

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3112 OF 2019**

Rajshree Realtors Private Limited)
102, Karma Sandesh 2, Off Hingwala Lane,)
Behind Popular Hotel, Gharkopar (East))
Mumbai 400 077) ...Petitioner

V/s.

1 Union of India)
Through Secretary, Ministry of Finance)
Department of Revenue, Room No.46,)
North Block, New Delhi 110 001)

2 PCIT – 14)
Income Tax Department, Mumbai)

3 Income Tax Officer)
Ward 14(3)(1), Mumbai 400 020) ...Respondents

Mr. R. V. Easwar, Senior Advocate a/w Mr. Rajendra i/b Mr. S. R. Londhe for
Petitioner.

Mr. Suresh Kumar for Respondents.

**CORAM : K.R. SHRIRAM &
FIRDOSH. P POONIWALLA, JJ
DATED : 10th JULY 2023**

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

1 Petitioner is impugning the notice dated 19th March 2019 issued by
respondent no.3 under Section 148 of the Income Tax Act, 1961 (the Act).

2 Petitioner is engaged in the business of real estate and was regularly
assessed to tax. For A.Y.2012-2013, petitioner had filed its return of income
on 21st September 2012 declaring an income of Rs.1,05,318/- and had
shown the said income under the head “Profit and Gains from Business and
Profession”. The return of income was initially processed under Section

143(1) of the Act. Subsequently, petitioner's case was selected for scrutiny under Computer Aided Scrutiny Selection (CASS) norms and statutory notices under Section 142(1) and 143(2) of the Act were issued to petitioner.

3 During the course of the assessment proceedings, petitioner was, by a letter dated 24th March 2015, called upon to explain huge share application money and share premium received by petitioner. Petitioner by its letters dated 14th November 2014, 27th February 2015 and 27th March 2015 replied and also provided all documents. Petitioner also provided the valuation report and the explanation for the share premium charged as also the details of the two subscribers, viz., Shubhshree Hirise Pvt Ltd (SHPL) and Subhdrishti Complex Pvt Ltd. (SCPL). Respondent no.3 proceeded to pass the assessment order dated 30th March 2015 under Section 143(3) of the Act and added as income under Section 68 of the Act, a sum of Rs.3,00,00,000/- that petitioner had received as share application money. The face value of the share was Rs.10 and was subscribed by SHPL and SCPL at the premium of Rs.9 each. Respondent No.3 added under Section 68 of the Act, not only the face value of the share, i.e., Rs.10/- but also the premium paid for the shares as income of petitioner. Against return of income of Rs.1,05,318/-, respondent no.3, in his order under Section 143(3), assessed petitioner's taxable income to Rs.3,01,05,318/-.

4 Aggrieved by the order of respondent no.3, petitioner preferred an appeal before the Commissioner of Income Tax (Appeals)[CIT(A)]. CIT(A)

after hearing the parties and considering the documents and evidence by an order dated 27th January 2017, deleted the said sum of Rs.3,00,00,000/- added by respondent no.3. This order of CIT(A) was impugned by respondent no.3 by filing an appeal before the Income Tax Appellate Tribunal (ITAT). By an order dated 8th February 2019, the ITAT upheld the order of CIT(A). Respondent No.3 has challenged the order of ITAT by filing an appeal in this court, which appeal is still pending.

5 Later, petitioner received a notice dated 19th March 2019 from respondent no.3 under Section 148 of the Act in which it is stated that respondent no.3 had reasons to believe that income chargeable to tax for A.Y.-2012-2013 has escaped assessment. As required, petitioner provided all information and material called for as per the notice. Petitioner was provided a copy of the reasons to believe recorded for initiating re-assessment proceedings under Section 147 of the Act. As per the reasons recorded by respondent no.3, information had been received from the Deputy Commissioner of Income Tax, Central Circle-3(1), Kolkata (DC.CC-K), vide letter DCIT/CC-3(1)/PKA/Kol/2018-19/5096, dated 1st March 2019. Respondent no.3 further mentioned that DC.CC-K had enclosed letter No.F.No.35/2012-13/3606-14, dated 6th February 2013 from DIT (Inv.), Kolkata, that as per the information a search and seizure operation was conducted at the business and residential premises of one Mr. Praveen Agarwal and his group companies on 13th September 2012, that in his statement recorded in the course of search, Mr. Agarwal had accepted in his

statement that he had registered a large number paper companies for providing various accommodation entries, that SCPL and SHPL were two such paper companies floated by Mr. Agarwal. As per information the assessee company is one of the beneficiaries who had taken accommodation entry in form of bogus share capital/premium from bogus paper companies, viz., SCPL and SHPL. As per respondent no. 3 the amount involved in the transaction was Rs.2,50,00,000/-. Respondent no. 3 further referred to statement of Mr. Agarwal and mentioned that petitioner had taken accommodation entry in form of bogus share capital /premium from the paper companies by Mr. Agarwal. Respondent no. 3 further stated that assessee had failed to disclose true and complete information regarding the share capital/premium and it was not a case of change of opinion. Assessee had failed to make requisite full and true disclosure of all material facts necessary for assessment and petitioner had taken accommodation entries in form of share capital/premium and had availed the benefit of Rs.2,50,00,000/-. Respondent no.3 specifically mentioned at the end of the page 3 of the satisfaction note that petitioner had filed a copy of audited Profit and Loss account and balance sheet along with the return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment had not been made.

6 Petitioner replied by its letter dated 25th June 2019 and called upon respondent no.3 to provide certain information mentioned therein.

Thereafter, petitioner filed its objections. Respondent no.3 specifically passed an order rejecting petitioner's objections, after which this petition came to be filed. On 26th November 2019, pending admission, ad-interim stay to the notice dated 19th March 2019 was passed. The said order was continued from time to time. On 15th December 2021, petition came to be dismissed for want of prosecution and by an order dated 27th September 2022 petition came to be restored.

7 Petition was allowed to be amended by an order dated 1st December 2022 and this amendment came to be made in view of assessment order dated 7th September 2021 being passed despite a stay being in force. The assessment order was stayed subsequently.

8 Mr. Easwar Learned counsel for petitioner submitted as under:

a) That as per the mandate of Section 147 of the Act, the words "reason to believe" signifies that the belief must be based on reasonable grounds and not mere suspicion, gossip or rumour. The basis in the formation of opinion for reopening should not be vague, indefinite or far-fetched.

b) There is not even an iota of evidence on record to suggest that petitioner has taken any accommodation entries. Respondent no.3 is in effect going on fresh assessment proceeding solely relying upon the statements of a person with whom petitioner was not related in any manner. There is no live link or close connection between the reasons recorded or the belief formed by respondent no. 3.

c) It is a clear case of change of opinion though in the reasons recorded

for reopening respondent no.3 states the case under consideration is not the result of change of opinion. Respondent no.3 has admitted in reasons recorded that petitioner had filed copies of audited profit and loss account and balance sheet along with the return of income where various information/material were disclosed. However, respondent no.3 has, for reasons best known, ignored the fact that during the original assessment proceedings respondent no.3 had issued notices under Section 133(6) of the Act to both the subscribers of the shares, i.e., SHPL and SCPL about the share money and the premium and that after considering the available material the then Assessing Officer (AO) had raised the issue about justification for high premium.

d) Re-opening provisions of the Act cannot be used to overcome or to reverse the adverse order of the appellate authorities.

e) Respondent no.3 without application his mind issued the original assessment order under Section 143(3) of the Act. Respondent no.3 made additions to the income of petitioner by referring to Section 68 of the Act. Respondent no.3 has also ignored the fact that during the original assessment proceedings the then AO had not only directed petitioner to prove the identity, creditworthiness of SHPL and SCPL as well as the genuineness of the transaction but had also issued notices under Section 133(6) of the Act to both the entities.

f) More importantly, the notice under Section 148 of the Act has been issued after the expiry of 4 years from the end of the relevant assessment

year. As per the first proviso in Section 147 of the Act, an assessment can be reopened after a period of 4 years only where income chargeable to tax has escaped assessment by reason of the failure on the part of assessee to make a return or to disclose fully and truly all material necessary for his assessment for that assessment year. In the case at hand, petitioner had furnished all the necessary details about the share and premium money during the original assessment proceedings. Respondent no.3, however, without even alleging what was the failure on the part of petitioner to furnish and what information was to be furnished has simply reproduced the language of Section 148 of the Act while issuing the notice. Respondent no.3 has not indicated which material facts were required to be disclosed by petitioner and were not produced during the scrutiny assessment. Since the assessment is being reopened after a period of 4 years from the end of A.Y.-2012-2013, it is incumbent on respondent no.3 to specifically allege in the reasons recorded that income chargeable to tax has escaped assessment on account of failure of petitioner to disclose fully and truly all material facts. Since respondent no.3 has not specifically averred so in the reasons recorded, respondent no.3 had no jurisdiction to reopen the assessment.

g) In the assessment order dated 7th September 2021, respondent no.3 has stated that quantum of share premium as per information received is only Rs.2,50,00,000/-, whereas the assessment has been finalized by addition of higher amount on account of same share premium to the tune of Rs.3,00,00,000/-. The amount of addition on account of share premium in

question made during the course of scrutiny proceeding is much more than the amount as per the information received. It is not clear from where these information have been obtained because nothing of this nature is disclosed in the reasons to believe.

h) The Revenue has challenged the order of ITAT before this court. Thus a parallel litigation for the same issue i.e. share capital and share premium received from SHPL and SCPL has been initiated by respondent no.3 by issuing a notice under Section 148 of the Act. The notice issued under section 148 of the Act by respondent no.3 seeks to re-agitate the issue on which petitioner has already succeeded before the appellate authorities. The action of issuing notice to reopen the assessment on the same grounds on which the respondents have suffered adverse orders, is subversive of the provisions of the Act as also the norms of judicial discipline and is wholly contrary to the judicial process.

9 Mr. Suresh Kumar, learned counsel for Revenue, in response, submitted that there was no change of opinion. The information that the two companies SHPL and SCPL are shell companies was not available at the time of original assessment. This was fresh additional information at the hands of respondent no.3 and hence material that was not considered during the original assessment proceedings under Section 143(3) of the Act. At the time of original scrutiny, it is true that the AO had made investigation about the claim of share premium receipt from SHPL and SCPL in the order under Section 143(3) of the Act. The genuineness of the transaction was not

proved and hence AO had added Rs.3,00,00,000/- claimed by assessee as share premium receipt under Section 68 of the Act. Fresh information received by respondent no.3 clearly establishes that SHPL and SCPL are shell companies and assessee is one of the beneficiaries who has taken accommodation entry in the form of share capital/premium. At the time of filing the return of income and also during the course of scrutiny proceedings under Section 143(3) of the Act, assessee was well aware of the fact which shows assessee has failed to disclose fully and truly all material facts necessary for the assessment of that assessment year. There was nothing vague or unspecific in the reasons to believe because reasons to believe for re-opening may come from external sources or even from material on record or may be derived from fresh facts. The notice has been issued following due process of law as prescribed in the Act.

FINDINGS:-

10 Admittedly, re-opening is proposed more than 4 years after the end of the relevant assessment year. First proviso in Section 147 of the Act as was then in force, provides that where an assessment under sub-Section 3 of Section 143 has been made for the relevant assessment year (here it has been done), no action shall be taken under Section 147 of the Act after the expiry of 4 years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year.

We have to therefore examine from the reasons to believe what was the material fact that petitioner was required to disclose fully and truly.

11 It would be useful to reproduce the relevant portions of the reasons to believe and it reads as under:

“Reasons for re-opening of the assessment u/s 147 r.w.s. 148

The assessee is a corporate entity and filed its Return of Income for AY 2012-13 on 21.09.2012 declaring total Income of Rs.1,05,318. The return was processed u/s 143(1), Scrutiny assessment was completed u/s 143(3) on 30.03.2015 assessing total income at Rs 3,01,05,320/-.

2. Information in this case has been received from DCIT, CC-3(1), Kolkata vide letter DCIT/CC-3(1)/PKA/Kol/2018-19/5096 dated 01.03.2019 in respect of shell companies floated by Shri Praveen Agarwal (Entry Operator). He has enclosed letter no FNo.35/2012-13/3606-3614 dated 06.02.2013 from DIT(Inv), Kolkata. As per the information a search and seizure operation u/s 132 of IT Act 1961 was conducted at the business & residential premises of Shri Praveen Agarwal and his group companies at Kolkata on 13.09.2012. Shri Praveen Agarwal is one of the known entry operators of Kolkata. In his statement recorded in course of search, Shri Praveen Agarwal has accepted on oath that he had registered a large number of paper companies for providing various accommodation entries. M/s Subhdisti Complex Pvt Ltd & M/s Subhshree Hirise Pvt Ltd are two such paper company floated by Shri Praveen Agarwal. As per information the assessee company is one of the beneficiaries who has taken accommodation entry in form of bogus share capital/premium from the bogus paper companies namely M/s Subhdisti Complex Pvt Ltd & M/s Subhshree Hirise Pvt Ltd. Details are as under:

<i>Sr. No.</i>	<i>Name of Beneficiary</i>	<i>PAN</i>	<i>A.Y.</i>	<i>Amount of transaction</i>
<i>1</i>	<i>M/s Rajshree Realtor Pvt Ltd.</i>	<i>AABCR6447V</i>	<i>2012-13</i>	<i>2,50,00,000</i>

3. In his statement Shri Praveen Agarwal confessed that he has provided accommodation entries to the beneficiaries through the paper companies floated by him. He has admitted in his statement under oath that he has floated this company / concern to provide various accommodation entries. Thus it is revealed that the assessee company M/s. Rajshree Realtor P Ltd has taken an accommodation entry in the form of bogus share capital/premium from the paper companies floated by Shri Praveen Agarwal.

4. The investigation report was perused. After appraisal of the report, there is substantial basis for the formation of reason to believe to initiate re-assessment proceedings u/s 147 of the IT. Act. Further this

is a fresh information received by the undersigned that there is an escapement of assessment of income in the hands of the assessee.

5. In this case scrutiny u/s 143(3) has been completed. Though the issue under consideration was examined by the AO during the regular assessment, but a fresh information received in this office reveals that assessee has failed to disclose true and complete information regarding the share capital/premium. It is, therefore, not a case of change of opinion by the AO. This is fresh information received after the completion of scrutiny assessment. This information and this modus operandi was not in the possession of this office at the time of regular assessment. Further the material facts relevant for assessment on the issue under consideration were not filed by the assessee during the regular assessment. Therefore, the assessee failed to make requisite full and true disclosure of all material facts necessary for assessment.

6. In view of the above information it is clear that assessee has taken accommodation entries in the form of share capital/premium and availed the benefit of Rs. 2,50,00,000/- for A.Y. 2012-13. Therefore, I have reason to believe that income to the extent of Rs. 2,50,00,000/- has escaped assessment within the meaning of section 147 of the I.T. act. of Section 147 of the IT act.”

12 We can see from the reasons that respondent no.3 had received information from DCIT, Central Circle-3(1), Kolkatta vide letter dated 1st March 2019. Respondent no.3 further mentions that DC Kolkatta had enclosed a letter dated 6th February 2013 from DIT(Inv.) Kolkatta. That as per the information a search and seizure operation u/s 132 of IT Act 1961 was conducted at the business & residential premises of Mr. Agarwal and his group companies at Kolkata on 13th September 2012. That Mr. Agarwal in his statement recorded in course of search has accepted that he had registered a large number of paper companies for providing various accommodation entries and SCPL and SHPL were two such paper companies. As per information the assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus share capital/premium from the bogus paper companies. The amount

involved in the transaction was Rs.2,50,00,000/- and, therefore, assessee had failed to disclose true and complete information regarding share capital / premium. It does not mention anywhere what was that material that petitioner was required to disclose truly and fully. Mr. Suresh Kumar submitted that the fact that there were accommodation entries in form of bogus share capital / premium from bogus paper companies SHPL and SCPL, were not disclosed. There is nothing to indicate anywhere, even assuming respondent no.3 could have relied on the statement of Mr. Agarwal to implicate petitioner, that petitioner was always aware before the original assessment order under Section 143(3) was passed, that SHPL and SCPL were two such paper companies floated by Mr. Agarwal to provide accommodation entry in form of bogus share capital / premium from bogus paper companies.

13 Moreover, during the original assessment proceedings, by a notice dated 17th July 2014 petitioner was called upon to furnish details of increase in the share capital, share application money and share premium alongwith sources thereof, of the same. In reply, petitioner by its letter dated 27th February 2015, furnished the details as sought. With the said letter, petitioner had also provided valuation reports of petitioner, and also explained that due diligence and valuation was also carried out by SHPL and SCPL etc.

14 Thereafter, petitioner received from respondent no.3 another letter dated 24th March 2015 on the same issue of share capital contribution and

the letter reads as under:

“ You are aware that the re-assessment proceeding in your case for A. Y. 2012-13 are in progress with this office. In connection with the same, you are requested to furnish the following:

During the year consideration, an amount of Rs.3.00 crores has been received by the company towards share Capital contribution from three parties. The assessee has charged a premium of Rs.90 on the additional shares issue by the company as against the face value of Rs.10, which is found to be unreasonably high considering the financial status of the company.

It is also bring to your notice that your company is not functioning as per the projected growth, shown in the valuation report submitted to this office.

In this background. Please justify the premium charged at Rs.90/- and also explain why such huge share application money and share premium should not be treated as unexplained income brought in by way of equity contribution and added to your income for the year under consideration.

The hearing in your case is accordingly fixed at 11.30 Am on 27.03.2015, your attention is also invited to the facts that the proceedings are bound by limitation of time, which expires on 31.03.2015, therefore the matter may please be given priority. In case of non-compliance, this office shall be constrained to complete the proceedings u/s. 144 of the IT Act. Ex-parte on the of materials available on record.”

15 Petitioner replied by its letter dated 27th March 2015 and made available the shareholding agreement with SHPL and SCPL. Many other details sought were also made available. Thereafter, the assessment order dated 30th March 2015 under Section 143(3) of the Act came to be passed in which, the AO rejected the explanation of petitioner and concluded that the amount of Rs.3,00,00,000/- on account of share application money with premium amount was grossly unjustified to be an allowable share premium and hence an amount of Rs.3,00,00,000/- was added back to the total income of assessee under Section 68 of the Act. Penalty under Section 271(1)(c) was also initiated separately for furnishing inaccurate particulars of income. As noted earlier, petitioner challenged this order before CIT(A),

who allowed the appeal. Paragraphs 4.7 and 4.9 of the order of CIT(A) read as under:

“4.7 I find that the appellant during assessment proceedings had submitted the valuation report of shares to justify the premium charged on shares. It is seen that the valuation report was prepared by Chaturvedi & Chaturvedi, Chartered Accountants, and signed by its partner Ishwar P Mehta having membership no. 034609. The value per share was worked out at Rs. 100.04 on discounted cash flow method. The premium charged on issue of shares was, therefore, not without any basis. The Hon'ble jurisdictional Tribunal in the case of Green Infra Ltd Vs. ITO (supra) had also held that it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a heavy premium and that the revenue authorities cannot question the charging of such huge premium without any bar from any legislated law of the land. The Assessing Officer's view that this was a clear case of money laundering and diversion of the appellant's own funds through issuing shares at huge premium to close sister companies / concerns is also not justified as there is nothing on record to indicate that the funds emanated from the coffers of the appellant. The Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services P Ltd., 307 ITR 334 (Del) has held that unless the department is able to show that the amount received towards share capital actually emanated from the coffers of the assessee company, no addition can be made in the hands of the assessee under section 68 of the Income tax Act.

4.8

4.9 There is also no dispute that the payments for the shares were received through banking channels as evidenced by the bank statements. The various courts have consistently held that the genuineness of the transaction is established if it is carried out through banking channels.”

16 Respondent no.3's appeal to ITAT also came to be rejected by an order dated 8th February 2019. The ITAT after hearing the parties and considering the records has given finding that the AO has made addition towards share capital receipt from two subscribers basically on the ground that the transactions between the parties did not pass the test of genuineness as assessee was not justified in charging of higher premium on shares without there being any corresponding business activity to justify projections and estimates relied upon for arriving at share premium. The AO never doubted

the identity of the parties. ITAT also recorded that petitioner had filed complete details in respect of SHPL and SCPL including their names and addresses, PAN, IT returns, copies of the financial statements, bank statements, letter of allotment etc. It is also recorded that both SHPL and SCPL have replied to notices under Section 133(6) alongwith whatever details sought by the A.O. Paragraph 7 of the order of ITAT reads as under:

“7. We have heard both the parties, perused materials available on record and gone through the orders of authorities below. We have also considered case laws cited by both the parties. The AO has made addition towards share capital received from 2 subscribers, basically on the ground that although identity of subscribers has been proved, but the transaction between parties did not pass the test of genuineness as the assessee has not justified charging of higher premium on shares without there being any corresponding business activity to justify projections and estimates relied upon for arriving at a share premium. Except this, the AO never doubted identity of the parties. The assessee has filed complete details in respect of 2 subscribers including their names and addresses, PAN, income-tax returns, copies of financial statements, bank statements, letter of allotment, etc. In fact both subscribers have replied to notices issued u/s 133(6) alongwith whatever details sought by the AO. In this factual background, if we examine the share capital received from the above 2 subscribers, undoubted fact emerges that the AO failed to make out a case of credit, which falls within the ambit of provisions of section 68 of the Act, except doubting genuineness of transactions on suspicion and surmise only for the reason of charging higher premium on shares. The provisions of section 68 deal with cases where sum found credited in the books of account, the assessee needs to prove identity, genuineness of transactions and creditworthiness of the parties. Once assessee discharges its initial burden cast by section 68 of the Act, by filing necessary evidences, then the burden shifts to the AO to prove otherwise. In order to fix a particular credit within the ambit of section 68 of the Act, the AO has to bring on record further evidences to prove that the sum found credited in the books of account of the assessee represents undisclosed income of the assessee. In this case, the AO, except doubting genuineness of transaction for charging higher premium on shares, did not bring on record any other evidence to disprove the voluminous evidences filed by the assessee in respect of 2 subscribers to prove identity and genuineness of transactions. In fact, the assessee has filed complete set of documents for both subscribers. The parties have responded to notices u/s 133(6) by filing necessary evidences, Therefore, merely for the reason that the parties did not appear before the AO or the assessee could

not produce the parties in person before the AO, the whole set of documents produced to prove the identity and genuineness of transactions, cannot be disregarded when the AO does not have anything more than suspicion in his possession to doubt transactions. Therefore, we are of the considered view that the AO was erred in bringing to tax share capital received from 2 companies u/s 68 of the Income-tax Act, 1961 as unexplained credit.”

17 In the circumstances, the issue regarding subscription of shares by SHPL and SCPL in petitioner has been thoroughly examined by the AO, who also in fact, did not accept petitioner's explanation and added the amount of Rs.3,00,00,000/- to petitioner's income. That addition was deleted by CIT(A) and the order of CIT(A) has been upheld by ITAT. All these only goes to prove that there was no failure on the part of petitioner to truly and fully disclose material facts. As Section 147 of the Act is very clear that no action shall be taken under the said Section after the expiry of 4 years from the end of the relevant assessment years unless any income chargeable to tax has escaped assessment by reason of the failure on the part of assessee to disclose fully and truly all material facts. First of all, it is not spelt out in the reasons to believe as to what was the material fact which was not truly and fully disclosed. Further, having considered the submissions of petitioner during the course of original assessment proceedings and the findings of CIT(A) as well as ITAT, we are also satisfied that there was no failure on the part of petitioner to disclose fully and truly any material fact. Even assuming, respondents' case is petitioner should have disclosed that these were bogus or accommodation entries, still there is nothing on record to indicate that petitioner was aware that these were bogus shares

capital/premium from bogus paper companies, viz., SHPL and SCPL and were accommodation entries.

18 In the circumstances, we hereby quash and set aside the notice dated 19th March 2019 issued under Section 148 of the Act. Consequently, the order on objection dated 14th August 2019 as well as the assessment order dated 7th September 2021 also are quashed and set aside.

19 Though we are not giving a definitive opinion, perhaps, if the reopening was within four years from the end of the assessment year, this fresh information might have qualified to be a tangible material.

20 Petition disposed.

21 We of course, clarify that all rights and contentions of the parties are kept open to be raised in the appeal that is filed by respondents challenging the findings of the ITAT which is pending before this court.

(FIRDOSH P POONIWALLA, J.)

(K.R. SHRIRAM, J.)