No	*Pan no. & Name of the beneficiary*	*Name the broker*	*A.Y.*	*Ascertained losses shifted*	*Net reduction profit income due Shifted out*	*CCM*
1.	*AADCP2023J M/s PPN Properties Pvt. Ltd.*	*Crimson Financial Services*	*2009-10*	*0*	*(-) 2,47,312.5*	*(-) 2.47,312.5*

However, the above facts clearly establish that such malpractices have been adopted to change the client code deliberately to create losses. Since the above amount of Rs. 2,47,312.5/- has escaped assessment for the A.Y. 2009-10, which was chargeable to tax, 1 am satisfied that on account of failure on the part of the assessee to disclose truly and fully all the material facts necessary for assessment for the above assessment year, the income chargeable to tax to the tune of Rs. 2,47.3 12.5 /- has escaped assessment within meaning of Section 147 of the IT. Act 1961.

Since, four years has been expired from the end of the relevant assessment year, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Pr. Commissioner of Income Tax — 7, New Delhi in terms of the proviso to Section 151(1) of the IT Act 1961."

9. The Tribunal in respect of the above reasons has held as under:

"20. On perusal of the above recording shows that it was not at all a reason to believe envisaged u/s 147 of the Act, at best the same can be considered as reason to suspect only. In the recording the Assessing Officer has admitted that client code modification is legally permissible in case of

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mistake. Further the recording states the assessee M/s. Prashant Agencies Pvt. Ltd. has suffered a loss of Rs.2,07,040/- in a transaction in which client code modification was involved. Similarly in the case of M/s. PPN Properties Private Limited recording states that the assessee has suffered a loss of Rs.2,47,312/- in a transaction in which client code modification was involved. However, there is no material on record to show that prima facie the said client code modification was because of some malafide reason and the assessee has received cash in lieu of payment made for loss of Rs.2,07,040/- in the case of M/s. Prashant Agencies Pvt. Ltd. and Rs.2,47,312/- in the case of M/s. PPN Properties Private Limited. Thus, the above recording does not satisfy requirement of law which is mandatory for assuming jurisdiction to reopen the assessment. My above view is supported by decision of Hon'ble Bombay High Court in the case of Coronation Agro Industries Limited Vs. DCIT reported in 390 ITR 464. Therefore, the reassessment orders passed pursuant to the above recording are hereby quashed and ground of appeals of the assessee is allowed."

10. A perusal of the above, shows that Client Code Modification is legally permissible in case of mistake. In the instant case, the observation of the Assessing Officer is to the effect that due to Client Code Modification in two transactions, the assesse's income was reduced by Rs.5,96,176/ .

11. We find that there is no material which has been brought out in the recorded reasons to show that Client Code Modification in the instant case was malafide or the assessee received Rs.5,96,176/- in cash in lieu of the said Client Code Modification. Thus, the above recording at best is a reason to suspect only.

12. It is an established position of law that the validity of reopening is to be decided on the basis of recording made u/s 148(2) of the Act alone and nothing can be added thereto. The recording should be self-contained to withstand the validity of the reopening made.

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13. In the circumstances, respectfully following the decision of the Hon'ble Bombay High Court in the case of Coronation Agro Industries Ltd. Vs DCIT (supra) and the above quoted decision of the Tribunal, in our considered opinion, the reasons recorded in the instant case does not satisfy the requirement of law and the same does not constitute the reason to believe for escapement of any income from tax. Therefore, the reason is not valid. The consequential order of reassessment passed in pursuance thereto cannot be sustained. We, therefore, set aside the impugned order of reassessment passed u/s 147 of the Act and allow this ground of appeal of the assessee.

14. In view of our above decision, the other grounds of appeal taken by the assessee in this appeal have become academic in nature and therefore, they are not adjudicated.

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

(Order Pronounced in the Open Court on 12/04/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 12/04/2019
Subodh
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

ASSISTANT REGISTRAR

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