

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2760 OF 2019

Jainam Investments)
No.11-A, 5th Floor, Rockside Apartment,)
A-Wing, Walkeshwar Road, Walkeshwar,)
Mumbai – 400 006)Petitioner

V/s.

1. Assistant Commissioner of Income Tax,)
Central Circle – 8 (1), Mumbai,)
Aayakar Bhavan, Maharishi Karve Road,)
Mumbai – 400 020)
2. Additional Commissioner of Income)
Tax, Central Range – 8, Mumbai,)
Aayakar Bhavan, Maharishi Karve Road,)
Mumbai – 400 020)
3. Union of India)
through the Secretary, Department of)
Revenue, Ministry of Finance,)
Government of India, North Block, New)
Delhi – 110 001)Respondents

Mr. Madhur Agrawal a/w. Mr. Fenil Bhatt i/b. Mr. Atul Jasani for petitioner.
Mr. Suresh Kumar a/w. Ms. Mohinee Chougule and Mr. Rahul Dubey for respondents.

**CORAM : K.R.SHRIRAM, &
ABHAY AHUJA, JJ
DATED : 24th AUGUST 2021**

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 Since pleadings are completed, we decided to dispose of this
petition at the admission stage itself.

Rule.

Rule made returnable forthwith.

2 Petitioner has approached this Court aggrieved by a notice dated 11th October 2018 under Section 148 of the Income Tax Act, 1961 (the said Act) by which respondent no.1 has decided to reopen the assessment for the Assessment Year 2014-2015. Petitioner is also challenging the order dated 28th September 2019 passed by respondent no.1 rejecting the objections raised by petitioner to the notice issued under Section 148 of the Act.

3 Petitioner is a partnership firm engaged in the business of trading in shares and securities. For the Assessment Year 2014-2015, petitioner filed its income tax returns on 27th September 2014. In the income tax returns, petitioner has provided particulars of each loan or deposit taken exceeding the limit specified in Section 269SS and 269T during the previous year. The particulars are contained in the annexures submitted with the returns.

4 Petitioner received a notice dated 28th July 2016 under Sub-Section 1 of Section 142 of the Act calling upon petitioner to produce or cause to be produced the accounts and/or documents specified at Annexure 'A' to the said notice. Annexure 'A' contained 14 items on which information was called for but what is relevant to this petition are the information sought at serial no.6 and serial no.12 in the Annexure 'A' and it reads as under :

6. Other Liabilities :- Details of Unsecured loans/deposits taken, whether squared up or not, in the following format. Also furnish confirmations from loan creditors showing PAN,

names and designations of their assessing officers, copy of account and furnish bank statements reflecting the receipt/repayment of loan.

*12. Please furnish reconciliation of **AIR information (Copy enclosed)** along with supporting evidence, thereof and reconciliation of TDS claimed as per certificates and the income offered in the P&L account.*

5 By its Chartered Accountant's letter dated 8th August 2016 petitioner gave details regarding all unsecured loans that is pertaining to item 6 quoted above. The list contained 58 entries and it gave the names of the entities from which the loan was taken alongwith its PAN number, address, opening balance, amount accepted, amount repaid, closing balance as on 31st March 2014, interest accrued/paid and TDS on interest. Petitioner has also annexed copies of the income tax returns filed by all those 58 entities. Ofcourse in the petition only certain specimen income tax returns have been annexed. Subsequently, petitioner, by its Chartered Accountant's letter dated 14th December 2016, gave details/reply regarding item 12 quoted above, i.e., annual information report of Shreenath, which for ease of reference is referred to as penny stock company.

Thereafter, an assessment order dated 20th December 2016 was passed by which respondent no.1 held that petitioner had taken accommodation entries of fresh bogus loan from the following entities :

1	M/s. Jewel Diam	8	M/s. Pushpak Gems
2	M/s. Kothari & Co.	9	M/s. Sonam Gems Pvt. Ltd.
3	M/s. Maan Diamonds	10	M/s. Meenakshi Diamonds P. Ltd.
4	M/s. Malhar Exports	11	M/s. Mahalaxmi Diamonds P. Ltd.
5	M/s. Manas Gems Pvt. Ltd.	12	M/s. Abhiman Gems Pvt. Ltd.

6	M/s. Parvati Exports	13	M/s. Sankhala Properties Pvt. Ltd.
7	M/s. Pankaj Exports		

Respondent no.1 concluded that these entities are dummy concerns being managed and operated by one Bhanwarlal Jain and that they are used as conduits for providing accommodation entries of loans and advances to various beneficiaries. In the order, respondent no.1 even relied upon reports of search on Bhanwarlal Jain group and came to a conclusion that a total outstanding balance amount of Rs.8,75,00,000/- as on 25th February 2014, which petitioner has shown as a loan from the 13 entities mentioned above, should actually be added to the total income of petitioner. In other words, respondent no.1 disallowed a sum of Rs.8,75,00,000/- being maximum outstanding loan balance as on 25th February 2014 under Section 68 of the Act and brought that amount to tax. Respondent no.1 also disallowed certain amounts shown as interest and also commission paid on these loans. Respondent no.1 added a total sum of Rs.9,01,20,042/- to the total income of petitioner. Respondent no.1 did not deal with the notice issued regarding penny stock company and the reply that was received from petitioner with regard thereto.

6 Aggrieved by this order of respondent no.1 adding a sum of Rs.9,01,20,042/- to its total income, petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [CIT (Appeals)]. The CIT (Appeals), by an order dated 6th November 2017 allowed petitioner's challenge to the

assessment order. The CIT (Appeals) relied upon the orders passed in petitioner's case for Assessment Year 2012-2013 and Assessment Year 2013-2014 where it is observed that petitioner had done everything in its power to prove the satisfactory nature of the loan transactions by providing PAN details of creditors, constitution and address of the creditors, particulars of income tax returns filed by the creditors, confirmatory letters given by the creditors, audited financial accounts (including balance sheet) of the creditors, relevant bank statements of the creditors, details of interest paid to the creditors and details of TDS deducted and paid. The CIT (Appeals) had held that the onus thereafter shifted to the Assessing Officer and if the Assessing Officer was still not satisfied, he had the option of making inquiries from the alleged lenders by summoning them. But as seen from the assessment order, nothing of that kind was done. The CIT (Appeals) also had held that if the Assessing Officer was not satisfied with what had been given to him by petitioner, he was duty bound to specify what more material he wanted petitioner to furnish, which was never asked. The CIT (Appeals) held that no cogent material was adduced to show that those loans were unexplained and the loans regarding those 13 entities should be treated as explained satisfactorily. The CIT (Appeals) had finally concluded that the assessment order has to fail because reliance was made on inadequate evidence, failure to make incriminating material like reports, statements etc. forming basis for action by the Assessing Officer was not made available, petitioner was not given due opportunity to cross examine

witnesses whose statement have been relied upon and finally failure to recognise the satisfactory nature of the explanation/evidence tendered by petitioner to explain identity of creditors, creditworthiness of the creditors and the genuineness of the loan transactions. The facts of the case for Assessment Year 2014-2015 being similar, CIT (Appeals) in its order concluded *“The facts of the present appeal are similar to the facts in appellant’s own case in AY 2012-13 and AY 2013-14. Respectfully following the various judicial pronouncements cited by the appellant in its submissions dated 04.09.2017, and also appellate orders in the assessee’s own case for AY 2012-13 and AY 2013-14, as reproduced above, I hold that the Appellant had explained the identity of loan creditors, their creditworthiness and genuineness, with necessary documents and has discharged its onus of proving the credits. The AO has failed to discharge his duty of rebutting the evidences produced by the appellant and also failed in bringing on record any assessee specific evidence to prove his case. Hence, the AO was not justified in making addition u/s. 68 of the Act, of unsecured loans aggregating to Rs.8,75,00,000/- taken by the appellant from various parties belonging Bhanwarlal Jain Group by treating the same as bogus or non-genuine”*.

Revenue, unhappy with this order of the CIT (Appeals), challenged it before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal by its order pronounced on 8th February 2019, dismissed the appeal of the Revenue. We are not made aware of any appeal filed

challenging this order of the Income Tax Appellate Tribunal.

7 Before the order was passed by the Income Tax Appellate Tribunal, respondent no.1 issued a fresh notice dated 11th October 2018 under Section 148 of the Act stating that he had reasons to believe that petitioner's income chargeable to tax for the Assessment Year 2014-2015 has escaped assessment within the meaning of Section 147 of the Act. In the reasons for reopening, respondent no.1 after mentioning about the loan taken by petitioner from the 13 entities mentioned in paragraph 5 above simply says :

"In addition to the above loans, there are certain other loans taken by M/s. Jainam Investment from the concerns owned by Shri Rajesh Jain and Shri Manish Jain (the sons of Shri Bhanwarlal Jain) which are controlled directly or indirectly by Shri Bhanwarlal Jain. The details of such concerns that have provided said bogus loans to M/s. Jainam Investments are as under :

Sr. No.	Name of the entities	Amount (in Rs.)
1	Manav Diamonds Pvt. Ltd.	49,00,000
2	Rama Exports	1,50,00,000
3	Smata Exports	1,20,00,000
4	Saroj Diamonds	1,00,00,000
5	Yash Exports	51,00,000
	Total	4,70,00,000

Respondent no.1 further states that petitioner has traded in the script of Shreenath (incorrectly mentioned as Shrenth), which is a penny stock company and is a beneficiary to gain the bogus short term capital loss in the sum of Rs.2,91,61,107/-. Respondent no.1 concludes that he was

satisfied that an action under Section 147 is warranted by the reason of the failure on part of the petitioner to disclose fully and truly all material facts and hence, it is proposed to reopen the assessment for the Assessment Year 2014-2015 under Section 147. The satisfaction is contained in the last paragraph of the reasons to believe, which reads as under :

In view of the above and taking into consideration the contents of statement on oath recorded u/s. 132 (4) of the Income Tax Act, 1961 of Shri Bhanwarlal Jain dated 11.10.2013 regarding the assessee's indulgence in the acceptance of accommodation entries from entities operated by Bhanwarlal Jain and family concerns mentioned supra and also having regard to the unscrupulous activities of Bhanwarlal Jain Group of entities. Information received from the Kolkata Investigation Wing regarding dealing in penny stocks and creating fictitious profits/losses to reduce the tax liability; the undersigned has reason to believe that the income chargeable to tax has escaped assessment at least to the extent of Rs.20,16,61,106/- in the case of the above mentioned assessee within the meaning of Section 147 of the Income Tax Act, 1961. Further, I am satisfied that an action u/s 147 is warranted by the reason of the failure on part of the assessee to disclose fully and truly all material facts. Accordingly, the assessment for A.Y. 2014-15 is proposed to be reopened u/s 147 by issue of notice u/s 148 of the Act".

8 Petitioner replied to this notice by a letter dated 12th November 2018. Main grounds, among many other, taken are that reassessment is proposed (a) merely on account of change of opinion and (b) there is no fresh tangible material to come to a different conclusion. During the course of arguments, Mr. Agrawal submitted an additional ground that there was total non-application of mind both by respondent no.1 in recording the reasons for initiating proceedings under Section 147 of the Act and by Additional CIT in granting the approval. We shall discuss with that later.

9 Dealing with the reopening for the five allegedly bogus loan transactions, Mr. Agrawal submitted (a) it is settled law that reassessment proposed merely on account of change of opinion is not permissible; (b) review in the garb of reassessment is absolutely prohibited and the Courts have consistently held that reassessment cannot be allowed in such situation of change of opinion; and (c) presence of fresh tangible material is a *sine-qua-non* for a valid reassessment. According to Mr. Agrawal, the statement of Mr. Bhawarlal Jain is the sole basis for the proposed addition that was recorded on 11th October 2013. The statement of Mr. Hemal Jhaveri recorded in survey proceedings, post the search on Bhanwarlal Jain group was also recorded on 16th October 2014 and 18th October 2014. The original assessment, after considering all these material, was completed on 20th December 2016 and therefore, it is clear that all the material, which are being considered now, were also considered at the stage of original assessment and there is absolutely no fresh tangible material available with the department which can lead to a different conclusion. Mr. Agrawal submitted that alongwith the annual returns, details of the loans taken by these five companies have also been given in response to the first show cause notice dated 28th July 2016, list of 58 companies with all details have been provided including annual returns etc. and these have been factually confirmed in the order passed by the CIT (Appeals) and there is nothing to conclude that there was failure on the part of petitioner to disclose fully and truly all material facts.

10 Relying upon the judgment of this Court in *Aroni Commercial Ltd. V/s. Deputy Commissioner of Income Tax 2 (1)*¹, Mr. Agrawal submitted that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. Mr. Agrawal submitted that if the Assessing Officer has considered the objection raised in the grounds for issuing notice under Section 148 of the Act during the original assessment proceedings but has not rejected those objections, the Assessing Officer is deemed to have accepted the objection. On the issue of penny stock company, Mr. Agrawal submitted that explanation was given in the reply to the first show cause notice and in the original assessment order, the Assessing Officer does not even deal with that and therefore, it should be held that he has accepted the explanation. Mr. Agrawal also submitted that even these points are not raised by the Revenue before the CIT (Appeals) and Income Tax Appellate Tribunal. Mr. Agrawal also submitted that in the reason for initiating proceedings, in column 7, respondent no.1 has stated that explanation 2(b) to Section 147 was applicable, whereas what was applicable was 2(c). Mr. Agrawal submitted that explanation 2(b) to Section 147 is where a return of income has been furnished but no assessment has been made, whereas what

1. (2014) 44 taxmann.com 304 (Bombay)

would have been applicable was 2(c) which applies to the case where an assessment has been made but income chargeable to tax has been under assessed. Mr. Agrawal also submitted that in column 8, respondent no.1 has said that the assessment is proposed to be made for the first time, whereas the answer should have been negative. These points were not disputed by Mr. Suresh Kumar. Mr. Agrawal further submitted that in the reason for reopening, in the first paragraph itself, it is mentioned that previous assessment was completed on 20th December 2016 and if only the Additional CIT had read that, he would not have signed the form seeking his approval. Therefore, even the approval has been granted without application of mind, which is one more ground to set aside the reassessment notice and the rejection of the objections raised by petitioner.

11 Mr. Suresh Kumar in response submitted that it was not a change of opinion but new material was obtained. Mr. Suresh Kumar read out the reasons for reopening to submit that fresh material was obtained. Mr. Suresh Kumar also submitted that five entities from whom loans were taken by petitioner are owned by Shri Rajesh Jain and Shri Manish Jain (the sons of Shri Bhanwarlal Jain) and therefore, they are different from the 13 entities mentioned above. Mr. Suresh Kumar submitted that it was the duty of petitioner to disclose fully and truly all material facts and they did not disclose that they have taken bogus entry loans from these five entities. Mr. Suresh Kumar relied upon a judgment of the Apex Court in *Phool*

Chand Bajrang Lal V/s. Income Tax Officer² to submit that it was open to the Assessing Officer to reopen the assessment if he finds that the transactions are found to be bogus and mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be a disclosure of the material facts truly and fully and the ITO would have the jurisdiction to reopen the concluded assessment in such a case. Mr. Suresh Kumar also relied upon a judgment of this Court in **Export Credit Guarantee Corporation of India Ltd. V/s. Additional Commissioner of Income Tax**³ to submit that where the Assessing Officer has tangible material to come to the conclusion that there is an escapement of income from assessment, the power to reopen can be exercised.

12 It is settled law that where the assessment is sought to be reopened after the expiry of a period of four years from the end of the relevant year, the proviso to Section 147 stipulates a requirement that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary is not applicable. Where the assessment is sought to be reopened within a period of four years of the end of the relevant assessment year, the Apex Court in **Commissioner of Income Tax V/s. Kelvinator of India Limited**⁴ has laid down the test of the principle which reads as under :

"Therefore, post 1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" falling which, we are afraid,

2. (1993) 69 Taxman 627 (SC)

3. (2013) 30 taxmann.com 211 (Bombay)

4. (2010) 320 ITR 561

s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an inbuilt test to check abuse of power by the AO. Hence, after 1 st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to s. 147 of the act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in s. 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the AO".

In the case at hand, the assessment is sought to be opened within a period of four years and hence, the proviso to Section 147 of the Act is not applicable.

13 It is also trite that the Assessing Officer cannot reopen an assessment even within a period of four years merely on the basis of a change of opinion. The Assessing Officer has no power to review an assessment which has been concluded. Certainly where he has tangible material to come to the conclusion that there is an escapement of income from assessment, the power to reopen can be exercised. What is tangible is something which is not illusory, hypothetical or a matter of conjecture. In *Export Credit Guarantee Corporation of India Ltd.* (Supra), the Court held

that even a single ground on the basis of which the assessment is sought to be reopened is valid and within jurisdiction, the notice for reopening of the assessment would have to be upheld. That is once a tangible basis has been disclosed for reopening the assessment. But in the reasons to believe in the present case apart from there being non application of mind as submitted by Mr. Agrawal, with whom we concur, we find not even a single ground is mentioned on the basis of which the assessment is sought to be reopened with regard to the five entities. There is no tangible basis that has been disclosed for reopening the assessment. The Assessing Officer simply states as quoted above *“in addition to the above loans, there are certain other loans taken by M/s. Jainam Investment from the concerns owned by Shri Rajesh Jain and Shri Manish Jain (the sons of Shri Bhanwarlal Jain) which are controlled directly or indirectly by Shri Bhanwarlal Jain”*. This was always available with the Assessing Officer when the earlier assessment order was passed. Infact as noted earlier, in response to the annual returns, in reply to the notice issued under Sub-Section 1 of Section 142 of the Act, all details of the 58 entities including these five have been provided. Even in the statement of the representative of petitioner recorded on 18th October 2014 under Section 131 of the Act, the representative has disclosed about the unsecured loans taken by petitioner from Shri Rajesh Jain and Shri Manish Jain (the sons of Shri Bhanwarlal Jain). It will be useful to reproduce question no.35 and answer thereto :

Q. 35. Apart from the concerns mentioned in Q. No.14 above,

are there any other concerns of Shri Bhanwar Lal Jain from which M/s. Jainam Investments has also taken unsecured loan? Please provide the years-wise details of loan taken from such parties.

Ans. Apart from the concerns mentioned in Q. No.14 above, there are certain parties which are introduced to me by Shri Rajesh Jain and Shri Manish Jain son of Shri Bhanwarlal Jain from whom unsecured loan has been taken. The details are as follows :

Sr. No.	FY.	Name of party	Amount of loan taken
2	2010-11	Money Diam	2,00,00,000
		Total	2,00,00,000
1	2011-12	Manav Diamonds Pvt. Ltd.	1,00,00,000
2	2011-12	Money Diam	50,00,000
3	2011-12	Royal Diamond	1,00,00,000
		Total	2,50,00,000
1	2012-13	Money Diam	80,00,000
2	2012-13	Royal Diamond	3,30,00,000
		Total	4,10,00,000
2	2013-14	Manav Diamonds Pvt. Ltd.	49,00,000
4	2013-14	Rama Exports	1,50,00,000
5	2013-14	Samta Exports	1,20,00,000
6	2013-14	Saroj Diamonds	1,00,00,000
7	2013-14	Yash Exports	51,00,000
		Total	4,70,00,000
1	2014-15	Saroj Diamonds	1,19,00,000
2	2014-15	Yash Exports	1,30,00,000
		Total	2,49,00,000
		Grand Total	15,79,00,000

14 Therefore, there is no tangible material which has come to the knowledge of the Assessing Officer while reopening the assessment. Moreover, if one considers the opening paragraphs of the reasons for reopening, it says “A search/survey action u/s. 132/133A of the Income Tax

Act, 1961 was carried out on 25/10/2016 in the cases of JSK Industries Pvt. Ltd., EMI Transmission Ltd. & Karamtara Engineering Pvt. Ltd. and other related group entities (together referred to as JEK group) During the course of Survey action u/s. 133A conducted on 25.10.2016 at the premises of M/s. Jainam Investments accommodation entries in the form of bogus loans in its books from various Bhanwarlal Jain group of entities". These were material available even before the first order was passed because the first order was passed on 20th December 2016. Nowhere in the reasons for reopening, it is mentioned that these tangible materials were obtained or received much after the original assessment order was passed. Moreover, the statement of Bhanwarlal Jain recorded on 11th October 2013 has been relied upon, whereas the original assessment, after considering the statement and all other material, was completed on 20th December 2016. We repeatedly asked Mr. Suresh Kumar to identify the fresh tangible material that was available with the department and the date on which it was received to which there was no answer because it is not stated in the reasons for reopening. Therefore, we cannot accept the reason for reopening with regard to the entries regarding these five entities.

15 As regards the penny stock, in the reason for reopening, it is stated that the Kolkata Investigation Wing have analyzed the trade data and there are 13 penny stocks in which it was conclusively ascertained that petitioner is found to be involved in trading of these scripts and is a beneficiary to gain the bogus short term capital loss and for the Assessment

Year 2014-2015 the name of the script Shrenth (it should be Shreenath). In the first show cause notice, respondent no.1 has called upon petitioner to provide information related to penny stocks and gave the name of Shreenath. In its reply dated 14th December 2016, petitioner has provided all details including submission of transactions recorded in the annual information report in the script of Shreenath. The assessment order does not deal with these submissions nor the first assessment order referred to any penny stock. In the reasons for reopening, it is not respondents' case that in the original assessment order it was missed out. The reasons for reopening of assessment, as held in *Aroni Commercial Ltd.* (Supra), has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice. No such tangible material is disclosed in the reasons for reopening. Assessing Officer simply says Kolkata Investigation Wing have analyzed the trade data of identified 84 penny

stocks and concluded that most of the purchases in penny stocks on abnormally higher rate are being done by these paper companies and one of those penny stock is Shreenath in which petitioner was found to be involved in trading. This is far too general. In the case of *Phool Chand Bajrang Lal* (Supra), on which Mr. Suresh Kumar relied upon, the I.T.O. Azamgarh, subsequent to completion of the original assessment proceedings, received a confidential communication from the I.T.O., Calcutta based on a request made by the I.T.O. Azamgarh. No such material has been identified. Ofcourse, the submission of Mr. Suresh Kumar that there was no true and full disclosure on the facts of the case and therefore, the I.T.O. would have the jurisdiction to reopen the concluded assessment in such a case is not acceptable because as noted earlier, the proviso to Section 147 does not govern a notice for reopening within a period of four years and admittedly, in this case, the notice to reopen was issued within a period of four years. Therefore, we have to agree with petitioner that there is no tangible material for the reopening as stated in the reasons for reopening.

16 The Assessing Officer was aware of the fact that the script of Shreenath was allegedly a penny stock company as it is clear from the annual information report given by the Assessing Officer himself to petitioner alongwith the first notice. Therefore, there is no question of any further information on the same issue being treated as information so as to justify the reopening of the assessment. The expression "reason to believe" in Section 147 of the Act has been held to mean a cause or justification. It is

also the position that at the stage when the Assessing Officer reopens an assessment, it is not necessary that the material before the Court should conclusively prove or establish that income has escaped assessment. But that does not mean that the Assessing Officer will not even mention enough details of tangible material that he has received for him to reopen the assessment. A general and bald statement, as stated in the reasons for reopening that Kolkata Investigation Wing have analyzed the trade data of identified 84 penny stocks and there are 13 penny stocks in which petitioner is found to be involved, has been made, is not enough. The Assessing Officer should have atleast indicated the details of the material that he had received and when he received.

17 In the circumstances, we have to hold that the impugned notice dated 11th October 2018 [ITBA/AST/S/148/2018-19/1012962880(1)] and impugned order dated 28th September 2019 [ITBA/AST/F/17/2019-20/1018438264(1)] require to be set aside and are hereby set aside.

18 Petition disposed accordingly.

(ABHAY AHUJA, J.)

(K.R. SHRIRAM, J.)

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signed by
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