

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

+ **INCOME TAX APPEAL No. 74/2017**

Reserved on : 1st August, 2018

Date of decision: 15th January, 2019

THE PRINCIPAL COMMISSIONER OF INCOME TAX-4Appellant
Through Mr. Ruchir Bhatia, Advocate.

versus

GEETANJALI CREDITS AND CAPITAL LIMITED Respondent
Through Mr. Kamal Ahuja and Mr. Sameer
Srivastava, Advocates.

INCOME TAX APPEAL No. 75/2017

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GEETANJALI CREDITS AND CAPITAL LIMITED Respondent
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Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

The above captioned appeals by Revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short) in the case of M/s Geetanjali Credits and Capital Limited, formerly known as Shubh International Limited ('respondent- assessee' for short), relate to Assessment Years 1999-2000 and 2000-01 and arise from common order of the Income Tax Appellate

Tribunal, Chandigarh ('Tribunal', for short) dated 22nd April, 2016 passed in ITA Nos. 920 and 921/CHD/2008 ('impugned order' for short).

2. The appeals were admitted for hearing vide order dated 10th February, 2017 on the following substantial questions of law:-

“(1) Did the ITAT fall into error in holding that re-assessment in the circumstances of the case, was not in accordance with law; and

(2) Did the ITAT fall into error in cancelling the additions made to the tune of Rs.2.1 crores and Rs.48.00 lakhs [Sic. Rs. 40.00 lakhs] (for AYs 1999-2000 and 2000-2001, respectively) under Section 68 of the Income Tax Act, 1961 in the hands of the Assessee, in the circumstances of the case.”

3. The respondent-assessee has not disputed the territorial jurisdiction of this High Court to decide the afore-captioned appeals in view of order dated 31st July, 2014 passed under Section 127 of the Act.

4. Two issues arise for consideration in view of the substantial questions of law framed vide order dated 10th February 2017. First issue relates to validity of proceedings initiated by the Assessing Officer vide notice under Section 148 read with Section 147 of the Act. The second issue relates to merits i.e. deletion of additions of Rs.2.10 crores and Rs.40 lacs made by the Assessing Officer on protective basis for the Assessment Years 1999-2000 and 2000-01 respectively, which additions were affirmed by the Commissioner of Income Tax (Appeals) on substantive basis.

5. To avoid prolixity, repetition and for convenience, we have with consent of the parties, treated the appeal preferred by the Revenue for the Assessment Year 1999-2000 as the lead case. Tribunal and the

Commissioner of Income Tax (Appeals) had also treated the appeal for the Assessment Year 1999-2000 as the lead case and followed and applied their findings to the appeal for the Assessment Year 2000-01. Wherever necessary, we would refer to the facts relevant for the Assessment Year 2000-01.

6. Respondent-assessee is a public limited company, that had made a public issue for Rs. 95 Lakhs in December, 1996 which was fully subscribed. The issue was to fund the project for manufacture and sale of egg trays. However, this business/project did not start though the respondent-assessee had acquired about 2 acres of land in village Haripur, Distt. Panchkula in Haryana. Attempt made once to grow crops on the land was not successful due to non-availability of water etc. Thereafter the land could not be put to any use.

7. Bharat Bhushan Goyal, Kewal Krishan and Sunil Gupta were the Directors of the respondent-assessee, during the period relevant to the Assessment Years 1999-2000 and 2000-2001. Sunil Gupta, a Chartered Accountant by profession, was not a shareholder in the respondent-assessee.

8. The respondent-assessee in the return for the Assessment Year 1999-2000 filed on 31st December, 1999 had declared taxable income of Rs. 6,899/- and in the return for the Assessment Year 2000-2001 filed on 11th June, 2002 had declared loss of Rs. 41,766/-. The returns were processed under Section 143(1) of the Act and were not taken up for scrutiny assessment under Section 143(3) of the Act.

9. On or about 23rd May, 2002 search and seizure operations under Section 132 of the Act were conducted in the case of M/s Lada Liquor

Group by Investigation Wing, Chandigarh. It was then noticed that respondent-assessee had made investment of Rs.2.50 Crores with M/s Taranjit Singh & Co., Chandigarh, a partnership firm engaged in the business of Liquor Contractors. Payments were made in February, March and April, 1999. Money paid to M/s Taranjit Singh & Co. had not been refunded or re-paid till the date of search. Detailed enquiries by the Investigation Wing on the source of investment had revealed that cash was first deposited in different accounts of stock-brokers before it was transferred to the bank account of the respondent-assessee with Bank of Baroda, Civil Lines, Ludhiana. Source of deposits in the bank accounts of stock-brokers had remained unexplained and were dubious. This information with details and evidence were furnished to the Assessing Officer of the respondent-assessee by the Additional Director of Income Tax (Inv.), Chandigarh vide his letter dated 4th September, 2003. The Assessing Officer had thereupon recorded 'reasons to believe' and notice under Section 148 read with Section 147 of the Act for the Assessment Year 2000-01 was issued on 6th October, 2003 and served on the respondent-assessee on 16th October, 2003 and notice for the Assessment Year 1999-2000 was issued on 30th July, 2004 and served on the respondent-assessee on 2nd August, 2004.

10. Pursuant to the said notices, the respondent-assessee had stated that the earlier returns filed under Section 139 of the Act should be treated as returns filed in response to the notices.

11. By Assessment Order dated 16th March, 2006 for the Assessment Year 1999-2000, addition of Rs.2.10 crores on protective basis on account of unexplained deposit in bank account was made, for the following reasons:-

10. To summarise, the facts of the case are that search was conducted in the case of M/s Lada Liquor whereby it was noticed that M/s Taranjit Singh & Co. took entries of Rs. 2,50,00,000/- (Rs. 2,10,00,000/- pertaining to the year under consideration) in the name of the assessee M/s Shubh International Ltd. (now Nis Getanjali Capital & Credit Ltd.) through demand drafts. Perusal of bank account of the assessee shows that these demand drafts were issued by the assessee after receiving various cheques (as discussed in Para 3 above). These cheques were received by the assessee from three stock brokers namely M/s EssArr & Co., M/s S.K. Sharma & Co. and M/s Usha Garg & Co. (as shown in para 4 above) in lieu of sale of investments by the directors of the assessee in connivance with Sh. Taranjit Singh. When examined, the stock brokers failed to give ledger folio numbers/distinctive nos. of the shares sold and identity of buyers. In addition payments from so called buyers which were brought by the representatives of the assessee, have been allegedly received in cash by the stock brokers. In turn the stock brokers issued cheques to the assessee and the assessee transferred sum Rs. 2,10,00,000/- in the account of M/s Taranjit Singh & Company through Demand Drafts, Shri Bharat Bhushan, Director of the company assessee, in his statement dated 03.09.2002 has accepted that market value of shares held by the company was negligible. But these shares have been shown as sold for a whopping consideration of Rs. 2.5 crores and the whole sale was made in cash which was received by the stockBrokers on behalf of M/s Shubh International Ltd. This makes it quite obvious that these are simply sham transactions by which unaccounted cash has been introduced in the form of sale of investments of Assesse Company. This unaccounted cash is nothing but the unaccounted income of the assessee company. The director of the assessee company Sh. Bharat Bhushan has stated that control of the company was handed over to Sh. Taranjit Singh though legal formalities were not completed as Sh. Taranjit Singh expired in April, 2000 and Sh. Taranjiot sold the investments of the company.

He has further stated that the investments of the assessee company were sold by Sh. Taranjit Singh. Sh. Taranjit Singh might have sold the investment in order to bring his own unaccounted money into Assessee Company. Since the amount was paid out of bank account n. 60140 of the company maintained with Bank of Baroda, Civil Lines, Ludhiana, addition of Rs, 2,10,00,000/- is made on protective basis without prejudice to any action in the hands of M/s Taranjit Singh & Company, Chandigarh.

11. Vide order sheet entry dated 13.03.2006, Sh. Sunil Gupta, FCA, counsel for the assessee company confirmed that the facts of the present case are similar to the case of assessee itself for the assessment year 2000-01 and claimed that there is no justification of making double addition as the addition has been made by the ACIT (Central Circle) in the case of lulls Taranjit Singh & Co. in respect of credits received from the assessee company.

12. The replies of the assessee company have been considered. He has accepted that the facts are similar for the Assessment Year 2000-01 in which addition of Rs. 40,00,000/- was made on protective basis in respect of entries pertaining to that year. Total of entries pertaining to this year comes to Rs. 2,10,00,000/-. Protective assessment does not tantamount to double addition as claimed by the assessee.

13. In view of above, an addition of Rs. 2,10,00,000/- is made in the hands of the assessee company on protective basis without prejudice to any action in the hands of M/s Taranjit Singh & Company, Chandigarh.

12. By the Assessment Order dated 30th March, 2005 for the Assessment Year 2000-01, the Assessing Officer made an addition of Rs.40 lacs on protective basis on account of unexplained deposit in the bank account and investment for the following reasons: -

“7.1. On 21.03.2005 a copy of a/c of M/s Shubh International Ltd. as appearing in the books of account of

M/s Sharma & Co. was furnished. Shri S.K. Sharma failed to furnish the names & addresses of company whose shares were sold by him.

7.2 Hence, it has been established that the directors of M/s Shubh International Ltd. has introduced their unexplained money in the guise of shares in the bank account of the company from which the amount was further advanced to M/S Taranjit Singh & Company.

8. Vide order sheet entry dated 21.3.2005 the assessee company was asked to furnish the distinct number of shares which were sold by M/s Usha Garg & Co., M/s EssArr& Co. and M/s S.K. Sharma & Co.

8.1 On 23.3.2005 Shri Sunil Gupta, CA furnished the names of the companies whose shares were sold by the above mentioned concerned which are as under:-

S.No.	Name of the share broker	Name of the company whose shares were sold	Date	Amount
1.	S.K. Sharma & Co.	Samksons Paper Ltd., New Delhi	30.03.99	Rs.5,00,000/-
2.	Usha Garg & Co.	Manan Steel Ltd. Ldh.	-do-	Rs.10,00,000/-
3.	EssArr& Co.	Randeep Capital Srvices Ltd.	-do-	Rs.5,00,000/-
4.	EssArr& Co.	Randeep Capital Services Ltd.	-do-	Rs. 5,00,000/-
5.	Usha Garg & co.	Manan Steel Ltd. Ldh.	17.04.99	Rs.5,00,000/-
6.	EssArr& Co.	Kinetic Trust Ltd. New Delhi.	-do-	Rs.5,00,000/-
7.	S.K. Sharma &Co.	Samksons Paper Ltd.	-do-	Rs.10,00,000/-

		New Delhi.		
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8.2 The counsel for the assessee company failed to supply the complete addresses of the companies of which the shares were sold by the stock brokers on behalf of Shubh International Ltd. Before the DDIT(Inv.) the assessee has not filed the detail of share holding of above companies. In the return of income the assessee has also failed to show the transactions as well as the income from these transactions, it clearly shows that no sale of shares have been taken place. Only the accommodation entries have been given by the above mentioned stock brokers to M/s Shubh International Ltd. by issuing the cheques amounting to Rs. 40,00,000/- which was further advanced to M/s Taranjit Singh & Company, Chandigarh during the year 1999-2000 relevant to the A.Y 2000-01.

9. The statement of Shri Bharat Bhushan Goyal, Director, shows that investments held by the company were not worth the liability of the company. Since the amount was paid out of the bank account No. 60140 of the company maintained with Bank of Baroda Civil Lines, Ludhiana, addition of Rs.40,00,000/- is made on protective basis without prejudice to any action in the hands of M/s Taranjit Singh & Company, Chandigarh.”

13. Two Assessment Orders had reproduced details of deposits/credit and payments/debit entries in the account of the respondent-assessee with Bank of Baroda, Civil Lines, Ludhiana. In this manner deposits made were collated with issue of bank drafts/cheques in favour of the M/s Taranjit Singh & Co. Assessment Orders had reproduced statement on oath made by Bharat Bhushan Goyal, Director of the respondent-assessee recorded on 3rd September, 2002 by Dy. Director (Inv.) Chandigarh accepting that worthless shares held by the respondent-assessee were purportedly disposed of for more than Rs. 2 crores and credited in the account in Bank of Baroda by

transfer/payments by the stock-brokers. Amounts deposited were then transferred to M/s Taranjit Singh & Co. These transactions relating to purchase and sale of shares to generate book entries were bogus and sham and were allegedly made by Taranjit Singh who was also wanting to take control of the respondent-assessee, for which legal formalities had not been completed. Taranjit Singh, partner of M/s Taranjit Singh & Co., died in April, 2000 and thereafter the respondent-assessee had tried to recover the investment from Ms. Mahinder Kaur, the legal representative/heir of Taranjit Singh. We shall subsequently refer to and reproduce statement made by Bharat Bhushan Goyal.

14. The Assessment Orders also extensively quote from statements made on oath by Shagun Garg, authorized signatory of M/s Usha Garg and Company, Ludhiana; Hari Krishan Punni, authorized signatory of M/s Ess Arr and Company, Ludhiana and Sudhir Kumar Sharma, proprietor of S.K. Sharma and Company, Ludhiana, the stock-brokers through whom the respondent-assessee had made investments and sold the worthless shares. They had confirmed the sham and bogus nature of share transactions accepting that they did not know the purchasers to whom the shares were sold as the purchasers were brought to them by representatives of the respondent-assessee and were unknown persons who had paid cash as sale price which was deposited in the bank accounts of the stock-brokers, who in turn had issued cheques in favour of the respondent-assessee. The stock-brokers were unable to even give detail of distinctive number of shares, name and addresses of the purchasers etc. We would subsequently reproduce relevant portion of their statements.

15. Appeals preferred by the respondent-assessee against the Assessment Orders were decided by the Commissioner of Income Tax (Appeals) by a common order dated 19th September, 2008.

16. During the course of hearing before the Commissioner of Income Tax (Appeals), Sunil Gupta, a Chartered Accountant by profession and one of the Directors of respondent-assessee, had argued that there was no justification to make double addition as M/s Taranjit Singh & Co. had been taxed on substantive basis. Rejecting the submission, the Commissioner of Income Tax (Appeals) observed that the block assessment in the case of M/s Taranjit Singh & Co. had been quashed in the first appeal on the technical ground that no material found in the course of search or enquiries conducted and the addition would not fall within the scope of Chapter XIV-B of the Act. He reproduced the relevant order passed by the first Appellate authority in the case of M/s Taranjit Singh & Co., which reads:-

"I have considered the submission of the appellant and, perused the orders of assessment and considered the material placed on record. In the case of the appellants, the undisputed facts are that deposit from M/s Shubh International Ltd., which has been added as undisclosed income, has been duly disclosed. No material has been detected as a result of search or gathered as a result of enquiries conducted on the basis of material detected during the course of search to establish that such deposit represent undisclosed income of the assessee. In these facts the addition is outside the scope of Chapter XIV-B of the Income Tax Act and hence is directed to be deleted."

17. Further, Tribunal had dismissed the appeal preferred by the Revenue in the case of M/s Taranjit Singh & Co., reiterating the ground that no

material was found during the course of search and that the addition made would not come within the scope of block assessment.

18. The Commissioner of Income tax (Appeals) noticed that the Assessing Officer had held that the amounts received from the three stock-brokers on 'sale of investments' were sham and bogus, yet the assessment against the respondent-assessee had been framed on protective basis.

19. The Commissioner of Income Tax (Appeals) issued letter no. 853 dated 21.11.2007 to the respondent-assessee setting out relevant facts like deletion of substantive addition in the case of M/s Taranjit Singh & Co., failure of the respondent-assessee to discharge onus to establish genuineness of the share transactions, clandestine sale of worthless shares for price of Rs. 2.5 crores, evidence of connivance of the stock-brokers who had allegedly sold the investments for cash to unknown persons and thereupon issued cheques in favour of respondent-assessee. Reply given by the respondent-assessee to the said letter was considered.

20. The Commissioner of Income Tax (Appeals), for the detailed reasons recorded, held that substantive addition of Rs. 2.1 crores and Rs. 40 Lakhs should be made in the hands of the respondent-assessee for Assessment-Years 1999-2000 and 2000-2001. This appellate order referred to statement on oath made by Hari Krishnan Punni authorized signatory for M/s. Ess Aar & Co. on 20.08.2002 before the Deputy Director of Income Tax (Inv.) and the second statement before the Commissioner of Income Tax (Appeals) on 27.02.2008. Statement on oath made by Mr. Sagun Garg authorized signatory for M/s Usha & Co. was also quoted. Statement by Mr. Bharat

Bhushan Goyal, Director of respondent-assessee, was reproduced to show incongruities and to highlight negligible value of shares.

21. The Commissioner of Income Tax (Appeals) specifically rejected the challenge to validity of notice issued under Section 148 of the Act, recording that at the stage of issue of notice, prima facie belief that the income has escaped assessment was required. The expression 'reason to believe' meant a cause or justification to know or suppose that the income had escaped assessment and it should not read to mean that the Assessing Officer had finally ascertained and concluded that income had escaped assessment.

22. The Commissioner of Income Tax (Appeals), however, did not specifically refer to 'reason to believe' and facts in the appeal preferred by the respondent-assessee for Assessment Year 2000-2001, noting that the grounds taken were similar to those taken in the appeal preferred for Assessment Year 1999-2000 and had been dealt with.

23. Appeal for Assessment Year 2000-2001 was accordingly dismissed with substantive addition of Rs.40 lakhs in the hands of the respondent-assessee.

Discussion on Question No. 1, ITA No. 74/2007 relating to Assessment Year 1999-2000.

24. The 'reasons to believe' recorded by the Assessing Officer as quoted in the order passed by the Tribunal reads as under:-

“M/s Shubh International Ltd.
SCO 1104-05, Sector 22-B, Chandigarh
Assessment Year 1999-2000

Reasons for issue of Notice under Section 148

The company M/s Shubh International Ltd., SCO 1104-05, Sector 22-B, Chandigarh filed its return of income on 31.12.1999 declaring income at Rs.6,899/-. The same was processed u/s 143(1) on 5.6.2000. As per information received from Addl. Director of Income Tax (Inv.), Panchkula vide letter No. Addl.DIT(Inv.)/CHD/2002-03/1777 dated 4.9.2003, received through the Addl. CIT Range-III office letter No. 2416 dated 9.9.2001, the company, Shubh International Ltd., Chandigarh claimed to have invested Rs.2,10,00,000/- with M/s Taranjit Singh & Co. Liquor Contractors, Chandigarh during the F:Y: 1998-99 relevant to the A:Y: 1999-2000. Till now this amount was not repaid as per inquiries conducted by Investigation Wing Shubh International Ltd. has given only entry and actually no deposits/investments were made with M/s Taranjit Singh & Co., Chandigarh. Since the amount Rs.2,10,00,000/- was first deposited in the account of the company maintained with Bank of Baroda, Pakhowal Road, Ludhiana, the source of this amount remained unexplained within the meaning of the Section 148 of the IT Act in the hands of Shubh International Ltd. I have therefore reasons to believe that income to the extent of Rs.2,10,00,000/- has escaped assessment. Hence, a notice u/s 148 is being issued to M/s Shubh International Ltd. for the A:Y: 1999-2000.

sd/-
(AMRIK SINGH)30.3.04
Income Tax Officer, Ward 3(3)
Chandigarh.”

25. The Tribunal in the impugned order vide paragraph Nos. 20 to 27 has held as under:-

“20. The record revealed that search & seizure operation under Section 132 of the Income Tax Act was conducted at the residential and business premises of

Smt. Mohinder Kaur and others on 23.05.2002. Late Shri Taranjit Singh was husband of Smt. Mohinder Kaur, had been doing liquor business at Chandigarh and Panchkula. After his death on 19.04.2000, business was taken over and carried out by his wife Smt. Mohinder Kaur till the date of the search. The reasons recorded would, therefore, clearly suggest that information was received from ADIT (Investigation) Panchkula vide letter dated 04.09.2003, was in reference to the search conducted in the cases of Smt. Mohinder Kaur, legal heir of late Shri Taranjit Singh.

21. In the reasons, the Assessing Officer on the basis of information received from ADIT (Investigation) noted that assessee company has invested Rs.2.10 Cr with M/s Taranjit Singh & Co., Chandigarh, liquor Contractor in assessment year under appeal and till date, this amount has not been repaid as per enquiries conducted by Investigation Wing. It is also noted in the reasons for re-opening of the assessment that assessee had given only entry and actually no deposits/investments were made with M/s Taranjit Singh & Co., Chandigarh. This information supplied by the Investigation Wing would reveal that actually no investments have been made by assessee company with M/s Taranjit Singh & Co., Chandigarh.

22. The Assessing Officer, in the block assessment under Section 158BC of the Act in the case of Smt. Mohinder Kaur, wife of late Shri Taranjit Singh dated 22.08.2005 observed that after detailed enquiries and analysis of the statements of Directors on record, it emerged that transactions of sale of shares are sham transactions and sale transaction by assessee through the broker was not genuine. The amount was deposited in the bank account of the broker in cash, thereafter transferred to bank account of the assessee company from where drafts in favour of M/s Taranjit Singh & Co., Chandigarh were issued belong to Shri Taranjit Singh. It is also observed that Shri Taranjit Singh routed his undisclosed funds in the name of assessee company in the

business of M/s Taranjit Singh & Co., Chandigarh and ultimately invested in his personal business and for acquiring various assets in his name and in the name of his wife. The amount so invested is assessable in the hands of late Shri Taranjit Singh as his undisclosed income. The total amount involved in both assessment years under appeal in a sum of Rs.2.50 Cr, was assessed as undisclosed income in the hands of late Shri Taranjit Singh, on substantive basis. It would, therefore, make it very clear that on the basis of investigation conducted after search in the case of Smt. Mohinder Kaur, legal heir of late Shri Taranjit Singh, it came on the record of the Revenue Department that the entire deposit of Rs.2.50 Cr was the money of Shri Taranjit Singh from his undisclosed funds which was routed through the brokers into the bank account of the assessee company and then transferred to M/s Taranjit Singh & Co., Chandigarh. This was the sole reason for initiating the re-assessment proceedings against the assessee. Therefore, where in question of holding that Assessing Officer has reason to believe that income chargeable to tax has escaped assessment in the hands of the assessee company. The Assessing Officer also did not examine this information received from ADIT (Investigation) and without applying his mind accepted the same to be correct. In the assessment order, Assessing Officer has referred to statements recorded by DDIT (Investigation) Chandigarh of Shri Bharat Bhushan Goyal, Director of the assessee company in which he has briefly explained that since incorporation of the assessee company, there were no manufacturing activities. Therefore, assessee company started making inter-corporate investments. List of many investments was produced and filed.

23. Shri Taranjit Singh, who was friend of the Director, wanted to control the assessee company but the formalities could not be completed but actually he started controlling the co, he sold/liquidated the investments of company. Original certificates and transfer deeds were given to him. Bank account opened and operated in his

consultation. Shri Taranjit Singh, by that time expired. Since Shri Taranjit Singh wanted to take over control of the assessee company, therefore, he sold/liquidate the shares of the assessee company and for that purpose, he wanted to make him as a partner in his liquor business. The Board of Directors of the assessee company passed a resolution for selling the investments. The investments were to be sold through Shri Taranjit Singh. He has conformed in his statement that investment of Rs.2.10 Cr was initially made in March, 1999 and Rs.40 lacs was invested in April, 1999. The Assessing Officer, however, took it adversely against the assessee company. The source of the deposits in the bank account of the assessee were from the three brokers through the banking channel and all the brokers have confirmed selling investments of the assessee company through them and payments made by them through banking channel. The Assessing Officer did not believe their statement because the brokers have not mentioned the Ledger Folio Number/distinct number and name of the purchaser etc in the record. It may be noted that in ledger, generally no details of shares are mentioned.

23(i) The Assessing Officer also noted that assessee has failed to supply complete address of the companies, the shares of which were sold through three brokers. the Assessing Officer also noted that the assessee received cheques from these three brokers in lieu of sale of investments by the Directors of the assessee in connivance with Shri Taranjit Singh, therefore, the whole complexion of the findings of the Assessing Officer would reveal that everything was done by Shri Taranjit Singh in order to control the business affairs of the assessee company and even the shares/investments of the assessee company were sold by the three brokers through Shri Taranjit Singh. In this way, the Revenue Department had taken a stand that the entire amount shall have to be added on substantial basis in the hands of Shri Taranjit Singh which, in-fact was also done in the case of Shri Taranjit Singh through the legal heir in block

assessment. The Assessing Officer, therefore, on the basis of the same, made the protective assessment in the case of the present assessee company. The Assessing Officer also noted in the assessment order that protective assessment is made because ld. counsel for the assessee intimated him that substantive addition is made in the case of M/s Taranjitsingh & Co., Chandigarh which fact is incorrect because the order for assessment year 2000-01 was passed earlier on 30.03.2005 and block assessment order in the case of Smt. Mohinder Kaur was passed on 22.08.2005. These facts would clearly reveal that Assessing Officer did not apply mind to the information received from the ADIT (Investigation), Panchkula and did not examine any information on the matter in issue. He was having no tangible material with him to show that there was any reason to believe that income chargeable to tax in the hands of the assessee has escaped assessment. There were no reference to any document or material except the information received from ADIT (Investigation), Panchkula which could not be recorded as a material or evidence that prima-facie showed or established nexus or link which disclosed escapement of income. The information received from ADIT (Investigation) was not a pointer and did not indicate escapement of income in the case of the assessee.

24. Hon'ble Gujrat High Court in the case of Inductotherm (India) P. Ltd. V M. Gopalan, DCIT, 356 ITR 481 held as under:

“The power to reopen an assessment is available either in a case where a return has been accepted under Section 143(1) of the Income Tax Act, 1961, or a scrutiny assessment has been framed under Section 143(3) of the Act. A common requirement in both cases is that the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment. There should be tangible material to come to the conclusion that there is escapement

of income from assessment. Reasons must have a live link with the formation of the belief.”

It was also noted, “(ii) that in two out of the four reasons recorded by the Assessing Officer for re-opening the assessment, he stated that he needed to verify the claims to bad debts and the admissibility of the bad debts written off. For mere verification of the claim, power for re-opening of the assessment could not be exercised. The Assessing Officer in the guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment.”

24((i) Hon’ble Delhi High Court in the case of Signature Hotels P. Ltd. Vs ITO & Another 338 ITR 51 held as under:

“Held, allowing the petition that the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation that the petitioner had introduced money amounting to Rs. 5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of Section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that

the company, S, had a paid-up capital of Rs.90 lacs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The re-assessment proceedings were not valid and were liable to be quashed.”

24(iii) Hon’ble Bombay High Court in the case of CIT Vs Smt. ManibenValji Shah 283 ITR 453 held as under:

“The assessee purchased a flat in the accounting year relevant to the assessment year 1988-89 for Rs.2,50,000 and filed a return but no regular assessment order was passed. A notice was issued to the assessee on October 10, 1991 under Section 148 on the ground that details regarding the source of funds for the purchase had not been furnished. The Tribunal held that notice was not valid. On appeal to the High Court:

Held, dismissing the appeal, that a bare perusal of the notice dated October 10, 1991, clearly indicated that the officer wanted to know the details with regard to the source of funds for purchase of the flat for a sum of Rs.2,50,000. Obviously there was no question of the Assessing Officer having any basis to reasonably entertain the belief that any part of the income of the assessee had escaped assessment. The notice was not valid.”

25. The Assessing Officer in the reasons further noted that since the amount of Rs.2.10 Cr was first deposited in the account of the assessee company maintained with Bank of Baroda, Ludhiana and source of this amount remained unexplained within the meaning of Section 148 of the Act, therefore, he has reason to believe that income chargeable to tax has escaped assessment. This alleged belief was also not tenable in law because once it is a stand of the Revenue Department that the

entire undisclosed money belong to Shri Taranjit Singh as per block assessment order passed in the case of Smt. Mohinder Kaur, legal heir of Shri Taranjit Singh which was routed through the bank account of the assessee, therefore, there is no reason to believe that income chargeable to tax has escaped assessment in the case of the assessee company. There is, thus, change in the stand of the Department for the purpose of making the addition in the hands of the assessee.

25(i) As per information, all brokers exist. Assessing Officer was aware of transaction of sale and purchase of shares/investments through brokers prior to recording of reasons for re-opening of assessment. Source of deposit in bank account of the assessee was sale of Shares/investments, within knowledge of Assessing Officer. The brokers prior to recording of reasons under Section 148 of the Income Tax Act in their statements to DDIT (Investigation) confirmed selling of shares/investments of assessee company. It is also interesting to note that A.O. in assessment order observed, Directors have introduced the money in bank account of assessee company from the source best known to them. Therefore, decision in case of Saraswati Devi (supra) apply in favour of assessee. No information has been received by Assessing Officer from Investigation Wing that assessee company received any accommodation entry. The reasons, however, records that assessee company given entry to Shri M/s Taranjit Singh & Co. The case law cited by Id. DR are mainly on account of bogus/accommodation entries received by assessee. Therefore, there may not be a justification to reopen assessment in case of assessee company.

25(ii) It may be noted here that the Id. CIT (Appeals) in the case of Smt. Mohinder Kaur, legal heir of Shri Taranjit Singh deleted the entire addition of Rs.2.50 lacs vide order dated 12.09.2005 mainly on the reason that since the deposits from the assessee company have been duly disclosed and no material was detected during the course of search to prove undisclosed income in the

hands of late Shri Taranjit Singh, therefore, same would not fall within the meaning of Chapter XIV-B of the block assessment. The entire addition of Rs.2.50 Cr was deleted in the case of late Shri Taranjit Singh. On further appeal by the revenue and the assessee, ITAT vide order dated 26.04.2012 set aside and quashed the block assessment being bad in law and without jurisdiction because no warrant of authorization was issued in the name of Smt. Mohinder Kaur, legal heir of late Shri Taranjit Singh, therefore, no block assessment order could be framed in this case. It would, therefore, show that technically, the addition has been deleted in the case of Shri Taranjit Singh by quashing the block assessment proceedings but the finding of fact recorded by the Revenue Department would remain same that Shri Taranjit Singh disclosed the fact of receipt of Rs.2.50 Cr from the assessee company in his books of account. Therefore, the finding given by the Assessing Officer in the block assessment that the entire money was of Shri Taranjit Singh routed through the name of the assessee company in his business remain unchallenged and as such Revenue Department cannot take a somersault in the case of the assessee for the purpose of re-opening of the assessment or to make addition on substantive basis later on.

26. We may note here again that the Assessing Officer in the case of the present assessee, first passed the assessment order under Section 148/143(3) on 30.02.2005 for assessment year 2000-01 and no block assessment order was passed by that date in the case of late Shri Taranjit Singh, therefore, passing of the protective assessment in the case of assessee company would also support our finding that the Assessing Officer was having no reason to believe that income chargeable to tax has escaped assessment in the case of assessee company, otherwise, Assessing Officer would not have made the protective assessment in the case of the present assessee company. The decisions relied upon by Id. counsel for the assessee, as reproduced above, clearly support the

case of the assessee that it is not a fit case of re-opening of the assessment on the facts and circumstances of the case for merely making protective assessment in the hands of the assessee. Re-opening of assessment would be bad in law. The decision cited by Id. DR would not support case of revenue.

27. Considering the totality of the facts and circumstances of the case, noted above in the light of the material on record, we are of the view that Assessing Officer has not applied his mind to the information received from ADIT (Investigation) and he was having no tangible material with him to form his belief that income chargeable to tax has escaped assessment. Rather, there was no material available with the Assessing Officer to form his belief that income chargeable to tax has escaped assessment in the case of the assessee company. There was no reason to believe that income chargeable to tax has escaped assessment. The opening of the assessment has, thus, not been done validly in accordance with law. The reopening of assessment is bad in law. We, accordingly, set aside the orders of authorities below and quash the re-opening of the assessment under Section 147/148 of the Income Tax Act.”

26. The Tribunal for examining the issue of reopening, viz. satisfaction of the jurisdictional preconditions and ‘reasons to believe’, has referred to the block assessment order passed under Section 158BC of the Act in the case of Ms. Mohinder Kaur, dated 28th August, 2005 (see paragraph 22 of the impugned order). Referring to the statement of Bharat Bhushan Goyal, Director of the respondent-assessee, it was opined that Taranjit Singh was his friend and wanted to take control of the respondent-assessee but formalities had not been completed. Taranjit Singh had started selling and liquidating the investments of company, for which original certificates and transfer deeds were given to him. Bank account in the name of respondent-

assessee was opened in the Bank of Baroda and was operated in consultation with Taranjit Singh. Investments were sold with intent to make the respondent-assessee a partner in his liquor business. The Assessing Officer had passed protective assessment orders, with intent to tax the entire amount on substantive basis in the hands of Taranjit Singh & Co. This was done through block assessment order passed against the legal heir of Taranjit Singh.

27. The aforesaid findings, we would observe, are completely against the principles applicable to Section 148 read with Section 147 of the Act, for the following reasons:-

(A) Return filed for the Assessment Year 1999-2000 was processed under Section 143(1) and had not been taken up for scrutiny assessment under Section 143(3).

(B) 'Reasons to believe' for the Assessment Year 1999-2000 were recorded on 30th March, 2004. The block assessment order in the case of Ms. Mohinder Kaur as legal heir of Taranjit Singh was passed on 22nd August, 2005, i.e. more than a year after the 'reasons to believe' were recorded.

In these circumstances, the findings in the block assessment order; or that substantive addition was made in the case of Taranjit Singh & Co. and protective addition was made in the case of the respondent-assessee vide Assessment Order dated 16th March, 2006, were completely irrelevant and not germane for deciding the validity of issue of notice, which has to be determined and decided on the basis of the facts as they existed when the notice under Section 148 read with Section 147 of the Act was issued.

Validity of the “reason to believe” cannot be examined on basis of findings on merits in the assessment order, appellate orders in the case of respondent-assessee or the block assessment order or appellate orders in the case of M/s Taranjit Singh & Co. Furthermore, income must be taxed and assessed in the hands of the right person, notwithstanding another person had been 'wrongly' subjected to tax or had declared and paid tax on the income.

28. Legal principle applicable where return of income is processed and not subjected to regular/scrutiny assessment was examined and settled by the Supreme Court in *Assistant Commissioner of Income Tax versus Rajesh Jhaveri Stock Brokers Private Limited*, (2008) 14 SCC 208 in the following words:-

“**15.** In the scheme of things, as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under Section 143(1)(a) as it stood prior to 1-4-1989, the assessing officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the legislature i.e. to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain, J.) in *Apogee International Ltd. v. Union of India* [(1996) 220 ITR 248 (Del)] .

16. It may be noted above that under the first proviso to the newly substituted Section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an

intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any assessing officer, but mostly by ministerial staff. Can it be said that any “assessment” is done by them? The reply is an emphatic “no”. The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise.

29. This ratio was reiterated in ***Deputy Commissioner of Income Tax and Another versus Zuari Estate Development and investment Company Limited***, (2015) 15 SCC 248 observing that an order under Section 143(1) is not an Assessment Order by which the Assessing Officer forms an opinion on merits. Hence, principle of change of opinion is not applicable in such cases.

30. In ***Rajesh Jhaveri Stock Brokers Private Limited (supra)***, the Supreme Court emphasis that the word 'reason' in the phrase 'reason to believe' would mean cause or justification. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the question of escapement by legal evidence or conclusion. Escapement is a matter to be finally decided when the Assessment Order under Section 147 read with Section 143(3) of the Act is passed. Reliance was placed on earlier decision of the Supreme Court in ***Central Provinces Manganese Ore. Company Limited versus I.T.O., Nagpur***, (1991) 191 ITR 662 (SC) wherein it has

been observed that at the stage of initiation, the final outcome of the proceeding is not relevant. The requirement at the initiation stage is "reason to believe" and not the established fact of escapement of income. Further, at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief as was recorded by the Assessing Officer. Whether or not the material would conclusively prove escapement was not the concern at that stage. The mandate of Section 147 of the Act, when it uses the word 'reason to believe' is that the belief must be that of an honest and reasonable person based on reasonable grounds and not mere suspicion, gossip or rumour. In other words, the basis in the formation of opinion for re-opening should not be wholly vague, indefinite, far-fetched and remote. At the same time, adequacy or sufficiency of reason, as distinct from existence or relevance, cannot be investigated and made subject matter of challenge in appellate or writ proceedings. Satisfaction of the Assessing Officer on the 'reason to believe' is subjective. Such satisfaction can be challenged on the ground of irrelevance of the reasons in the sense that the reasons indicated must have live nexus between the knowledge of the Assessing Officer and formation of belief and not on merits, for formation of belief by the Assessing Officer falls within the domain and realm of subjective or personal satisfaction of the Assessing Officer.

31. We would now refer to the statement of Bharat Bhushan Goyal, Director of respondent-assessee recorded by the Deputy Director (Inv.) Chandigarh on 3rd September, 2002, which reads as under:-

“I state on oath that I am founder Director of M/s Shubh International Limited, SCO 1104-05. Sector 22-B, Chandigarh. This company was incorporated 1990-91.

The company was incorporated with the intention of manufacturing egg trays. However, this business could not be started. The other directors in this company were Sh. Kewal Krishan s/o late Sh. Satparkash, my friend & Sh. Harmesh Jain s/o Sh. Ram Prakash. Initially, the Directors contributed about one lac and purchased land in village Haripur, Distt. Panchkula near Shubh Poultry Farm Ltd. This land is still in the name of company. The total area of land was about 2 acres. So far this land has not put to any use. For one year, we tried to have crops from this land but due to non-availability of water and the flow of rainwater on this land, we were not successful. After about three-four years, we made further investment in this company. This investment was by promoters i.e. myself, Kewalkrishan and our Friends & relations. So far, I recollect Mr. Harmeshdisa associated himself from the company. In December, 1996, Public issue of this company was floated. This issue was for Rs. 95 lacs. Before this issue promoters have further contributed towards equity of the company. List of the shares held by the promoters at the time of public issue is produced/filed. This issue was fully subscribed. The list of share holders as on today is also produced and filed.

Myself, Sh. Kewal Krishan and Sh. Sunil Gupta C.A. are the present directors of the Company. Sunil Gupta, was taken as Director in 1996 at the time of public issue of the company. Sh. Sunil Gupta is not holding any share in this company.

Since, the project of manufacturing of egg tray did not materialized, the company started making inter-corporate investments. List of main investments produced/filed. In the inter-cooperate investments company was not having any income Sh. Taranjit Singh, who was my friend offered me to have control of this company. He promised me to pay for my investments in this shares of this company.

Legally this formality was not completed but he started controlling the affairs of the company. He sold/liquidated the investments of this company.

Myself, Kewal Krishan Goel handed over the original share certificates along with signed transfer deeds to Taranjit Singh for disposing of the same. For this, a bank account was opened with Bank of Baroda, Civil Lines, Ludhiana which was operated by the Directors of the company in consultation with Sh. Taranjit Singh.

How he manages to sell the investments is not known to me as I or Kewal Krishan were not associated with these transactions.

It may be informed here that the market value of shares held by this company was negligible, as these company were not paying any dividend since our investments. For this reason also we wanted to get rid to this company and handed over the control of this company to Sh. Taranjit Singh informed me that he is going to make this company as a partner in his liquor business. For this, he might have got some papers/documents signed from me or sh. Kewal Krishan. But, actually we have not knowledge of this business activity.

Sh. Taranjit Singh expired in the month of April, 2000. At that time, the account books and other documents were incomplete. On the basis of vouchers/documents available in the office of the company. We got the books completed. This we have to do as legally, we were answerable for all legal actions of the company. In the books of accounts, entries were made as per vouchers, we cannot guarantee the correctness, genuineness of the vouchers supplied by Sh. Taranjit Singh, I say with guarantee that I have not gone to any broker for the sale of investment in the form of shares held by M/s Shubh International Ltd. It was Sh. Taranjit Singh only who sold/disposed off these investments. Sh. Taranjit Singh expired in April, 2000. So far we have not received any amount either from Sh. Taranjit Singh or from his legal

heris. We are still pursuing the matter with Smt. Mahinder Kaur for payment of our investments. It may be stated here that Sh. Taranjit Singh did not negotiated any amount for payment on account of investments by promoters in the company. We also did not press for the negotiation of the price to be paid by Sh. Taranjit Singh as the value of the investments of the company was nominal and not known at that time.

Q. What do you know about the business activity of S. Taranjit Singh and how he came in your contact?

A. I know that Sh. Taranjit Singh was a liquor contractor in Chandigarh. We knew each other for the last 7-8 years. Since, I have not pulling on well in my business, he, in order to help me suggested taking over the control of my company namely M/s Shubh International Ltd. I have no other knowledge about his other business.

Q. You have stated that you are not pulling on well in your business but the investment held by M/s Shubh International Ltd. are reported to have been sold for more than 2 crores. If Sh. Taranjit Singh could sell these investments you could have also encashed it and there would not have any financial constraints on you. What you have to say about this?

A. As stated earlier, the value of investments of the company was reducing day by day. I do not know how Sh. Taranjit Singh could manage to encash these investments for more than two crores. Since the value of investments was not worth the liabilities of the company. I being the promoter director was worried about my responsibility towards share holder. Handing over the control of this company to Sh. Taranjit Singh have proved worst as the company has almost lost everything as nothing has been paid by Sh. Taranjit Singh or his legal heirs.

Q. What were the investments made by M/s Shubh International?

A. List of main investment is produced/filed.

Q. Presently what are the activities of the company of M/s Shubh International?

A. Presently, there is no business activity. As stated above, Sh. Taranjit Singh took over the affairs of the company in 1999 and after his death nothing is left of the company. Hence, no business activity is going on.

Q. Was Sh. Taranjit Singh authorized by the Board of Directors of the company to take control of the company and to sell the investment of the company?

A. Company's Board of Directors passed resolutions for selling the investment. I shall file the copy of the Board's resolution. In the Board's resolution, there was no reference to Sh. Taranjit Singh. Arrangement to sell the investment by Sh. Taranjit Singh was made by me to safeguard my own investment in the company. For this reason, the director of the company had been signing the documents/cheques as desired by Sh. Paramjit Singh. All the investments in the shares was in physical form.

Q. Did you in your personal capacity or in the name of the company receive any profit/income for Sh. Taranjit Singh?

A. The company was made partner in M/s Taranjit Singh and Co. at the profit of Rs. 80,000/- (approx) which was credited to the accounts of the company, which has never been received so far.

Q. What were the investments in Taranjit Singh and Co.?

A. Investment was Rs. 2.10 Cr initially in the month of March 1999 and Rs. 40 lacs was invested in April 1999.

Q. What were the business activities of M/s Taranjit Singh & Co.?

A. As stated earlier, the company was made a sleeping partner hence we did not participate in business activities.

Q. Since the company was making huge investments with M/s Taranjit Singh and Co. What precautions did you take to safeguard the investment?

A. As stated earlier, Sh. Taranjit Singh was to take over the control of the affairs of the company and he managed to sell the investment of the company. This arrangement was mutually agreed upon by me and Sh. Taranjit Singh, therefore, we did not take much interest in the affairs of M/s Taranjit Singh & Co. We came to know about the actual working /profitability on the close of the year and that too after the death of Sh. Taranjit Singh.

Q. I have information that M/s Taranjit Singh & Co was carrying on liquor business at Chandigarh and in Panchkula district during F.Y 1999-2000. As per the record of the Excise Authority of Chandigarh and Panchkula, Sh. Taranjit Singh, Ravinder Kumar and Manoj Kumar were the partners of M/s Taranjit Singh & Co.. M/s International was not shown as partners of the company. What do you have to say about this ?

A. The company was made a partner and a partnership deed was executed. Sh. Taranjit Singh was dealing with the Excise Department. I cannot explain why Sh. Taranjit Singh did not declare the company as a partner with the Excise Authorities.

Q. You have stated that a partnership deed was executed, who were the partners and what was the profit ratio of each partner?

A. Presently, I do not know. I knew Sh. Taranjit Singh and acted as per his directions and signed documents on *behalf* of the company as desired by him. Sh. Kewal Krishnan also used to sign on behalf of the company at my directions, which used to be dictated by Sh. Taranjit Singh.”

32. Shagun Garg, authorized signatory of M/s Usha Garg and Company, Ludhiana in his statement had stated as under:-

“Q. Please give the details of shares purchased and sold for Shubh International Ltd., by you i.e. M/s Usha Garg Co. Ludhiana?

A. The detail of shares and purchased and sold have been recorded our ledger account. A copy of which have already been supplied.

Q. In the copy of ledger account supplied by you have not mentioned the ledger folio no./distinctive number, name of the purchaser, mode of payment received from buyer and mode of payment made to the seller in the case of sellers sold of M/s Shubh International Ltd.?

A. The ledger account do not have the above things mentioned. The relevant information i.e. distinctive number of shares sold, name and address of the purchaser, amount detail of commission received on each transaction and mode of payment will be supplied.

Q. How did you sell and buy shares for Shubh International Ltd? did the representative of the company brought the buyer with themselves and ask you to execute the deal?

A. The shares were sold on behalf of M/s Shubh International Ltd. to various persons brought by the representative of the company i.e. Shubh International Ltd. and mediators who deal with us in the sale and purchase of shares. The payment was received in cash from the buyers brought by the representative of the company and the mediators who deal through us. The cash was deposited in my bank account and cheques were issued thereafter to them. This is a common practice to accept cash from the buyers and deposit cash in the bank and issue cheques to the seller after deducting after brokerage.

Q. You have stated above that Shubh International Ltd. was introduced by Sh. Rajan Bheradwaj. Who were the persons introduced to you as the representative of the Shubh International Ltd. who had been delivering the shares to you and collecting cheques from you. Who had

been handing over the cash on behalf of the purchaser which was deposited by you: in your bank?

A. I do not remember dire name of the persons representing M/s Shubh International Ltd.. My dealing with them was simple. They have been bringing cash to me alongwith persons claimed to be buyers and introduced by the representatives/mediators. Again, I wantto clear that cash was brought by the persons claimed to be buyers and brought by the company representatives/mediators. I have already stated that the names of the persons delivering the shares and collecting the cheques is not remembered. The modus operandi was for all the transactions done for and on behalf of Shubh International Ltd.”

(The Assessing Officer had re-examined Shagun Garg on 11th March, 2005 who had reconfirmed the factual position stating that he did not know the name of the persons representing the respondent-assessee. In spite of the undertaking and promise to furnish and supply distinct number of shares, name of companies from whom the shares were purchased etc, these were not furnished.)

33. Hari Krishan Punni, authorized signatory of M/s Ess Arr and Company, Ludhiana in his statement recorded on 20th August, 2002 had stated:-

“Q. Please give the detail of size of the deal you had made with Shubh International Ltd. during last 3-4 years?

A. We had sold and purchased shares for M/s Shubh International Ltd. for about 90 lacs during the last four years. We have already furnished you the account of above company. Giving all the details of size of above transactions.

Q. How did you buy/sell shares for concern M/s Shubh International ltd. Who use to visit you for delivery of

shares and get payments on behalf of the company when shares are sold to you. What was the mode of payment i.e. cash or cheques?

A. The representative of the company i.e. M/s Shubh International Ltd, use to come and give order frequently in the year 1998 for the sale/purchase of shares. The procedure for the sale of shares is firstly representative places the orders for purchase of shares which is written in a register i.e. day book. When we execute the order then the delivery of shares is made to us and we made the payment within a stipulated period of 12-15 days of the execution of the deal. We usually made the payments by cheque but when the amount is Rs.20,000/- or less it was made also in cash.

Q. You have stated above that representative of the company i.e. Shubh International Ltd. use to visit you for sale/purchase of shares. Please give the names and addresses of these representatives who visited you on behalf of the company?

A. At present, I am unable to give you the names and addresses of the persons who use to visit me. I will check up my records and submit the same.

Q. In the copy of ledger account supplied by you. You have not mentioned the ledger Folio no. Distinctive No. Name of the purchaser. Mode of payment received from the buyer and mode of payment made to the seller in the case of shares sold on behalf of Shubh International Ltd.?

A. The ledger account do not have above things mentioned. The relevant information as required by you will be supplied on the next date.

Q. Now did you sell or buy shares for M/s Shubh International Ltd. Did the representative of the company brought the buyer with themselves and asked you to execute the deal?

A. The shares were sold on behalf of Shubh International Ltd. to various persons brought by the representatives who deals with us. I want to make it clear that..... I was directly involved as the transactions of sale/purchase of shares of Shubh International Ltd. were of special kind i.e. of different nature. The representative of the company used to bring buyers in whose names shares were to be transferred. The cash payments were received from the buyers brought by the representatives of the company M/s Shubh International Ltd. The cash brought by these so called buyers were deposited in my bank account and cheques were issued thereafter to the representative of the company M/s Shubh International Ltd.”

34. Sudhir Kumar Sharma, proprietor of S.K. Sharma and Company, Ludhiana, in his statement recorded by the Assessing Officer on 11th March, 2005 had stated as under:-

“Q. As per information available with this office you have sold shares held by M/s Shubh International Ltd. to some other parties. Please state the number of such shares, the names of the companies and Distinct No. of these shares?

A. At present, this information is not readily available with me. I will consult my records and send the same within 3-4 days positively.

Q. Please state the name of the person who approached you to sell the shares held by M/s Shubh International Ltd. during the year 1998-99 and 1999-2000?

A. Some representative of the company contacted me at my office. I do not remember his name as the matter is about three years old.

Q. Please state how you have received the payments of these shares on behalf of M/s Shubh International Ltd.?

A. At present, I cannot tell anything about these transactions. I will consult my records and send the reply accordingly.”

35. In addition to the statements, the Assessing Officer had details of the credit entries i.e. investment made by the respondent-assessee of Rs.2.10 crores with M/s Taranjit Singh & Co. The aforesaid evidence and material was available with the Assessing Officer when he had recorded the 'reasons to believe'.

36. The impugned order passed by the Tribunal does not dispute the evidence and material, albeit holds that this material was not tangible for the three brokers did exist and it was known that the source of deposit in the bank account was a sale of shares/investments. No information was received by the Assessing Officer from the Investigation Wing that the respondent-assessee had received accommodation entry (see paragraph 25(i) of the impugned order). The aforesaid rationale is incorrect, for whether or not any accommodation entry was received has to be inferred and concluded from the facts by the Assessing Officer, and not by a third person. It is the subjective opinion formed by the Assessing Officer that has to be tested on the principle of an honest and reasonable person. In this case, the stock-brokers had elucidated on the sham and bogus nature of the share transaction i.e., investment and sale of worthless shares which was done through unknown persons who were the respondent-assessee's representatives, and other facts accepted and admitted in the statements which were recorded by the Investigation Wing.

37. Similarly, paragraph 25(ii) of the impugned order proceeds on wrong premise that when the block assessment order in the case of Ms. Mohinder

Kaur was quashed on the technical ground that addition of Rs. 2.5 crores could not have been made in the block assessment proceedings, re-opening under Section 147 read with Section 148 of the Act would not be justified, for the entire money of Taranjit Singh was routed through the respondent-assessee or the Revenue could not take a 'somersault' for the purpose of re-opening assessment or make addition on substantive basis later on. This reasoning is wrong and fallacious being contrary to law, for appellate orders in the case of Ms. Mohinder Kaur had not been passed when the 'reason to believe' in the case of respondent-assessee were recorded. The 'reason to believe' recorded cannot be set aside on the basis of the appellate order in the case respondent-assessee making substantive addition instead of protective additions made in the assessment order. Question of 'somersault' does not arise when protective addition made into substantive addition.

38. We, at this stage, reproduce the findings of the Tribunal in paragraphs 28 to 30, which read as under:-

“28. It may also be noted here that the assessee explained that investments/shares have been sold by the assessee company through three brokers. The brokers in their statements have confirmed selling the shares/investments on behalf of the assessee company. They have also confirmed giving of sale consideration through banking channel to the assessee company in their statements. The existence of brokers not disputed. The assessee proved identity of brokers and their creditworthiness and genuineness of transaction. The assessee proved source of money deposited in their bank account on account of sale of shares/investments. It is not a case of A.O. that despite sale of shares/investments, assessee still possessed and controlled the same shares/investments. The Assessing Officer did not record anywhere in the assessment order if these statements

recorded by DDIT (Investigation) of the brokers have been supplied to the assessee for the comments of the assessee and whether assessee has been given any opportunity to cross-examine these brokers. In the absence of any evidence or material on record, it is difficult to believe that assessee has been given any opportunity to cross-examine the statements of these three brokers on behalf of the assessee. Therefore, when these brokers have confirmed selling the shares on behalf of the assessee company and giving sale consideration through banking channel to the assessee company and their statements are not adverse in nature against assessee, but in the absence of giving right of cross-examination of their statement, their statements cannot be read in evidence against the assessee on certain points which have been considered by Assessing Officer to be adverse in nature. We rely upon decision of Hon'ble Supreme Court in the case of Kishan Chand Chela Ram (supra).

29. It may also be noted here that Assessing Officer has recorded two statements in both assessment year as per assessment order but Assessing Officer has not recorded any fact if assessee has been allowed to cross-examine these brokers at assessment stage. Therefore, on the same analogy, even if their statements are not adverse in nature against assessee but same cannot be read in evidence against the assessee for the purpose of making addition. It may also be noted here that Assessing Officer himself has mentioned in the assessment order that sale consideration and source of giving advance to M/s Taranjit Singh & Co., Chandigarh is the amount received through three brokers through banking channel, therefore, Assessing Officer cannot ask the assessee to prove source of the source. The Assessing Officer has also not brought any evidence on record that despite selling the investments through the brokers, assessee company was still having ownership and possession over the same investments held by the assessee company. These facts and material on record clearly suggest that assessee

genuinely sold the investments/shares through three brokers and received the sale consideration through banking channel. Therefore, such consideration could not be treated as undisclosed unaccounted income of the assessee.

30. Considering the facts and circumstances of the case in the light of the material, evidences on record and above discussion, we are of the view assessee has been able to prove that it has received the sale consideration on account of sale of shares/investments and has genuinely entered into the bank account. Therefore, no addition against the assessee could be made. We, accordingly, set aside the orders of authorities below and delete the addition of Rs.2.10 Cr converted by Id. CIT (Appeals) on substantive basis.”

39. There is a contradiction in the findings recorded in paragraphs 23 to 27 in the impugned order and what has been recorded in paragraphs 28 to 30. In paragraphs 23 to 27 the Tribunal accepts and holds that Taranjit Singh was responsible and the addition was assessable in his hands as undisclosed income. In paragraphs 28 to 30, the Tribunal, in fact, upholds and accepts that the investment was genuine and valid. We shall deal with the findings in Para 27 to 30 while examining question no. 2. Question No. 1 is accordingly answered in favour of the appellant/Revenue and against the respondent/assessee.

Question No.1, ITA No. 75/2017 (AY 2000-01).

40. Order passed by the Tribunal does not record and exact the 'reason to believe' and without reproducing and examining the same, holds that following the reasons given for the Assessment Year 1999-2000, they would quash the reopening of the assessment under Sections 147 and 148 of the Act and also delete the addition of Rs.40 lacs made by the Commissioner of

Income Tax (Appeals) on substantive basis. We have already commented upon the reasoning given by the Tribunal on the question of reopening for the Assessment Year 1999-2000. As the Tribunal has not considered and examined the 'reasons to believe' for the Assessment Year 2000-01, we would pass an order of remit for fresh consideration. Question No. 1 is accordingly answered.

Question No.2, ITA No. 74/2017 (AY 1999-2000) & 75/2017 (AY 2000-01).

41. As regards question No. 2 in ITA Nos. 74/2017, we have already pointed out contradiction of the first order of the Tribunal vide paragraphs 23 to 26, 27 and second portion of the order of the Tribunal vide paragraphs 28 to 30.

42. Apart from the said contradiction, we find that the Tribunal has not taken notice of the statements of Bharat Bhushan Goyal, and the three brokers, reproduced in the Assessment Orders, on the ground that there was violation of principles of natural justice. The reason given was that the Assessment Orders do not record that the assessee had been allowed to cross examine the brokers at the assessment stage. An adverse presumption has been drawn to affirmatively believe and hold that the respondent-assessee was not given opportunity to cross examine or was denied the right to cross examine because the Assessment Order did not record that such opportunity was granted. The presumption is wrong and perverse. The finding, in fact, ignores the grounds of appeal reproduced in the order of the Commissioner of Income Tax (Appeals) dated 19th September, 2008, which read :-

“1. That assessment order is against law and facts on the file in as much as the Ld. Income Tax Officer, framing assessment was not justified to make an arbitrary addition

of Rs. 2.10 crores, although on protective basis on the ground that three brokers namely M/s S.K. Sharma & Company, Ms. Usha Garg & Chemical and M/s EssArr& Company have given accommodation entries to the appellant Company whatever amounts has been received were on account of sale proceeds of shares made through them.

2. That action of the Ld. Assessing Officer in recalling to provisions u/s 148 is had in law.”

43. The assessee had not raised a specific ground that they were not furnished statements on oath or were denied opportunity to cross-examine the brokers. The Assessment Order specifically refers to the failure of the stock brokers to produce relevant documents/papers. Assessing Officer had not only relied upon the statements recorded by Deputy Director (Inv.) but had also himself recorded the statement of Shagun Garg on 11th March, 2005. The Commissioner of Income Tax (Appeals) had similarly recorded the statement of Hari Krishan Punni on 27th February, 2008 during the pendency of the appeal. Relevant facts noticed in the assessment order, statement an oath etc. have been passed over and overlooked.

44. In view of the aforesaid discussion, we would answer the substantial question of law No. (2) framed in ITA No.74/2017, relating to Assessment Year 1999-2000 in favour of the appellant-Revenue and against the respondent-assessee, albeit, with an order of remand to the Tribunal to decide the issues raised on merits after duly taking into account all facts and circumstances recorded by the Assessing Officer and the first Appellate Authority. The decision would be taken afresh without being influenced by the impugned order or present judgment. We have passed an order of remand on question No.(2) in the present ITA relating to Assessment Year

1999-2000 in view of the remand order in ITA No.75/2017 passed in respect of question No.(1). Question No.(2) in respect of ITA No.75/2017 is also accordingly answered in the manner indicated above with a direction to the Tribunal to decide the question afresh on merits.

45. The appeals are accordingly disposed of, with no order as to the costs. Parties would appear before the Tribunal on the 12th of March, 2019, when a date of hearing would be fixed.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

JANUARY 15th, 2019
MR/VKR

न्यायमेव जयते