

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-10-2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. Nos.10257, 44312 and 44313 of 2016

And

W.M.P.Nos.9080, 38178 and 38179 of 2016

M/s.South Asia FM Limited,
Represented by its Authorised Signatory,
Mr.K.S.Rajesh,
Murasoli Maran Towers,
No.73 MRC Nagar Main Road,
MRC Nagar,
Chennai-600 028.

... Petitioner in all WPs

vs

The Assistant Commissioner of Income Tax,
Non-Corporate Circle-15, Aayakhar Bhavan,
No.121, Mahatma Gandhi High Road,
Nungambakkam, Chennai-600 034.

... R-1 in WP.10257/2016

The Deputy Commissioner of Income Tax,
Corporate Circle-6(2),
Aayakhar Bhavan,
No.121, Mahatma Gandhi High Road,
Nungambakkam,
Chennai-600 034.

... R-2 in WP No.10257/2016

The Assistant Commissioner of Income Tax,
Non-Corporate Circle-15, Room No.208, II Floor,
Aayakhar Bhavan, No.121, Mahatma Gandhi High Road,
Nungambakkam, Chennai-600 034.

... Respondent in WP.44312 & 44313 of 2016

WP No.10257 of 20176 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the notice issued by the second respondent dated 27.3.2015 under Section 148 of the Income Tax Act, 1961 and the consequential order No.ACIT/NCC-15/AY08-09/dated 4.3.2016 passed by the first respondent and quash the same.

WP No.44312 of 2016 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the notice issued by the respondent in PAN: AAJCS6348B/ACIT/NCC-15/AY10-11 dated 30.3.2016 under Section 148 of the Income Tax Act, 1961 and the consequential order dated 9.12.2016 in No.ACIT/NCC-15/AY2010-11 of the respondent and quash the same.

WP No.44313 of 2016 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the notice issued by the respondent in PAN: AAJCS6348B/ACIT/NCC-15/AY11-12 dated 30.3.2016 under Section 148 of the Income Tax Act, 1961 and the consequential order dated 9.12.2016 in No.ACIT/NCC-15/AY2011-12 of the respondent and quash the same.

For Petitioner in all Wps : Mr.Satish Parasaran,
Senior Counsel
for Ms.M.Sneha.

For Respondents : M/s.A.P.Srinivas and
A.N.R.Jayaprathap, Standing
Counsel for Income Tax.

C O M M O N O R D E R

The notice issued by the second respondent in proceedings dated 27.3.2015 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and the consequential order dated 4.3.2016 passed by the first respondent, are under challenge in WP No.10257 of 2016.

2. WP No.44312 of 2016 is filed challenging the notice dated 30.3.2016 issued under Section 148 of the Income Tax Act in respect of the assessment year 2010-2011 and the consequential order dated 9.12.2016 and WP No.44313 of 2016 is filed challenging the notice dated 30.3.2016 issued under Section 148 of the Income Tax Act in respect of the assessment year 2011-2012 and the consequential order dated 9.12.2016.

3. In all these writ petitions the writ petitioner is M/s.South Asia FM Ltd., represented by its Authorised Signatory Mr.K.S.Rajesh. Thus, all the three writ petitions are filed challenging the notices issued under Section 148 of the Act in respect of the three different assessment years. Thus, the facts in respect of all the three writ petitions are common.
PLEADINGS OF THE PETITIONER AS WELL AS THE ARGUMENTS:

4. The impugned notices for reopening of the assessments are issued with reference to the assessment years 2008-2009, 2010-2011 and 2011-2012. The writ petitioner-Company states that they have filed the return of income on 24.9.2008, admitting an income of Rs.33,24,51,590/-. The return was processed under Section 143(1) of the Income Tax Act, accepting the return of income. After a lapse of six and half years and after filing and accepting the return by the first respondent on 27.3.2015, the impugned notice has been issued for reopening of the assessment on the ground that the Assessing Officer had reason to believe that the income had escaped assessment within the meaning of Section 147 of the Act and required the writ petitioner-Company to file one more return of income for the same assessment year i.e., 2008-2009.

5. In response to the notice impugned, the writ petitioner-Company by their letter dated 28.4.2015, requested the first respondent to treat the return already filed on 24.9.2008 as a return in response to the notice issued under Section 148 of the Act and also requested the first respondent to furnish the reasons for reopening the above assessment. The respondents on 23.2.2016, furnished the reasons for reopening the assessment. Immediately on 29.2.2016, the writ petitioner filed the objections on the alleged reasonings recorded for reopening the assessment. On 4.3.2016, just before 27 days for the completion of reassessment, the first respondent by an order allegedly to be a speaking order, dismissing the petitioner's objections in a mechanical manner and thereby reopened the assessment of the petitioner for the assessment year 2008-2009. It is contended that the respondents had not considered the objections raised by the writ petitioner. An order of rejection has been issued mechanically and without considering the legal grounds raised by the writ petitioner.

6. In WP No.10257 of 2016, the reasons, in brief, recorded by the respondents for reopening of the assessment for the year 2008-2009 are:-

(a) The Assessee M/s.South Asia FM Ltd., received investment in the form of shares to the tune of Rs.193.54 crores during the year 2007 to 2010;

(b) As per the CBI charge sheet, Shri Dayanithi Maran, while functioning as Minister for Communications and Information Technology had facilitated the takeover of Aircel Ltd and in return Shri T.Anandakrishnan, through his group company invested Rs.193.54 crores in M/s.South Asia FM Ltd.;

(c) This payment of share capital received by M/s.South Asia FM Ltd is not in the nature of capital receipts but they are revenue receipts camouflaged as capital receipts as found out by CBI;

(d) Hence the assessment in the writ petitioner's case

for the AY 2008-2009 was reopened under Section 147 of the Act, to verify the genuineness of the investment of Rs.193.54 crores in the writ petitioner's company.

7. The objections raised by the writ petitioner in WP 10257 of 2016 on 29.2.2016 are as under:-

(a) The notice is ab initio void;

(b) There is no 'information' within the meaning of Section 147 of the Act, for coming to the belief that any income had escaped assessment;

(c) There is no concept of income involved as the transactions were capital in nature and when there is no income involved, there cannot be any escapement of such alleged income;

(d) The assessment cannot be reopened to verify the transactions; and

(e) No application of mind in the reasonings recorded and its mechanical approval by the immediate Higher Authority.

8. The writ petitioner in WP Nos.44312 and 44313 of 2016 have filed their return of income within the time limit stipulated. The assessments were taken up for compulsory scrutiny and the assessments were completed under Section 143(3) of the Act by making disallowances of Rs.4,10,17,643/- and Rs.91,03,884/- by invoking the provisions of Section 14-A read with Rule 8-D.

9. The contentions of the writ petitioners are that as against the legally completed assessments, the writ petitioners have received a notice under Section 148 of the Act dated 30.3.2016, after four years from the end of the relevant assessment year. The writ petitioners by their letter dated 19.4.2016 sought for the reasons for reopening the reopening of the assessment for the years 2010-2011 and 2011-2012 are:-

(a) The claim of depreciation at 25% was not for the first time but was subjected to scrutiny assessments from the AY 2006-2007 and in all the earlier assessment years 2006-2007 to 2008-2009 the petitioner's claim of depreciation was allowed by the department in the scrutiny assessments;

(b) In so assuming its jurisdiction to issue notice under Section 148 of the Act, the Assessing Officer failed to record a finding that the income chargeable to tax has escaped assessment by reason for the failure on the part of the taxpayer to disclose fully and truly all material facts necessary for the assessment which is a legal necessity as the original assessment was completed under Section 143(3) of the Act. On the contrary not only all the information was fully disclosed in the return and its supporting enclosures but also tested in a scrutiny assessment right from the AY 2006-2007, including the assessment year under consideration, and hence the issue of notice under Section 148 of the Act is ab initio void. The Assessment

Officer's kind attention was invited to the case laws on the subject;

(c) It was also objected to stating that, the reopening of the assessment for the AY 2008-2009 by the self-same Assessing Officer and his own reopening notice under Section 148 of the Act, dated 23.2.2016 where the issue of alleged excess depreciation on licence fee was not at all taken up. In the reassessment order, also such issue was neither taken nor any adjustment made. Therefore, it is crystal clear that the Assessing Officer was convinced that the petitioner is entitled for depreciation as claimed in the assessment and for that in the reassessment also, for the AY 2008-2009. Hence, it is arbitrary and illegal to say that for the AY 2010-2011 and AY 2011-2012 that the petitioner is not entitled for depreciation as claimed and allowed in the original scrutiny assessment.

10. The objections raised by the writ petitioner in WP Nos.44312 and 44313 of 2016 on 9.12.2016 are as under:-

(a) The reason furnished to the petitioner for reopening of the assessment is that the petitioner is not eligible for depreciation under Section 35 of the Act. However, in the rejection order, it was stated that there was a typographical error in the Section in the reasons recorded and that the correct Section would be 35-ABB. This tantamount to change of reasons or coming to a belief that any income has escaped assessment and the proceedings under Section 147 cannot be continued as fresh reason cannot be brought after the issue of a notice and furnishing of reasons. The respondent cannot state that it is typographical error. It ought to have issued a fresh notice under Section 148 of the Act and assessment proceedings cannot be continued in the old notice issued under Section 148 of the Act;

(b) Completion of all the assessment from AY 2006-2007 to AY 2010-2011 under Section 143(3) of the Act without disturbing the claim of depreciation does not bar for reopening the assessments.

11. The writ petitioner states that the issuance of notice under Section 148 of the Act, is prima facie illegal for the fact that the reasons recorded for reopening of the assessment were communicated only on 23.2.2016 after the end of six years i.e., 31.3.2015. The writ petitioner brought to the notice of the respondents about the judgments given in the point of limitation and the same had not been considered at all.

12. The writ petitioner's case is governed by statutory audit under Section 44-AB of the Act, where all investments are revealed in the returns filed. In fact, it is the first respondent in his reasons had categorically admitted that the writ petitioner had received the investments in the form of

shares during the year 2007-2010. Thus, it is crystal clear that all the informations were readily available with the respondents in the return filed by the writ petitioner. The fact of investment was revealed in the return filed by the writ petitioner. While being so, the first respondent had not come forward in the reasons as to the basis for the issuance of Section 148 notice after lapse of six years. All the materials required are there before the first respondent. Therefore, it is not known what information the first respondent had, for coming to believe that any income had escaped assessment. Thus, there is no information other than what is already available in the return filed, available with the respondents before recording alleged reasons for reopening the assessment. It is not the case of the respondents that the said investments cited in the reasons were not at all revealed by the writ petitioner. The other reasons furnished by the respondents are totally unconnected with the writ petitioner. The CBI charge sheet in the case of one Shri Dayanidhi Maran, who is in no way connected with the writ petitioner. Thus, it is clear that these alleged reasons were recorded solely on the basis of CBI charge sheet in the case of another legal entity Shri Dayanidhi Maran, which has no relevance whatsoever in respect of the case of the writ petitioner. Even if it is a fact that there is a CBI charge sheet in the other case, there is no finding in the reasons recorded to show any application of mind on the informations of the authorities in respect of such informations. Thus, the very basis for the issuance of the notice under Section 148 of the Act, is untenable.

13. It is further stated that the reasons for reopening of the assessment is that the share capital received is not a capital receipt but a revenue receipt. It is a legally admitted position that only when there is an income there can be escapement of income. In the case of the writ petitioner what was received was capital influx after going through all the legal norms including approval by FIPB and RBI. Therefore, unless the Assessing Officer proves before initiating action under Section 147 of the Act, what was received is revenue in nature, there cannot be any income or for that matter information within the meaning of Section 148 for reopening the assessment.

14. The learned Senior Counsel for the writ petitioner, forcibly contended that the nature of the transaction occurred and revealed in the returns filed by the writ petitioner is a capital income and certainly not a revenue receipt. Thus, an inference is to be drawn in respect of the capital income received in the form of a share by the writ petitioner-Company. It is not a capital receipt. Thus, the same cannot be designated as a revenue receipt, so as to impose tax under the provisions

of the Income Tax Act, 1961. The capital income received by the writ petitioner-Company is a one time investment and in respect of the returns filed by the writ petitioner, the scrutiny was completed. Thus, there is no question of escaped assessment and the very action of the respondents are nothing but a "change of opinion". The writ petition is maintainable in view of the fact that the ingredients of Section 147 of the Act, have not been satisfied in view of the fact that the impugned notice for reopening of the assessment has been issued based on the "change of opinion" and not on the basis of the principle of "reason to believe". Thus, "change of opinion" cannot constitute a ground to reopen the assessment which was already finalised. Therefore, the writ petition is also maintainable in view of the judgment of the Supreme Court in the case of Jeans Knit Private Ltd., Bangalore vs. Deputy Commissioner of Income Tax, Bangalore [2016 SCC Online SC 1536], wherein the Apex Court set aside the impugned judgments and remit the cases to the respective High Courts to decide the writ petitions on merits on the ground that the case of Commissioner of Income Tax vs. Chhabil Dass Agarwal [(2013) ITR 357 (SC)] does not apply to those cases.

15. The learned Senior Counsel for the writ petitioner contended that there is no appeal against the notice issued under Section 148 of the Income Tax Act. Thus, the writ petition is maintainable if the ingredients of Section 147 of the Act, are not met out or not satisfied, then the aggrieved persons are entitled to move the High Court under Article 226 of the Constitution of India.

16. In the case of the writ petitioner, the capital money alone had been received. The receipt of capital money can never be construed as a revenue receipt. Thus, the suspicion cannot be a ground for initiation of reopening of assessment in respect of the alleged escaped income. "Change of Opinion" now forms the basis for issuance of notice, cannot be a ground for reopening of the assessment which was assessed in accordance with the provisions of the Act long back. Thus, the impugned orders are liable to be scrapped.

17. Section 147 of the Act, states that "if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Provided that where an assessment

under sub-section (3) of section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the Assessee to make a return under Section 139 or in response to a notice issued under subsection (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

18. The learned Senior Counsel, while elaborating the amended phrase by the Direct Tax laws (Amendment) Act, 1989 with effect from 1.4.1989 that "has reason to believe" emphasises that the right to get reason for reopening the assessment is the vested right of an Assessee. It is contended that such a vested right provided by way of a Statute, more specifically, by amendment, cannot be taken away by the Assessing Officer. Thus, the vested right contemplated in respect of the reasons to be provided at the time of reopening of the assessment is mandatory and the same cannot be tinkered with by the respondents in order to harass the Assessee, who had already filed their returns long back and the same was assessed during the relevant point of time under the provisions of the Income Tax Act, 1961.

19. Section 147 of the Act, mandates the reasons to be recorded at the time of issuance of notice for reopening of the closed assessment. In the absence of recording the reasons for reopening the notice is to be construed as non est in law. The executive power conferred under the Act to the Executives, cannot be interpreted, so as to take away the vested right of an Assessee in respect of the closed assessments. Reopening of the assessment is not a routine affair or a normal event. Only in case of suppression of fact or the availability of new materials on record, then alone, the executive power can be exercised under Section 147 of the Act, for reopening the escaped assessment. The reasonings are mandatory. In the absence of adequate reasons, the notice issued under Section 148 is invalid. Thus, the notice itself must contain the reasons and the Assessing Officer must have a reason to believe that there is a suppression of material facts or the availability of any new materials for the purpose of reopening the closed assessment.

20. In all such cases, the subjective satisfaction of the Assessing Officer is contemplated under Section 147 of the Act, when the language employed in Section 147, "if the Assessing Officer has reason to believe". Therefore, there is no ambiguity in respect of the recording of reasons by the Assessing Officer for invoking Sections 147 and 148. Only if the

Assessing Officer has recorded the reasons as contemplated under Section 147, he is empowered to issue notice to the Assessee under Section 148 by recording the reasons and communicating the same to the Assessee, enabling the Assessee to furnish his reply and defend his case in respect of reopening of the alleged escaped assessment. Thus, the very ingredients of Section 147 have not been satisfied in respect of the actions of the respondents in the present writ petitions. In view of the fact that the notice does not satisfy the requirements of the mandatory provisions of "reason to believe" and recording the reasons and communicate the same to the Assessee, the impugned notice issued under Section 148 is liable to be scrapped as in violation of the provisions of Sections 147 and 148 of the Act.

21. The learned Senior Counsel further urged this Court by stating that if a notice is decided to be issued by the Assessing Officer under Section 148 of the Act, then the reasons for reopening of the escaped assessment must be stated and communicated to the Assessee. The learned Senior Counsel is of a firm opinion that providing reasons subsequently after issuance of notice is not sufficient. The learned Senior Counsel further contended that it is a precondition that in the event of any reason to believe and a decision is taken by the Competent Authorities, then, the reasons must be recorded in the notice and the same should be communicated to the Assessee. Thus, the twin requirements as per the Act is that the Assessing Officer must have a reason to believe and such reasons which forms the basis for the reopening of the escaped assessment must be reduced in writing and communicated to the Assessee at the time of issuance of the notice. Thus, subsequent communication of the reasons will not save the defective notice issued by the Assessing Officer under Section 148 of the Act.

22. Section 148 defines issue of notice where the income has escaped assessment. Thus, even the decision is taken under Section 147 of the Act by the Assessing Officer. Such reasons must be communicated to the Assessee along with the notice issued under Section 148 of the Act.

23. Section 149 deals with time limit for notice, which reads as under:-

"(1) No notice under section 148 shall be issued for the relevant assessment year,-
(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts

to or is likely to amount to one lakh rupees or more for that year.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section."

24. Section 149(1)(b) states that six years time limit is fixed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

Thus, the case of the writ petitioner falls under the said category and accordingly, the time limit prescribed for reopening of the closed assessment is six years.

25. Section 151 speaks about the sanction for issue of notice. "(1) In a case where an assessment under sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice: Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice."

26. Thus, it is made clear that in the event of reopening of the closed assessment, the Competent Authorities are bound to follow all the procedures contemplated under Sections 147 to 153 of the Act.

27. Referring the above provisions of the Act, the learned Senior Counsel for the writ petitioner contended that the impugned notice issued under Section 148 is barred by the period of limitation. As per the writ petitioner, the period of limitation is six years. However, in the present cases on hand, the notice under Section 148 of the Act, was issued before the expiry of the period of six years. However, the reasons for reopening of the assessments were provided after the expiry of the six years. Thus, the learned Senior Counsel for the writ petitioner is of an opinion that the date of communication of the reasons for reopening of the assessment must be taken into consideration for the purpose of reckoning the period of limitation. In other words, the reasons communicated to the writ petitioner after the expiry of the period of limitation of six

years will vitiate the entire proceedings. Since law requires that along with the notice, the reasons must be communicated. If the reasons are communicated belatedly, then also the actions become null and void. Thus, the impugned notice under Section 148 of the Act, is hit by the law of limitation prescribed under Section 149(1)(b) of the Act.

28. The learned Senior Counsel for the writ petitioner is of an opinion that the writ petitioner is not implicated in the criminal case by the CBI. Therefore, there is no reason to reopen the assessment already concluded in respect of the writ petitioner-Company.

29. In the case of Shri Balwant Rai Wadhwa vs. ITO, decided by the Income Tax Appellate Tribunal, Delhi Bench on 14.1.2011 in I.T.A.No.4806/Del/10, the period of limitation was considered and paragraph-4 of the judgment, is partly extracted:-

"4. We have duly considered the rival contention and gone through the record carefully. Admittedly the reasons were not supplied to the assessee by 31st March, 2008 i.e. within a period of 6 years from the end of the asstt. year. The question before us is whether valid service of notice has been served upon the assessee within the limitation provided u/s 149 (1) (b) of the Act. According to this section the notice ought to be served within 6 years from the end of the asstt. year. The contention of the assessee is that Hon'ble Delhi High Court has held that if the reasons recorded by the AO for reopening of assessment has not been supplied or served within 6 years then it will be construed that no valid notice has been served upon the assessee within 6 years."

30. In the case of Haryana Acrylic Manufacturing Co. vs. Commissioner of Income Tax [(2008) 175 Taxman 262 (Delhi)], wherein the Hon'ble High Court of Delhi, in paragraphs-20 and 24, it has been held as follows:-

"20. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not

sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade (P.) Ltd.'s we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our viewpoint, we hold that the notice dated 29-3-2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 2-3-2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.

24.

This means that a notice under section 148, in the present case, could not, in any event, have been issued after six years from the end of the assessment year 1998-99, i.e., after 31-3-2005. In whichever way we look at it, a notice under section 148 without the communication of the reasons therefor is meaningless inasmuch as the Assessing Officer is bound to furnish the reasons within a reasonable time. In a case, where the notice has been issued within the said period of six years, but the reasons

have not been furnished within that period, in our view, any proceedings pursuant thereto would be hit by the bar of limitation inasmuch as the issuance of the notice and the communication and furnishing of reasons go hand-in-hand. The expression 'within a reasonable period of time' as used by the Supreme Court in GKN Driveshafts (India) Ltd.'s case cannot be stretched to such an extent that it extends even beyond the six years stipulated in section 149. For this reason also, even assuming that we overlook all that has happened between 11-5-2004, when the petitioner sought the reasons, and 5-11-2007, when the said form annexed to the counter-affidavit was filed in this court, the validity of the notices under section 148 issued on 29-3-2004 and any proceedings pursuant thereto cannot be upheld."

31. In respect of exhausting the alternate remedy, the learned Senior Counsel for the writ petitioner relying on the case of Union of India vs. Ajit Jain [(2003) 129 Taxman 74 (SC)], wherein the Hon'ble Supreme Court held as follows:-

"The availability of an alternative remedy is not an absolute bar to the entertainment of a petition under Article 226 of the Constitution, though on account of availability of statutory remedies Courts normally do not entertain the writ petitions but where an action is wholly without jurisdiction and results in the infringement of any fundamental right, the plea of alternative remedy is of no avail. The instant case did fall in that category."

32. In the case of Principal Commissioner of Income Tax vs. Meenakshi Overseas (P) Ltd [(2017) 82 Taxmann.com 300 (Delhi)], wherein the Hon'ble High Court of Delhi, in paragraphs 23, 24 and 26, held as follows:-

"23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However,

something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading 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. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.

26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."

Relying on the abovesaid judgment, the learned Senior Counsel urged this Court by stating that in any angle, the impugned order cannot survive for want of legal support and accordingly, the same is liable to be quashed.

33. In the case of Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal [(2014) 1 SCC 603], wherein the Hon'ble Supreme Court in paragraphs 3 and 5, held as follows:-

"3. It has come on record that the

assessee did not comply with the aforesaid notices issued under Section 148 of the Act and thus, a letter dated 19-1-2001 came to be issued to the assessee as a reminder to file his return of income for the assessment years clearly mentioning that failure to do so would lead to an ex parte assessment under Section 144 of the Act. Thereafter, upon filing of written submissions by the assessee, notice under Section 142(1) of the Act dated 25-6-2001 was issued for Assessment Year 1995-1996 along with final show-cause fixing compliance for hearing dated 9-7-2001. The assessee sought for an adjournment which was not granted and the assessments were completed ex parte under Section 144 of the Act raising a tax demand of Rs 2,45,87,625 and Rs 6,32,972 for Assessment Years 1995-1996 and 1996-1997, respectively by orders dated 9-7-2001 and 28-3-2001, respectively. Further, penalty proceedings under Section 271(1)(c) of the Act were also initiated for both assessment years.

5. It is in the aforesaid backdrop that the assessing authority has passed the assessment order against the assessee confirming the earlier notices issued for Assessment Years 1995-1996 and 1996-1997 respectively and held that the assessee is liable to pay the income tax as demanded by demand notice dated 11-12-2009."

34. In the case of Income Tax Officer, Ward No.16(2) vs. Techspan India Private Limited and Another [(2018) 6 SCC 685], the Apex Court in paragraph 14, observed as under:-

"14. The language of Section 147 makes it clear that the assessing officer certainly has the power to reassess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words "reason to believe" in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers

on the assessing officer who may even initiate such reassessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the assessing authorities to reassess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order."

35. In the case of State of Uttar Pradesh and Others vs. Aryaverth Chawal Udyog and Others [(2015) 17 SCC 324], wherein the Hon'ble Supreme Court, in paragraphs 28 and 29, held as under:-

"28. This Court has consistently held that such material on which the assessing authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing authority in pursuance of such belief. In case of absence of such material, this Court in clear terms has held the action taken by the assessing authority on such "reason to believe" as arbitrary and bad in law. In case of the same material being present before the assessing authority during both, the assessment proceedings and the issuance of notice for reassessment proceedings, it cannot be said by the assessing authority that "reason to believe" for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan [Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1980) 4 SCC 71 : 1980 SCC (Tax) 348] .)

29. The standard of reason exercised by the assessing authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the

same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened. (See Binani Industries Ltd. v. CCT [Binani Industries Ltd. v. CCT, (2007) 15 SCC 435] ; A.L.A. Firm v. CIT [A.L.A. Firm v. CIT, (1991) 2 SCC 558] .) If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion". If an assessing authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for reassessment. Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some income has escaped assessment."

36. The Supreme Court found that the necessary sequitur is that a mere change of opinion while perusing the same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened. The conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion".

37. Referring the said judgment, the learned Senior Counsel for the writ petitioner is of an opinion that the principles laid down by the Supreme Court in the above judgment squarely follows in respect of the facts and circumstances of the present writ petitions.

38. The writ petitioner-Company had submitted their returns within the time stipulated and the same was assessed by the Assessing Officer and it was concluded. Thus, the CBI charge sheet in which the writ petitioner has not even implicated, cannot provide a ground for issuance of notice under Section 148 of the Act for reopening of the assessment which was closed.

39. In the case of Income Tax Officer, I Ward, District VI, Calcutta and others vs. Lakhmani Mewal Das [(1976) 3 SCC

757], wherein the Hon'ble Supreme Court, in paragraphs 11 and 12, held as follows:-

"11.As stated earlier, the reasons for the formation of the belief must have a 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 Income Tax Officer and the formation of his 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 the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer 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. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

12. The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come

to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs."

40. In the case of Madhya Pradesh Industries Ltd., Kingsway, Nagpur vs. Income Tax Officer, Special Investigation Circle 'B', Nagar [(1965) 57 ITR 637], wherein the Hon'ble Supreme Court, in paragraph 10, held as under:-

"10. We may hasten to observe that we are not seeking to lay down any rigid Rule about the nature or quantum of enquiry which the High Court in a petition which seeks to challenge the issue of a notice under Section 34(1)(a) of the Indian Income Tax Act may make. If the petition on the face of it does not disclose a right to relief, the High Court has undoubtedly power to dismiss it in limine. If there be other grounds which appear to the High Court to be adequate such as delay or acquiescence, existence of an adequate alternative remedy which is equally efficacious, or failure to disclose all material facts which have a

bearing on the question or misrepresentation of facts, jurisdiction of the High Court to dismiss a petition in limine cannot be denied. An attempt to short-circuit the procedure provided by the Indian Income Tax Act for investigation of facts which the Income Tax Officer alone is competent to investigate in the first instance may also justify the High Court in rejecting a petition for the issue of a writ under Article 226. But where, as in the present case, the claim made is that the Income Tax Officer had no power to issue the notice under Section 34, and that the power is exercised not for any legitimate purpose for which it may be used, but for the purpose of making a fishing enquiry and to review a previous order passed in favour of the Company, a Rule upon the Income Tax; Officer to show cause why the order should not be set aside and an opportunity to the authority whose action was challenged either to accept or deny the facts alleged and to set out such other material facts as have a bearing on the question, was at least called for."

41. In the case of Commissioner of Income Tax vs. Kelvinator of India Ltd (now known as Whirlpool of India Ltd) [2002 SCC Online Del 1515], wherein the Hon'ble Full Bench of the Delhi High Court, in paragraphs 25 and 26, observed as under:-

"25. Although the referring Bench had prima facie agreed with the decision of this court in Jindal Photo Films' case, [1998] 234 ITR 170, but a doubt was sought to be raised by the Revenue in view of a decision of the Gujarat High Court in Praful Chunilal Patel's case, [1999] 236 ITR 832. Therefore, let us now consider the decision of the Division Bench of the Gujarat High Court in the said case, wherein it was held (page 839):

"It will thus be seen that in the proceedings taken under section 147, the Assessing Officer may make an assessment or reassessment, or recomputation, as the case may be. The word 'assess' refers to a situation where the assessment was not made in the normal manner while the word

'reassess' refers to a situation where an assessment is already made, but it is sought to be reassessed on the basis of this provision.

In cases where the Assessing Officer has not made an assessment of any item of income chargeable to tax while passing the assessment order in the relevant assessment year, it cannot be said that such income was subjected to an assessment. In the assessment proceedings, the Assessing Officer would ascertain on consideration of all relevant circumstances the amount of tax chargeable to a given taxpayer. The word 'assessment' would mean the ascertainment of the amount of taxable income and of the tax payable thereon. In other words, where there is no ascertaining of the amount of taxable income and the tax payable thereon, it can never be said that such income was assessed. Merely because during the assessment proceedings the relevant material was on record or could have been with due diligence discerned by the Assessing Officer for the purpose of assessing a particular item of income chargeable to tax, it cannot be inferred that the Assessing Officer must necessarily have deliberated over it and taken it out while ascertaining the taxable income or that he had formed any opinion in respect thereof. If looking back it appears to the Assessing Officer (albeit within four years of the end of the relevant assessment year) that a particular item even though reflected on the record was not subjected to assessment and was left out while working out the taxable income and the tax payable thereon, i.e., while making the final assessment order, that would enable him to initiate the proceedings irrespective of the question of non-disclosure of material facts by the assessee."

26. We are, with respect, unable to subscribe to the aforementioned view. If the contention of the Revenue is accepted the same, in our opinion, would confer an arbitrary power upon the Assessing Officer. The Assessing Officer who had passed the order of assessment or even his successor officer only on the slightest pretext or

otherwise would be entitled to reopen the proceeding. Assessment proceedings may be furthermore reopened more than once. It is now trite that where two interpretations are possible, that which fulfils the purpose and object of the Act should be preferred."

Relying on the aforesaid judgments, the learned Senior Counsel for the writ petitioner urged this Court by stating that in any angle, the impugned orders cannot survive for want of legal support and accordingly, the same are liable to be quashed.

PLEADINGS OF THE RESPONDENT AS WELL AS THE ARGUMENTS:-

42. The respondent raised a preliminary objection with regard to the maintainability of the writ petitions in view of the fact that an alternate remedy is available and provided under the Income Tax Act itself. Without exhausting the remedies provided under the Statute, the present writ petitions cannot be entertained and accordingly, they are liable to be rejected in limine.

43. In this regard, reliance is placed on the judgment of the Allahabad High Court in the case of DOKI Nandan Singhania vs. CIT [190 ITR 289], Zigma Commodity P Ltd vs. ITO, Ward-5(3), Kolkatta [46 Taxmann.com 339], Dr.Nedunchezian vs. CIT [279 ITR 342 (Madras)], CIT vs. Chhabil Das Agarwal [357 ITR 357 SC] and that of Kone Elevators India Ltd [35 Taxmann.com 102 (Madras)].

44. It is contended that the information provided by the CBI would fall under the category of new information based on which the Assessing Officer has reason to believe and formed his opinion. It is pertinent to state that in case of Mrs.Rama Sinha vs. CIT [(2003) 130 Taxman 139 (P&H)] has held that the reassessment proceedings cannot be questioned since the Assessing Officer initiated the reassessment proceedings on the basis of the definite information received from the CBI about the Assessee. Further, in the case of Balram Jagar vs. CIT [(2002) 120 Taxman 464 (P&H)], it was held that the question whether the petitioner could held liable for an offence under the Prevention of Corruption Act or any other contemporaneous Statute could not have any bearing on his liability to be taxed under the Act and the Competent Authority constituted under the Act would not be denuded of his jurisdiction to determine the petitioner's liability to pay tax in relation to the particular assessment year simply because in a criminal case, charge had not been framed.

45. The settled position of law is that there is no mandatory requirement as per the Income Tax Act, 1961, furnishing the reasons to the Assessee at the time of the issuance of the notice. As per the decision of the Apex Court, in the case of GKN Driveshaft [259 ITR 19], it was held that the

due procedure to be followed during reopening proceedings was that once the notice is served the Assessee would have to necessarily file its return and then on request, the Assessing Officer should furnish the reasons for reopening of the assessment. The time limit provided under the Act is therefore, only for proper issue and service of notice which had been duly followed in the present cases.

46. The writ petitioner questioned the sufficiency of the reasons and the modus operandi of the investigation if any conducted which is not for the writ petitioner to question. The fact that scrutiny proceedings were conducted in a different entity does not absolve the writ petitioner of the proceedings being initiated against him in the light of the new information concerning the writ petitioner's case. Further, in the following cases, the Courts have held that the information received from the Investigation Wing would constitute material based on which reason to believe could be formed. [See AGR Investment Ltd vs. Additional CIT and Another [333 ITR 146 (Del); and Salimar Builtcon P. Ltd vs. ITO-ITAT, Jaipur [136 TTJ 701].

47. The settled position of law regarding sufficiency of the reason is not up for questioning when the Assessing Officer has formed his belief for the same. Substantive proof for escapement of income in order to make any additions can only be made after verification of details during the proceedings. The writ petitioner had quoted from the speaking order but had conveniently omitted a line in between there by changing the context of the sentence with the intention to mislead this Court. Courts have consistently held that at the time of reopening, the Assessing Officer should possess of some material and is not required to establish the escapement of income, the validity of the reassessment on the basis of the final outcome of the reassessment proceeding on that item could not be proper. [See Sri Krishna P. Ltd vs. CIT [221 ITR 538 (SC)] and in the case of Central Province Manganese Ore Co. Ltd vs. ITO [191 ITR 662], which support the stand of the Department.

48. The Assessee contends that foreign investments were brought into the country after obtaining various approval from the Government Agency. However, the CBI report suggest that the Assessee has used his personal influence and had obtained illegal gratification during the said process. Further, during the relevant time, when the writ petitioner was holding a key position in the Government of India and therefore, the transaction cannot be simply brushed aside sighting that it was approved in various stages by the Government. The writ petitioner can prove the same by availing this opportunity for due hearing during the scrutiny proceedings. The writ petitioner is entering into the shoes of the Assessing Officer and was

citing method of investigations which should be carried out for forming a reason which is an entirely subjective position provided under the Statute.

49. The proceedings under the Income Tax Act and the proceedings conducted by CBI are different and distinct from each other. The Income Tax Act provides for limitation of time, for reopening of the assessment upto six years from the relevant assessment year whereas the proceedings under the CBI would take more time for Courts to decide and if the Department has to wait till the outcome of the proceedings of the CBI then the proceedings under the Income Tax Act would get time barred leading to a potential leakage of revenue for the Nation. Thus, both are different and distinct proceedings and the level of evidence vary. A notice under Section 148 can be issued once the reason for belief is formed on the information in the possession of the Assessing Officer. Proceedings are initiated to verify the same and the writ petitioner would be given a fair opportunity for defending his case by submitting proof and arguments. In fact the Hon'ble Apex Court in a case reported in 103 ITR 437 has held that Court cannot go into adequacy of material if reason for information of believes has a rational connection with the formation of belief.

50. In the case of Raymond Woolen Mills reported in 236 ITR 34, the Hon'ble Supreme Court had reiterated the position that Courts can only consider whether there was a prima facie case for reassessment and that sufficiency of material or correctness of the material is not to be considered at that stage.

51. The writ petitioner has filed the above writ petitions, challenging the notices issued by the Department dated 27.3.2015, 30.3.2016 and 30.3.2016 under Section 148 of the Act and the consequential orders dated 4.3.2016, 9.12.2016 and 9.12.2016 disposing of the objection of the writ petitioner and for quashing the same. The Statute has provided an alternate remedy under the Income Tax Act whereby the writ petitioner can challenge the said order by filing an appeal and therefore on this sole ground, the above writ petitions have to be dismissed in limine.

52. The learned Additional Solicitor General of India, at the first instance, made a submission that in respect of WP No.3405 of 2016, the order of assessment had already been passed by the Assessing Officer and the same has not given effect to on account of the pendency of the present writ petitions. In respect of WP No.43944 of 2016, the order passed by the Assessing Officer is kept under the sealed cover, so also the assessment order passed with reference to WP No.44311 of 2016

has not given effect to.

53. The learned Additional Solicitor General of India, at the outset, disputed the interpretations provided by the learned Senior Counsel appearing for the writ petitioner with reference to Sections 147 and 148 of the Income Tax Act, 1961. In respect of maintainability of the writ petitions, it is contended that the writ petitioner is bound to participate in the process of assessment based on the notices issued by the Competent Authority under Section 148 of the Act and after passing of the assessment order, the writ petitioner is having appellate remedy under the provisions of the Act.

54. Pursuant to the amendment made on 1.4.1989, there is a change in the provisions of the Income Tax Act and the original term "reasons to be recorded in writing" has been amended as "has reason to believe". Thus, it is the subjective satisfaction of the Assessing Officer whether there is any reason to believe for the purpose of reopening the escaped assessment. The Assessing Officer, undoubtedly, has to record the reasons for reopening of the escaped assessment. However, the sufficiency of the materials available with the Assessing Officer cannot be questioned nor provide a cause of action for the writ petitioner to challenge the very notice by way of a writ petition under Article 226 of the Constitution of India. There is an application of mind on the part of the Competent Authorities while recording the reasons as the provision warrants such an exercise. However, the same need not be communicated at the notice stage and the reasons were already communicated in respect of the writ petitioner at his request. Thus, the procedures contemplated under the Act, are followed scrupulously by the Competent Authorities and there is no infirmity or irregularity.

55. The learned Additional Solicitor General of India once again gone through the ingredients of Section 147. The language employed in Section 147 of the Act is that "If the Assessing Officer 'has reason to believe' that any income may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice".

56. The learned Additional Solicitor General of India is of an opinion that it is the subjective satisfaction of the Assessing Officer in respect of the requirement that he has a reason to believe. Secondly, the Assessing Officer is empowered to assess or reassess such income and also any other income chargeable to tax which has escaped assessment. The intention of the Section is unambiguous that the Assessing Officer is empowered to make an assessment or reassess the assessment

already reached finality. Thus, the fresh assessment in respect of certain materials is also permissible under Section 147 as well as reassessment is also permissible under the Act. When assessment as well as the reassessment is permissible and if the Assessing Officer has got a reason to believe that there are some materials for reopening of the assessment, then he can issue notice under Section 148 of the Act.

57. Explanation 1 to Section 147 states that "production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso". Explanation 1 to Section 147 enumerates that mere production of a document is not a ground to dispute the reopening of the assessment nor amount to a disclosure in respect of the escaped assessment. It clarifies that even in case where the Assessee had produced the document showing the income which was not assessed earlier, is also a ground for reopening of the assessed returns. Thus, the Assessee cannot plead that he had already produced the documents along with the returns at the time of filing and therefore, the Assessing Officer cannot reopen the assessment already reached finality with reference to Section 143(1) of the Act.

58. It is further contended that an Explanation 2(c)(1) to Section 147 of the Act, reads as under:-

"(c) where an assessment has been made, but—(i) income chargeable to tax has been underassessed ; or (ii) such income has been assessed at too low a rate ; or (iii) such income has been made the subject of excessive relief under this Act ; or (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

The above Explanation 2 also provides power to the Assessing Officer that income chargeable to tax has been underassessed or such income has been assessed at too low a rate or such income has been made the subject of excessive relief under the Act or excessive loss or depreciation allowance or any other allowance under this Act has been computed.

59. It is stated by the respondent that various circumstances are provided under the provisions of Section 147 for the reopening of the assessment. Thus, the provision does not restrict a particular circumstance or event, number of circumstances and the reasons are provided for reopening of the assessment in order to protect the revenue and to ensure that the Assessee are brought under the Taxnet in respect of the

entire income. Such circumstances are enumerated in Section 147 to ensure that the Act is implemented in its letter and spirit and the object is achieved.

60. The learned Additional Solicitor General of India contended that under Section 252 of the Act, after an order is passed, the writ petitioner shall approach the Appellate Tribunal by way of an appeal. Section 260-A provides an appeal to the High Court and Section 261 provides an appeal to the Supreme Court. Thus, the present writ petitions cannot be entertained in view of the fact that it is only an initiation and the Assessing Officer has not yet arrived a conclusion in respect of the escaped assessment. The power of the Assessing Officer cannot be questioned in view of the fact that the notice under Section 148 has been issued based on certain materials brought to the notice of the Assessing Officer. Thus, the Assessing Officer has every authority to cull out the truth behind such materials or informations made available to him. In the event of curbing the powers of the Assessing Officer, the Department will not be in a position to impose the tax in respect of all such escaped assessments and further the same will pave the way for the Assesseees to avoid or evade payment of income tax as per the provisions of the Act.

61. Notice is a proposal mooted out by the Assessing Officer under Section 148 on coming to the conclusion that the authorities has got a "reason to believe" in respect of the materials available on record. Thus, the very notice will not provide a cause of action for the writ petitioner to file the present writ petitions. This apart, the writ petitioner had already been responded to the notice and pursuant to the request made by the writ petitioner, the reasons recorded by the Assessing Officer were furnished to the writ petitioner, enabling him to submit his assessment as required under the provisions of the Act. As of now, there is no due of tax under the provisions of the Act. In the absence of any demand of tax and in the absence of any decision in respect of assessment, the writ petitions are certainly premature and filed only based on the presumptions and assumptions and such writ petitions filed on the apprehensions can never be entertained by this Court.

62. There is no bar for the authorities to form an opinion based on the Criminal Court charge sheet that it is a fit case for reopening of the assessment. The sufficiency of the materials can never be questioned by the Assessee. Contrarily, it is the duty of the Assessee to establish his case before the Assessing Officer, so as to come to a conclusion and pass an order on merits and in accordance with law. Thus, the present writ petitions are premature and are liable to be rejected.

63. In support of the arguments, the learned Additional Solicitor General of India, cited the following judgments:-

In the case of Biswanath Bhattacharya vs. Union of India and Others [(2014) 4 SCC 392], the Hon'ble Supreme Court, in paragraphs 13, 14 and 16, held as follows:-

"13. Though Section 127 expressly provided for recording of reasons it did not expressly provide communicating the same to the assessee. Still, this Court held that such a communication is mandatory: (Ajantha Industries case [Ajantha Industries v. CBDT, (1976) 1 SCC 1001 : 1976 SCC (Tax) 127] , SCC p. 1005, paras 10-11)

"10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

11. We are clearly of opinion that the requirement of recording reasons under Section 127(1) is a mandatory direction under the law...."

14. In our view, such a conclusion in Ajantha Industries case [Ajantha Industries v. CBDT, (1976) 1 SCC 1001 : 1976 SCC (Tax) 127] must be understood in the light of the observation of the Court that there was no provision of appeal or revision under the Income Tax Act against an order of transfer. For the same reason, this Court distinguished and declined to follow an earlier judgment in S. Narayanappa v. CIT [AIR 1967 SC 523] where this Court on an interpretation of Section 34 of the Income Tax Act, 1922, opined to the contra. Section 34 provided for reopening of the assessment with the prior sanction of the Commissioner, if the Income Tax Officer has "reasons to believe" that taxable income had been

underassessed. Dealing with the question whether the reasons which led the Commissioner to accord sanction for the initiation of proceedings under Section 34 are required to be communicated to the assessee, this Court held: (S. Narayanappa case [AIR 1967 SC 523] , AIR p. 525, para 4)

"4. ... There is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee."

16. We reject the submission of the appellant for the following reasons. Firstly, there is no express statutory requirement to communicate the reasons which led to the issuance of notice under Section 6 of the Act. Secondly, the reasons, though not initially supplied along with the notice dated 4-3-1977, were subsequently supplied thereby enabling the appellant to effectively meet the case of the respondents. Thirdly, we are of the opinion that the case on hand is squarely covered by the ratio of Narayanappa case [AIR 1967 SC 523] . The appellant could have effectively convinced the respondents by producing the appropriate material that further steps in furtherance to the notice under Section 6 need not be taken. Apart from that, an order of forfeiture is an appealable order where the correctness of the decision under Section 7 to forfeit the properties could be examined. We do not see anything in the ratio of Ajantha Industries case [Ajantha Industries v. CBDT, (1976) 1 SCC 1001 : 1976 SCC (Tax) 127] which lays down a universal principle that whenever a statute requires some reasons to be recorded before initiating action, the reasons must necessarily be communicated."

The Apex Court in paragraph 16 of the abovesaid judgment said that there is no express statutory requirement to communicate the reasons which led to the issuance of notice under Section 6 of the Act. Secondly, the reasons, though not initially supplied along with the notice dated 4-3-1977, were subsequently supplied thereby enabling the appellant to effectively meet the case of

the respondents. This apart, the appellant could have effectively convinced the respondents by producing the appropriate material that further steps in furtherance to the notice under Section 6 need not be taken. At the outset, the Apex Court says that the reasons can be provided even after the issuance of the notice in a format. Thus, there is no infirmity in respect of providing reasons even in such circumstances, the Assesseees can submit their returns effectively in respect of reassessment and defend their case by producing materials and by convincing the Assessing Officer in respect of the stand taken by them. Contrarily, the writ petitioner cannot challenge the very issuance of notice which was done with reference to Sections 147 and 148 of the Act.

64. In the case of Bal Ram Jakhar vs. Commissioner of Income Tax [(2002) 120 Taxman 464 (Punjab & Haryana)], the Hon'ble Punjab and Haryana High Court, in paragraphs 4 and 5, held as follows:-

"4. We have thoughtfully considered the arguments/ submissions of learned counsel, but have not felt persuaded to agree with him that the jurisdiction of this court under article 226 should be exercised for quashing of the impugned notice and, in our opinion, the writ petition deserves to be dismissed as premature. It is not the petitioner's case that he has filed a return in pursuance of the impugned notice and any order prejudicially affecting his rights or interest has been passed by the concerned authority. In view of this, we do not find any justification to entertain the petitioner's prayer for quashing of the notice issued under section 148 of the Act.

5. In view of this conclusion, we would have refrained from expressing any opinion on the merits of the reasons recorded by the Assistant Commissioner of Income-tax, Circle-cum-New Assesseees Circle, Bhatinda, for initiating proceedings under section 147 read with section 148 of the 1961 Act, but as Shri Mittal made repeated efforts to persuade us to nullify the notice solely on the ground that/the Special Judge, Delhi, has not framed charges against the petitioner, we are constrained to observe that an order, like the one passed by the Special Judge, Delhi, not framing the charge cannot be treated as conclusive, so far as the proceedings under the 1961 Act are

concerned. A careful reading of the order, annexure P-12, passed by the Delhi High Court in Criminal Revision No. 473 of 1997 shows that the Central Bureau of Investigation had not pressed for framing of charges against the petitioner on the issue of receipt of Rs. 51,24,800 because at that stage it did not have sufficient evidence to corroborate the allegations. The question as to whether the petitioner could be held liable for an offence under the Prevention of Corruption Act or any other contemporaneous statute does not, in our opinion, have any bearing on his liability to be taxed under the 1961 Act and the competent authority constituted under that Act cannot be denuded of its jurisdiction to determine the petitioner's liability to pay tax in relation to the particular assessment year simply because in the criminal case charge has not been framed."

The Hon'ble High Court of Punjab and Haryana, in the abovesaid judgment, dismissed the writ petition as premature on the ground that the question as to whether the petitioner could be held liable for an offence under the Prevention of Corruption Act or any other contemporaneous statute does not, in our opinion, have any bearing on his liability to be taxed under the 1961 Act and the competent authority constituted under that Act, cannot be denuded of its jurisdiction to determine the petitioner's liability to pay tax in relation to the particular assessment year simply because in the criminal case charge has not been framed.

65. In the case of K.M.Bansal vs. Commissioner of Income Tax and Another [1991 SCC Online AII 1283], the Hon'ble Allahabad High Court came to the conclusion that "the function of the Assessing Officer at the stage of issuance of notice under Section 148(1) is administrative in nature. It becomes quasi-judicial once the notice is served upon the assessee. Since reasons are recorded at a stage anterior to issuance and serving of the notice, it is held that reasons need not be communicated. But once the proceedings become quasi-judicial and more important, and once it is admitted that, in such proceedings, the assessee has a right to question the validity of initiation of reassessment proceedings, refusal to communicate the reasons becomes unsupportable". The following propositions are formulated that "while the recording of reasons as contemplated by sub-section (2) of Section 148 is obligatory, the reasons so recorded need not be communicated to the Assessee along with the notice under sub-section (1) of Section 148. It

is also not open to the Assessee to straightaway call upon the Assessing Officer to disclose or communicate reasons to him, as soon as he receives the notice under Section 148(1). He must first file his return or a revised return, as the case may be, and if he raises a contention either that no reasons were recorded or that the reasons recorded are not relevant and germane, then the Assessing Officer has to communicate the reasons to him".

66. The abovesaid judgment also reiterates that it is mandatory on the part of the Assessing Officer to communicate the reasons along with the notice issued under Section 148(1) of the Act. The Assessee has to respond to the notice at the first instance by filing his return. If there is no discrepancy, then the Assessing Officer can close the file. In the event of any discrepancy, then the further proceedings can be continued. In such circumstances, the Assessee also is entitled to seek reasons for reopening of the assessment. Thus, the proposition laid down by the Courts are very clear that the reasons need not be communicated to the Assessee at the time of issuing the notice under Section 148(1) of the Act.

67. In the case of GKN Driveshafts (India) Ltd vs. Income Tax Officer [(2002) 125 Taxman 963 (SC)], the Hon'ble Supreme Court of India, in paragraph-5, held as follows:-

"5.
However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order."

In the abovesaid judgment, the Hon'ble Supreme Court has clarified that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order.

68. The Hon'ble Supreme Court reiterated the principles in GKN Driveshafts (India) Ltd's case that reasons need not be communicated along with the notice issued under Section 148 (1)

of the Act. If there is a request made by the Assessee then the reasons shall be communicated, enabling the Assessee to respond to the reasons recorded by the authorities concerned.

69. In the case of Dr.K.Nedunchezian vs. The Deputy Commissioner of Income Tax [(2005) 4 CTC 161 (SC)], the Hon'ble Supreme Court, held that "particularly in tax matters, there should be no short circuiting of the alternative statutory remedies as has been repeatedly emphasised by the Supreme Court. When there is an alternative remedy ordinarily writ jurisdiction of this Court under Article 226 of the Constitution should not be invoked. Where there is a hierarchy of appeals provided by the statute the party must exhaust the statutory remedies before resorting to writ jurisdiction, especially income tax related matters, have exhausted the remedies available under the Statutes".

70. In the light of the abovesaid judgments, the learned Additional Solicitor General of India contended that the present writ petitions challenging the very notice are untenable and premature. This apart, there is no cause of action for the purpose of entertaining a writ petition against the notice which is nothing but an initiation of reopening of an assessment under the provisions of the Act, which is administrative in nature and the Assessing Officer has not yet passed any orders nor formed any adverse opinion or imposed tax on the writ petitioner. Thus, there is no cause of action for filing of the present writ petitions. Accordingly, the present writ petitions are liable to be dismissed.

71. In reply, the learned Senior Counsel for the writ petitioner reiterated the arguments by stating that there is no appeal provision against the notice issued under Section 148(1) of the Act. Thus, the writ petitions are maintainable. When the notice was issued not in compliance with the provisions of the Act, then the aggrieved persons have liberty to challenge the same under Article 226 of the Constitution of India. It is a precondition that a notice issued under Section 148(1) should contain the reasons. In the absence of any such reason, then it is to be construed that the authorities had not formed an opinion required under Section 147(1) of the Act. The reason to believe does not mean that the reasons can be recorded subsequently or communicated to the Assessee at a later point of time. Once the reasons are recorded and the assessment is proposed to be reopened, then the Assessee is entitled to know the reasons already said to have been recorded by the authorities concerned.

DISCUSSIONS:

72. Considering the contentions raised by the respective parties to the cases on hand, this Court is of an

opinion that issuance of the notice under Section 148 of the Act is nothing but initiation of the proceedings for reopening of the assessment already finalised. Undoubtedly, such reopenings are to be done cautiously and the reasons for reopening are also mandatory. In the absence of any substantial reason, the Assessing Officer cannot reopen the assessment which was closed long back.

73. The very object of the provision under the Income Tax Act is to ensure that the suppressed materials or facts and the new availability of materials to the Department are also to be dealt with for the purpose of taxation. In order to cover the loopholes in the Tax Regime, and to control and evasion of tax by the individuals, the provision of reopening of assessments are made and such provisions are to be certainly invoked by following the procedures contemplated under the Act.

74. Let us now look into the manner in which the initiations are done by the respondents in respect of the present writ petitions. Undoubtedly, the writ petitioner filed the returns for the respective assessment years, within the time limit prescribed under Section 139 (1) of the Income Tax Act, 1961. It is an admitted fact that the impugned notices are issued within the period of six years as contemplated under Section 149(1)(b) of the Act. Thus, the notice was issued informing the Assessee to take note of the fact that the Department has collected some materials in respect of the assessment of the particular assessment year and therefore, they have got every reason to believe to reopen the assessment.

75. Mere issuance of notice cannot be construed as a final order. Initiation of the proceedings are to be construed as informations to the Assessee and can never be concluded as a final proceedings. Thus, the issuance of notice is an information provided to the Assessee, enabling him to avail of all further opportunities contemplated under the Statutes. Thus, the Court cannot come to the conclusion that non quoting of the reasons by the Assessing Officer in the impugned notice will vitiate the entire proceedings. If such a proposition is adopted, then it would be certainly difficult for the Executives to reopen the cases as per the provisions of the Act. The procedures are contemplated under the Act, enabling the Assessee to avail the opportunity and defend their case in accordance with law.

76. Thus, certain aspects which is contemplated under the provisions of the Act, cannot be interpreted, so as to defeat the purpose for which such a provision was enacted by the Legislators. Constructive interpretation of the Act and the Rules are of paramount importance. The Rule of constructive

interpretation requires that the possible object and the purpose to be achieved is met out by adopting not only the balancing approach, but also by providing all reasonable opportunities to the persons, who all are connected or aggrieved.

77. The purpose of the Income Tax Act, more specifically, Sections 147 and 148 of the Act, is to ensure that the Assessee, who have suppressed the fact at the time of filing of their income tax returns or if the Department is in possession of certain new materials in respect of the assessment of a particular year, then the Assessee must be informed about the decision to reopen the assessment and after such information is provided, the procedures must be followed for the purpose of concluding the reassessment.

78. In the present cases on hand, the proceedings have not reached its finality. It is only an initiation of proceedings under Sections 147 and 148 of the Act. The very initiation cannot be interfered with by the Courts in a routine manner. Judicial review against such initiations under the provisions of the Act, is certainly limited. The Court cannot intervene on such initiations in a routine manner in the absence of any valid and acceptable legal grounds. Thus, the exercise of judicial review in such matters regarding the initiation of the proceedings are to be exercised cautiously.

79. Let us now meet the grounds raised on behalf of the writ petitioner that Section 147 requires that the reasons must be recorded in the notice and in the absence of any reasons communicated along with the notice under Section 148 of the Act, the entire proceedings become null and void. If such an interpretation is accepted by this Court, then one can presume that the authorities are bound to pass a final order at the notice stage itself. That is not the intention of the Statute. The intention of the Statute is that the authorities on receipt of new material facts or regarding any suppression of materials by the Assessee, is bound to initiate proceedings by invoking Sections 147 and 148 of the Act.

80. The amended phraseology of "reason to believe" must be interpreted that the Assessing Officer on receipt of any such new material or materials in relation to suppression of fact by the Assessee has made out a prima facie opinion that it is a case for reopening of the assessment, then he can issue notice under Section 148 and thereafter, the procedure of furnishing the reasons, receiving objections and conducting scrutiny and all other procedures contemplated under the provisions of the Act will suit as follow. Thus, it is not as if at the very issuance of notice requires that the reasons must be recorded in the notice itself.

81. The very meaning of the word "Notice" is that "information that tells you or warns you about something that is going to happen". Thus, the mere notice providing an information to the Assessee that the authorities have got every reason to believe to reopen the assessment does not mean that all opinions and reasons formulated by the Assessing Officer must be communicated to the Assessee in the very notice issued under Section 148 of the Act.

82. On a perusal of the impugned notice dated 27.3.2015, the Assistant Commissioner of Income Tax has stated that "whereas I have reason to believe that your income tax in respect of which you are assessable/chargeable to tax for the assessment year 2008-2009 has escaped assessment within the meaning of Section 147 of the Act.

83. Let us now examine whether such an information provided by the Assessing Officer is adequate and satisfying the requirements contemplated under Section 147 of the Income Tax Act, 1961.

84. The very concept of notice is that the authorities while issuing notice should not predetermine the issues or arrive a conclusion. In the event of stating the reasons elaborately, it is to be construed that such reasonings are recorded without providing an opportunity to the Assessee and such a procedure now argued by the writ petitioner deserves no merit consideration.

85. Thus, the notice is issued based on certain materials available with the Department and on receipt of the notice, the Assessee has got right to seek for the reasons from the Department and the Department is bound to provide reasons, enabling the Assessee to submit his explanations/objections in order to defend his case. Thus, mere issuance of notice will not preclude the writ petitioner from seeking the reasons and other documents.

86. In the present cases, admittedly, on receipt of the notices, the writ petitioner submitted letters to the respondents, seeking reasons for reopening of the assessment for the assessment years 2008-2009, 2010-2011 and 2011-2012. The respondents also furnished the reasons for reopening of the assessment. Thereafter, the Assessee must co-operate for the scrutiny and for completion of the reassessment process.

87. The writ petitioner, being a Company, is duty bound to respond to the notices to prove its innocence or otherwise. Contrarily, the writ petitions are filed at the notice stage itself, and the same will hamper all further proceedings of the

Department and such an idea would if any developed can never be encouraged by the Courts. On receipt of the notices impugned in the present writ petitions, rightly the writ petitioner had approached the respondents for furnishing the reasons. The respondents have also furnished the reasons and the letters. Thus, it is left open to the writ petitioner to defend their case in the manner known to law and allow the officials to scrutinise the assessments based on the new materials available and thereafter, take a decision and pass assessment or reassessment orders by following the procedures contemplated under the Act.

88. In view of the fact that the requirement under Section 147 of the Act i.e., the reason to believe, does not mean that the authorities at the time of issuance of notice under Section 148 should furnish all the reasons and the decisions taken by the authorities to reopen the closed assessment which is certainly unwarranted. Such a procedure is not contemplated and not intended by the provision of law. By adopting the principles of constructive interpretation, any law enacted should achieve its purpose and the object sought to be achieved. If the argument of the writ petitioner is considered, then the very purpose and object of the provisions and the amendments made thereunder will be defeated and the Authorities Competent would not be in a position to reopen any assessment at all.

89. Thus, the reason to believe has been incorporated for the subjective satisfaction of the Assessing Officer and not for the purpose of communicating all the reasons even at the initial stage of issuance of notice to the Assessee under Section 148 of the Act. The provision is a check for the Income Tax Officials. Such a check provided under the Statute to the Officials, cannot be taken undue advantage by the Assessee. The word "reason to believe" incorporated is to indicate the Officials that, they cannot reopen the assessment in a routine and mechanical manner. The Assessing Officer in the event of receipt of any new material or information regarding the suppression, must have a reason to believe and the reasons must be recorded in the files and thereafter issue notice to the Assessee and the Assessee on receipt of the notice is entitled to seek the reasons or otherwise from the respondents, enabling them to adjudicate the matter in the manner known to law. This being the interpretation to be adopted, the arguments as advanced on behalf of the writ petitioner deserves no consideration at all.

90. In respect of exhausting the appellate remedy available under the provisions of the Act, this Court is of an opinion that the writ petitioner has to exhaust the remedy

provided under the Act, this Court cannot entertain the writ petition, when there is a remedy available to the aggrieved person under the Statute. The High Court cannot usurp the power of the Appellate Authorities in respect of the adjudication of the merits and the demerits of the matter. The High Court cannot appreciate the mixed question of law and facts, at the initial stage, when a notice under Section 148 of the Income Tax Act, 1961 was issued to the Assessee for reopening the assessment. Such complex facts and circumstances are to be adjudicated by producing documents and by adducing evidences by the parties concerned. Such an exercise can never be done by the High Courts under Article 226 of the Constitution of India. Thus, entertaining a writ petition at the notice stage, must be sparingly and cautiously done. The High Courts must be restrained from entertaining such writ petitions when the very notice itself is under challenge.

91. Undoubtedly, the legal principles settled in this regard that the writ petition can be entertained if the notice has been issued by an incompetent authority having no jurisdiction or if the allegation of mala fides are raised or if the same is in violation of any Statutory Rules in force. Even in the case of raising an allegation of mala fides, the authorities against whom such an allegation is raised to be impleaded as party respondent in his personal capacity. In the event of not establishing any such legal ground, no writ proceedings can be entertained against a notice in a routine manner and the judicial review in this regard is certainly limited.

92. In the present cases, the point of limitation raised deserves no consideration in view of the fact that the notice under Section 148 of the Act, was issued to the writ petitioner within the time limit prescribed under Section 149(1) (b) of the Act. The date of communication of the reason cannot be the point of reckoning period of limitation. Thus, there is no infirmity in respect of the notices issued to the writ petitioner under Section 148 of the Act.

93. Our Great Nation is a fast developing country in the world. We are effectively performing in respect of the developmental and technological activities. Greedy men are attempting to exploit the situations in many places. Corruption in our country are mounting and it becomes a routine affair in certain public businesses. When the corruption is spreading like a Cancer in our Great Nation, such provisions are to be interpreted constructively by not allowing the offenders to escape from the clutches of law. The scientific way of transactions by using the modern technologies are to be keenly addressed by the officials also. The corrupt activities are

being injected deep into the system and it is very difficult for the authorities to cull out the modus operandi of such corrupt activities. Investigations are to be modernised and the method of investigations are to be improved, so as to match the level of corruption and the modus operandi of corruptions in certain areas.

94. The huge transactions like that of the present cases on hand, the authorities must be in a position to investigate the issues thoroughly and by using an intelligent way of investigation. Under these circumstances, the Courts cannot interfere in a routine manner in respect of the notice issued under Section 148 of the Act. Whenever such allegations are raised against the Assessee, then the Department shall be allowed to investigate the matter with all fairness and by adopting an intelligent way of investigating the issues.

95. The very concept of income tax assessment is that the Assessee is taxed by the Department based on the returns filed by the Assessee. Section 2 of the Act provides "definitions". Section 2(8) defines "assessment includes reassessment". Thus the very meaning of the assessment provided under the Act includes reassessment also. Thus, the reassessment is not a separate concept and it is included within the meaning of the assessment under Section 2(8) of the Act. Thus, an assessment and reassessment are part and parcel of the procedures and therefore, there cannot be any doubt in respect of the power of reassessment provided under the Act.

96. The Income Tax Department may not be aware of the income of the individual Assessee. They are assessing the tax based on the returns filed by the respective Assessee. Thus, the very concept of assessment is that the Officer who is scrutinising the returns did not aware of the income of an individual. For this reason only Act provides adequate power to deal with the cases, where there is evasion or suppression or otherwise by the Assessee. The very source of assessment is the returns filed by the Assessee concerned. Only after the filing of the returns, the Department of Income Tax came to understand the income of the person concerned. Thus, the reassessment may arise on several occasions and on several grounds. The Income Tax Department may receive informations from many other sources. The Income Tax Department may get some external materials as well as from various other sources. It is the process of investigation. On receipt of such materials or informations from various other sources, in such circumstances, the authorities must be in a position to reopen the assessment and impose tax. In the absence of any such lucid provision, enabling the Department reopening a case, there is a possibility of escapement of payment of tax by large number of Assessee. The

very nature of the Act is to ensure that the informations and the materials collected or received from various other sources are also dealt with by the Department of Income Tax appropriately and with reference to the provisions of the Act.

97. The power of reopening of the assessment is certainly wide in nature. If it is restricted, then the very purpose and object of the Income Tax Act will be defeated. The wide power provided to the authorities competent to reopening of the assessment and to ensure that all external materials and the informations received from various sources should also be dealt in accordance with the provisions of Law. Thus, it does not mean that the Income Tax Authorities may reopen at any point of time. In order to protect the Assessee a definite time limit has been provided under the Act itself. Thus in the event of receiving any informations or materials from any other sources can be a ground for reopening of the assessment and the period of limitation is four years and six years respectively and in respect of the present writ petitions, it is six years.

98. The procedure of reopening of the assessment is contemplated under Sections 148 to 153 of the Act. Once again looking into the spirit of Section 147, it is unambiguously enumerated that "assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section, or recompute the loss or the depreciation allowance".

99. The language employed in Section 147(1) of the Act is that "which comes to his notice subsequently in the course of the proceedings under the Section". Thus even after initiation of reopening of assessment proceedings under Section 147 of the Act, if during the course of the proceedings if any materials or informations are received by the Assessing Officer that also can be taken into consideration for the purpose of reassessment. It is crystal clear that the reasons recorded before the initiation of the reopening of the assessment alone need not be a ground for reassessment. Even after reopening of the assessment if any materials or informations are received by the Assessing Officer that also shall be included part and parcel of the proceedings and sufficient explanations shall be called for from the Assessee and accordingly a reassessment order can be passed. Thus, two circumstances arise after the conclusion of the assessment. Firstly, if the assessment is finalised, the reopening in respect of the escaped assessments can be made if any new materials or suppression of materials are identified. On such reopening of the assessment and during the course of the proceedings, if the Assessing Officer noticed any other materials or informations in respect of escaped assessment and

the same also can be treated as part and parcel of the reassessment proceedings which is reopened.

100. On going through the said ingredients of the Section 147, this Court has no hesitation to conclude that the Assessing Officer has got wider power in respect of covering the escaped assessments for the purpose of reopening the assessment. The proviso to Section 147 states that "provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment". This also provides various circumstances enabling the Assessing Officer to assess or reassess such income other than the income involving the matters which are the subject matters of any appeal, reference or revision. The wideness of the power has been further clarified in the said proviso clause.

101. Explanation 2 sub-clause (b) to Section 147 also provides power to the Assessee where a return of income has been furnished by the Assessee but no assessment has been made and it is noticed by the Assessing Officer that the Assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

102. The circumstances are narrated wherein certain materials and informations are provided by the Assessee at the time of filing of the returns and if the same has not been assessed by the Assessing Officer during the relevant assessment year and if it is subsequently noticed, then also the Assessing Officer is empowered to reopen the assessment in respect of the escaped assessments.

103. On a perusal of various circumstances incorporated under Section 147 of the Act, for reopening of the escaped assessment, this Court is of an opinion that it is certainly flexible and wider power has been provided, enabling the Assessing Officer to reopen the assessment in the interest of revenue and to ensure that the Assessee pay the correct tax with reference to the provisions of the Act.

104. This Court is of a firm opinion that where certain doubts in respect of the reasons or otherwise have been raised by the Assessee, such benefit of doubt should be held in favour of the revenue and not in favour of the taxpayer. Contrariness is to be established by the Assessee, while scrutinising the materials available with the Assessing Officer.

105. It is for the Assessee to convince the Assessing Officer in respect of all such escaped assessments, informations

and materials available and submit the returns. This being the legal principles to be followed, the provisions are to be interpreted to achieve its purpose and the object and therefore the wider powers provided under Section 147 of the Act, for reopening of the escaped assessments can never be restricted by imposing certain conditions on the Assessing Officer.

106. Even in case of certain procedural lapses, this Court is of an opinion that such procedural lapses can be taken advantage of by the Assessee only if it causes prejudice to the proceedings, if any. Such procedural lapses not causing any prejudice to the rights of the Assessee during the course of the proceedings of the reassessment, then the Assessee cannot file a writ petition, seeking quashing of the entire proceedings. Such writ petitions also cannot be entertained in view of the fact that such procedural lapses or omissions or commissions have not caused any prejudice to the interest of the Assessee nor resulted in denial of fair procedure and opportunity to the Assessee.

107. In the present writ petitions, this Court is of an opinion that undoubtedly notices were issued based on the reasons recorded by the Assessing Officer under Section 147 of the Act. However, the reasons arrived had not been communicated to the writ petitioner. But the writ petitioner requested the reasons to be furnished. Responding to the letters sent by the writ petitioner, the Assessing Officer communicated the reasons to the Assessee/writ petitioner and the objections were rejected. Thus, the writ petitioner has not been prejudiced in respect of the proceedings communicated by the Assessing Officer. Thus, this Court, has to consider the very fact that, whether any prejudice has been caused to the Assessee resulting any injustice or otherwise in the present writ petitions on hand. The writ petitioner very well can respond to the Assessing Officer and establish his genuinity or otherwise by producing the materials available with him and by providing informations known to him. Without doing so, the writ petitioner filed the present writ petitions, challenging the notices.

108. Let us now look into Section 148 of the Act. Section 148 speaks about "the issuance of notice where income has escaped assessment". Section 148(2) stipulates that "the Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so". Whether the said provision can be interpreted as if recorded reasons by the Assessing Officer should be communicated along with the notice. The very purport of the Act is to ensure that the Assessing Officers are acting with reasons and judiciously. The Statute provides that the Assessing Officer should record the reasons only with an object to ensure that the Assessing

Officers/Competent Authorities cannot act with callousness and without any basis.

109. Every actions of the Authorities Competent must be on reasonings and the same must be recorded in files. The reasons to be recorded by the Assessing Officer for taking decision to reopen the escaped assessment does not mean that such reasons are to be communicated along with the notice itself. The notice directs the Assessee to submit his returns. If the Assessee is of an opinion that he requires the reasons recorded by the Assessing Officer for reopening of the assessment, then he can make a request and accordingly the same shall be furnished by the Assessing Officer to the Assessee.

110. In the present cases on hand, the request made by the writ petitioner had been complied with and the reasons for reopening of the escaped assessment had been communicated to the writ petitioner. The said propositions are very well recognised by the Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Thus the very provision stating that the Assessing Officer should record the reasons does not mean that the same should be communicated along with the notice itself. The provision is incorporated in order to ensure that the Assessing Officers act with responsibility and make sure that they are reopening the assessment only based on some reasons and the materials available on record. Such provisions provided to avoid the arbitrariness on the part of the Assessing Officer cannot be taken advantage by the Assessee by contemplating the procedures that the reasons so recorded by the Assessing Officer should be communicated to the Assessee along with the notice issued under Section 148(1) of the Act. Such a proposition cannot be appreciated and that is not the intention of the Act itself. Thus, the very arguments advanced in this regard by the writ petitioner deserve no merit consideration.

111. In case of M/S. Phool Chand Bajrang Lal vs Income-Tax Officer And Another [1993 203 ITR 456], it has been held as follows:-

"One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude."

112. On careful consideration of all the judgments, cited supra, this Court is of an undoubted opinion that if the Assessing Officer has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment. It is however, to be noted that the conditions stipulated in the Act must be fulfilled if the case falls within the ambit of Section 147.

113. Considering the fact that there are some materials on record and the informations with the Department of Income Tax, the reopening of the assessment in the writ petitions with reference to Sections 147 to 153 of the Act, is in accordance with law and there is no infirmity, as such. Thus, the writ petitioner is bound to respond to the Assessing Officer for the purpose of arriving a conclusion and for taking a decision. In the event of passing an order of assessment or reassessment, then the writ petitioner is entitled to prefer an appeal contemplated under the provisions of the Act. Contrarily, based on the preliminary informations gathered by the Assessing Officer, the notices issued for the purpose of reopening of the assessment would not provide a cause of action for filing of the present writ petitions and this Court has no hesitation in holding that the writ petitions are not only premature, even on merits the writ petitioner has failed to establish any acceptable reason to grant the relief, as such, sought for.

114. This being the principles to be followed, the writ petitioner has miserably failed to establish any legally acceptable ground for the purpose of interfering with the actions initiated by the respondents by invoking the provisions of the Income Tax Act, 1961. Thus, there is no infirmity as such, in respect of the initiation of the proceedings for reopening of the assessment under the Act and the writ petitions are devoid of merits. The respondent is empowered to proceed further in accordance with law. Accordingly, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Assistant Commissioner of Income Tax,
Non-Corporate Circle-15, Aayakhar Bhavan,
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2. The Deputy Commissioner of Income Tax,
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+2cc to Ms.M.Sneha, Advocate, S.R.No.70283, 70284
+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.70184

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44313 of 2016

NA (CO)
CS/30/10/2018



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