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

\+ **Date of Decision: 31.10.2019**

% W.P.(C) 10953/2019 and C.M. No. 45242/2019

J.M.D. GLOBAL PRIVATE LIMITED ..... Petitioner
Through: Ms. Suruchi Aggarwal, Adv.

versus

THE PR. COMMISSIONER OF INCOME TAX-5
& ANR. ..... Respondents
Through: Ms. Vibhooti Malhotra, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred this writ petition to assail the notice dated 29.03.2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) by respondent No. 2 alleging escapement of income chargeable to tax in respect of assessment year 2012-13, and the order dated 30.08.2019, passed by respondent No. 2 disposing of the petitioner's objection to re-opening of the case under Section 147/148 of the Act. The writ petition was initially taken up for hearing on 16.10.2019 when the following order was passed:

"W.P.(C) 10953/2019 and C.M. No. 45242/2019

One of the reasons given by the Assessing Officer for issuing notice under Section 147 of the Act is that the notice

issued to the entry provider M/s Aadhar Ventures India Ltd. (which was earlier known as M/s Pranetta Industries Ltd.) was not served. The petitioner states that the notice was not issued to the said party at the correct address. The petitioner states that this information has been gathered on inspection of the records of the respondents. The petitioner has also stated in its communication dated 16.08.2019 and 09.09.2019 that when the notice was initially issued to M/s Aadhar Ventures India Ltd., they had duly complied with the same. There are other issues also raised by the petitioner in its challenge to the issuance of notice under Section 147 of the Act and to the orders passed on the objections raised by the petitioner.

Before looking into any other aspect, we call upon the respondents to file an affidavit dealing with these two factual aspects. Let a short affidavit in this regard be filed within a week. The original record shall also be kept available before the Court on the next date of hearing.

List on 31.10.2019."

2. In terms of the last order, an affidavit has been filed on behalf of respondent No.2. From the said affidavit, it appears that the Assessing Officer issued notice dated 31.01.2019 under Section 133(6) of the Act to M/s Adhar Venture India Ltd., which was earlier known as M/s Prraneta Industries Ltd. at Office No. 215, 2nd floor, Make Bhavan No.III, Commercial Premises Co-op Society Ltd., New Marine Lines, Mumbai-400020. This was not the address of M/s Adhar Venture India Ltd as per the PAN Data Base.

3. To the aforesaid extent, the grievance of the petitioner – that the notice was not sent to M/s Adhar Venture India Ltd (formerly *M/s Prraneta Industries Ltd*) at the correct address, before issuance of the notice under

Section 148 of the Act to the petitioner, appears to be justified. The non receipt of response to the said notice under Section 133(6) of the Act issued to M/s Adhar Venture India Ltd could not have been the reason to form the belief that the petitioner's income chargeable to tax has escaped assessment. The matter, however, does not end here. This is for the reason that on a reading of the reasons for re-opening of assessment recorded by the Assessing Officer, it is clear to us that the non-receipt of a response to the notice under Section 133(6) of the Act from M/s Adhar Venture India Ltd is not the sole basis/ reason for re-opening of the Assessment Proceedings. The reasons are multiple and independent of each other. The reasons recorded by the Assessing Officer read as follows:

> "*In this case information has been received from DCIT, Central Circle-2 (2), Mumbai. It is informed that a search u/s 132 of the Income Tax Act, 1961 was carried out at the residence and various premises of the Shri Shirish C Shah who happened to be main persons engaged in providing bogus accommodation entries like long term capital gain, share capital with huge share premium, turnover, loan etc. The assesse directly and indirectly controlled more than 200 companies which include some of the public limited companies also. The details of these companies are available in the assessment order Shri Shirish C Shah.*
>
> *2. It is seen from the impounded material from the computer of the Shri Shirish C Shah that M/s Prraneta Industries Ltd. Has made investment in the form of share capital of Rs.300,00,000/- vide cheque No. RTGS dated 25.11.2011, 02.11.2011, 03.11.2011, 05.11.2011, 08.11.2011, 25.11.2011, 30.11.2011 and 01.12.2011.*
>
> *3. The assessments of the companies providing accommodation entries have since been completed wherein it*

had been held that impugned companies were engaged in providing accommodation entries. The assessment of Shri Shirish C Shah has also been completed wherein detailed facts and modus operandi etc had been described.

4. I have perused the information received & available on record. Assessment in this case has been completed u/s 143 (3) to verify the addition of share capital of Rs.3,00,00,000/- taken from M/s Prraneta Industries Ltd. Now the information received from DCIT, CC 2 (2), Mumbai is that M/s Prraneta Industries Ltd. Is the company of Shri Shirish C Shah who is engaged in providing accommodation entry. The information also state that the assessment in the case of Shrish C Shah . has been completed wherein detailed facts and modus operandi etc. had been described. The assessments of the companies providing accommodation entries have also been completed wherein it had been held that impugned companies were engaged in providing accommodation entries. During the assessment proceedings of these companies, they were asked to establish the source of funds. At this stage, all these companies filed letter which is either annexed or part of the order wherein they stated that all the funds were arranged by Shri Shirish C Shah who can explain the same. These companies. allowed their bank account with user ID and password to Shri Shirish C Shah. This issue has been discussed in the assessment order of Shri Shirish C Shah. This clearly shows that how the source of fund remained unexplained.

On receipt of information, notice u/s 133 (6) was issued to M/s Prraneta Industries Ltd (now Aadhar Venture India Ltd) on 31.01.2019 by this office to verify the genuineness of the transaction but the same has been received back from the postal authority on 11.02.2019 with remarks 'No'. This shows that this is accommodation entry which has not been verified from this angle at the time of original assessment order.

The total of the above accommodation entries taken by the assessee comes to Rs.300,00,000/-. Taking, on a conservative basis, the rate of commission paid to entry operators, the assessee has also paid the said amount of commission @ 2% i.e. Rs.6,00,000/- (i.e. 300,00,000/-) to the entry operators out of undisclosed sources. Having perused and considered the information received from the Wing, I have reason to believe that income of the assessee to the extent of Rs.306,00,000/- has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee company to truly and fully disclose all material facts necessary for assessment. Thus, it is fit case for initiation of proceedings u/s 147 of the Income Tax Act, 1961.

5. On the basis of the facts as stated above, I have reasons to believe that income chargeable to tax exceeding Rs.1 Lac. Has escaped assessment, as the assessee has not disclosed fully and truly all material facts necessary for his assessment for the relevant assessment year. Hence, a notice u/s 148 read with section 147 for reopening of assessment is required to be issued in this case.

Submitted for kind perusal and approval as per provision of section 151 (1) of the Income Tax Act, 1961."

4. From the above, it would be seen that the primary reason for re-opening of the Assessment Proceedings in respect of the petitioner for the assessment year 2012-13 is that M/s Prraneta Industries Ltd. (which is now known as M/s Adhar Venture India Ltd.) – with which the petitioner had transactions worth Rs. 3 crores for capital infusion, was found to be engaged in the business of providing accommodation entries. This fact came to the notice of the Assessing Officer only upon receiving the investigation report from the DCIT, Central Circle-2(2), Mumbai which, itself, is premised on search conducted under Section 132 of the Act on the premises of Shri

Shirish C Shah, who was managing the affairs of M/s Prraneta Industries Ltd. The reasons record that assessment proceedings in respect of Shri Shirish C Shah, as well as the company providing accommodation entries has been completed, wherein the said fact, viz, that they are engaged in providing accommodation entries, has been established.

5. Before proceeding further, we may also take note of the recent decision of the Supreme Court in ***Principal Commissioner of Income Tax (Central)- I v. NRA Iron & Steel Pvt. Ltd.***, (2019) 412 ITR 161 (SC) decided on 05.03.2019. The respondent assessee had shown receipt of share capital/ premium during the financial year 2009-10 aggregating to Rs.17.60 crore from 19 companies – some of which were based in Mumbai, some in Kolkata and some in Gauhati. Shares having face value of Rs.10 were subscribed by the said 19 investor companies in the assessee company at a premium of Rs.190 per share. It appears that the original assessment was completed and the investment made by the said 19 companies in the share capital/ premium of the respondent assessee company was accepted by the AO. Subsequently, a notice under section of the Act was issued on 13.04.2012 to reopen the assessment, for reasons recorded therein. The assessee filed its objections, which were rejected. Summons/ notices were also issued to the representatives of the investor companies. However, none

appeared on behalf of either of them. The stand of the assessee company was that the amounts had been received through normal banking channels through account payeee cheques/ demand drafts and, therefore, there was no cause to take recourse to section 68 of the Act. The assessee claimed that it had discharged the onus upon it to establish the genuineness of the transactions under section 68 of the Act.

6. The AO made inquiries with regard to the genuineness of the transactions of investment in share capital with premium in the assessee company. In the independent inquiry, the AO found that the investor companies despite service of notice did not appear; that in respect of some of them, their office was found closed; some other entities were found not existing at the given address; in some cases, the premises was found to be owned by some other person. Consequently, notices could not be served in these cases. Even when they responded, the investor companies did not provide justification for applying in equity shares in the assessee company at a premium of Rs.190 per share.

7. The reply submitted by the investor companies were found to be incomplete and unsatisfactory. In regard to the said 19 investor companies,

the finding recorded by the AO has been paraphrased by the Supreme Court in the following words:

> *"The AO recorded that the enquiries at Mumbai revealed that out of the four companies at Mumbai, two companies were found to be non-existent at the address furnished.*
>
> *With respect to the Kolkata companies, the response came through dak only. However, nobody appeared, nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.*
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> *With respect to the Guwahati companies - Ispat Sheet Ltd. and Novelty Traders Ltd., enquiries revealed that they were non-existent at the given address."*

8. On the basis of the detailed inquiry, the AO found that:

> *"i. None of the investor-companies which had invested amounts ranging between Rs. 90,00,000 and Rs. 95,00,000 as share capital in the Respondent Company - Assessee during the A.Y. 2009-10, could justify making investment at such a high premium of Rs. 190 for each share, when the face value of the shares was only Rs. 10;*
>
> *ii. Some of the investor companies were found to be nonexistent;*
>
> *iii. Almost none of the companies produced the bank statements to establish the source of funds for making such a huge investment in the shares, even though they were declaring a very meagre income in their returns;*
>
> *iv. None of the investor-companies appeared before the A.O., but merely sent a written response through dak.*

The AO held that the Assessee had failed to discharge the onus by cogent evidence either of the credit worthiness of the so-called investor-companies, or genuineness of the transaction."

9. Consequently, the AO added back the amount of Rs.17.60 crores to the total income of the assessee for the assessment year in question.

10. The CIT (Appeals) allowed the assessees's appeal by observing, inter alia, that if the relevant details of the address of PAN identity of the creditor/ subscriber along with copies of the shareholders register, share application form, share transfer register etc. are available, the same would constitute acceptable proof or acceptable explanation by the assessee and that the department would not be justified in drawing an inference, only because the creditor/ subscriber fails or neglects to respond to the notice issued by the AO. In support of this conclusion, the CIT (Appeals) reliedupon a decision of this Court in ***CIT v. Lovely Exports Pvt. Ltd.***, (2008) 299 ITR 268 (Delhi). The ITAT dismissed the Revenue's appeal on 16.10.2017 on the ground that the assessee had discharged their primary onus to establish the identity and creditworthiness of the investors, especially when the investor companies had filed their return and were being assessed. The Revenue's appeal before this court i.e. ITA No.244/2018 under section 260A of the Act was dismissed on 26.02.2018 on the ground that the issues raised before the

High Court were factual, and that the lower appellate authorities had taken sufficient time to consider the relevant circumstances. This court held that no substantial question of law arose for its consideration.

11. In this background, the department appealed before the Supreme Court. The respondent assessee did not appear before the Supreme Court despite service. The Supreme Court heard the appeal on merits and considered the issue whether the respondent assessee had discharged the primary onus to establish the genuineness of the transaction required under section 68 of the Act. The Supreme Court held that the use of the words "*any sum found credited in the books*" in section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium. The Supreme Court relied on ***CIT v. Precision Finance Pvt. Ltd.***, (1994) 208 ITR 465 (Cal), wherein the Court held that the assessee was expected to establish to the satisfaction of the AO:

> *"• Proof of Identity of the creditors;*
> *• Capacity of creditors to advance money; and*
> *• Genuineness of transaction"*

12. The Supreme Court also took note of its decision in ***Kale Khan Mohammad Harif v. CIT***, (1963) 50 ITR 1 (SC) and ***Roshan Di Hatti v. CIT***, (1977) 107 ITR (SC), wherein it had laid down the onus of proving the source of money found to have been received by the assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transactions and creditworthiness of the payee, then the AO must conduct an inquiry and call for more details before invoking section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source of investment made, it is open to the revenue to hold that such investment is the income of the assessee, and that there would be no further burden on the revenue to show that the income is from any particular source. The Supreme Court also observed that with respect to the genuineness of the transaction, it is for the assessee to prove the same by cogent and credible evidence, since the investment was claimed to have been made in the share capital of the assessee company, it was for the assessee to establish that it was a genuine investment, since the facts are exclusively within the assessees knowledge. The Supreme Court also noticed the decision of this Court in ***CIT v. Oasis Hospitalities Pvt. Ltd.***, (2011) 333 ITR 119 (Delhi), wherein this Court observed:

> *"The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise."*

13. Merely providing the identity of the investors does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established. The Supreme Court also took note of the decision of the Calcutta High Court in ***Shankar Ghosh v. ITO***, (1985) 23 ITJ (Cal), where the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The said loan amount was rightly held to be the assessee's own undisclosed income.

14. The Supreme Court also placed reliance on ***CIT v. Kamdhenu Steel & Alloys Ltd.***, (2012) 206 Taxman 254 (Delhi), wherein the Court had observed:

> *"38. Even in that instant case, it is projected by the Revenue that the Directorate of Income Tax (Investigation) had purportedly found such a racket of floating bogus companies with sole purpose of lending entries. But, it is unfortunate that all this exercise if going in vain as few more steps which should have been taken by the Revenue in order to find out causal connection between the case deposited in the bank accounts of the applicant banks and the assessee were not taken. It is necessary to link the assessee with the source when that link is*

missing, it is difficult to fasten the assessee with such a liability."

15. It was held that the AO ought to have conducted an independent inquiry to verify the genuineness of the credit entries.

16. The Supreme Court also noticed several other decisions relating to the issue of unexplained credit entries/ share capital subscriptions. We may quote the relevant extract from the decision of the Supreme Court in this regard:

> *"i. In Sumati Dayal v. CIT, (1995) 214 ITR 801(SC)this Court held that:*
>
> > *"if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory, there is prima facie evidence against the assessee, vis., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably"*
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> *ii. In CIT v. P. Mohankala, 291 ITR 278, this Court held that:*
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> > *"A bare reading of section 68 of the Income-tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee ; (ii) such credit has to be a sum of money during the previous year ; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits*

found in the books or (b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.

The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature."

(emphasis supplied)

iii. *The Delhi High Court in a recent judgment delivered in PR.CIT-6, New Delhi v. NDR Promoters Pvt. Ltd., 410 ITR 379 upheld the additions made by the Assessing Officer on account of introducing bogus share capital into the assessee company on the facts of the case.*

iv. *The Courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors, but also the capacity of the creditors to advance money, and establish the genuineness of the transactions. The initial onus of proof lies on the assessee. This Court in Roshan Di Hatti v. CIT, (1992) 2 SCC 378, held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.*

v. *The Guwahati High Court in Nemi Chand Kothari v. CIT, (2003) 264 ITR 254 (Gau.) held that merely because a transaction takes place by cheque is not sufficient to*

discharge the burden. The assessee has to prove the identity of the creditors and genuineness of the transaction.:

> *"It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors, the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-a-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself"*

(emphasis supplied)

vi. In a recent judgment the Delhi High Court in CIT v. N.R. Portfolio (P.) Ltd. [2014] 42 taxmann.com 339/222 Taxman 157 (Mag.) (Delhi), held that the credit-worthiness or genuineness of a transaction regarding share application money depends on whether the two parties are related or known to each other, or mode by which parties approached each other, whether the transaction is entered into through written documentation to protect investment, whether the investor was an angel investor, the quantum of money invested, credit-worthiness of the recipient, object and purpose for which payment/investment was made, etc. The incorporation of a company, and payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus.

vii. Other cases where the issue of share application money received by an assessee was examined in the context of Section 68 are CIT v. Divine Leasing & Financing Ltd. (2007) 158 Taxman 440, and CIT v. Value Capital Service (P.) Ltd. [2008] 307 ITR 334."

17. The principles culled out by the Supreme Court are contained in para 11 of its judgment, which read as follows:

> *"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*
>
> *i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
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> *ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
>
> *iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*
>
> *In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."*

18. The Supreme Court found that the AO had made inquiries, which revealed that there was no material on record to prove that the share application money had been received from independent entities, some of which were found to be non-existent and had no office at the address mentioned by the assessee. Some of the investor companies were found to lack the financial capacity to make such investments, and there was no explanation as to why the investor companies had subscribed to the shares of

the assessee company at high premium of Rs.190 per share, when the face value was only Rs.10 per share. Moreover, the investor companies had not established the source of funds from which the high share premium was invested. Mere mention of the income tax file number of the investor was not sufficient to discharge the onus under section 68 of the Act. The Supreme Court held that the lower authorities, namely, the CIT (Appeals) and the ITAT had ignored the detailed findings of the AO and that they had erroneously held that merely because the assessee had filed all the primary evidence, the onus on the assessee under section 68 of the Act stood discharged. The Supreme Court held:

> *"13……..The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assesse Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.*
>
> *14.* ***The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the***

personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company - Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income." (emphasis supplied)

19. Consequently, the appeal preferred by the Revenue was allowed by the Supreme Court.

20. Though the said decision was rendered by the Supreme Court while dealing with a Civil Appeal arising from a decision of this Court dismissing the appeal under section 260A of the Act, the findings returned by the Supreme Court, as extracted herein above, are extremely pertinent and relevant in the present context as well.

21. In the light of the dubious character of the so called investor viz. M/s Prraneta Industries Ltd. (now known as M/s Adhar Venture India Ltd.) now having been discovered by the Assessing Officer, the genuineness of the said transaction has come under a serious doubt, giving rise to a reasonable belief in the mind of the Assessing Officer that the petitioner may have indulged in a dubious transaction with the said M/s Prraneta Industries Ltd to launder its undisclosed income. In our view, since the petitioner does not

dispute the receipt of Rs. 3 crores from M/s Prraneta Industries Ltd. towards alleged capital infusion, the belief formed by the Assessing Officer, that taxable income of the petitioner has escaped assessment cannot, but, be described as reasonable.

22. The mere fact that the petitioner had produced evidence before the Assessing Officer during the scrutiny assessment proceeding that the said amount had been received as share application money from M/s Prraneta Industries Ltd., and the fact that M/s Prraneta Industries Ltd. had confirmed having invested Rs. 3 crores in the assessee company for allotment of shares, is neither here, nor there. This is for the reason that one part of any such transaction would invariably be conducted through banking channels and would be duly recorded – whether the same is genuine or not. That is how money would be laundered. Thus, the fact that the monetary transaction has been conducted through a banking channel, and is acknowledged, does not render the opinion of the Assessing Officer regarding the escapement of taxable income illegal or unreasonable since, at the time of the conduct of scrutiny assessment proceedings, the assessee did not disclose the material fact that the so called investor – in this case M/s Prraneta Industries Ltd., is engaged in the business of providing accommodation entries, and the Assessing Officer had no basis to so assume. In fact, the assessment order passed by him is completely silent on the said aspect. The assessment order dated 24.03.2014, passed by him is as innocuous as it could be. The same reads as follows:

"*ASSESSMENT ORDER*

The return declaring Nil Income was filed on 30.09.2012. The return was processed u/s 143 (1) of the Act. The case was selected for scrutiny under CASE. First Notice under Section 143 (2) of the Income Tax Act 1961 was issued on 06.08.2013 and duly served upon the assessee within the statutory time period. In response to notice Shri Anil Jain, Chartered Accountant of the assessee company attended from time to time and filed necessary details and the case was discussed with him.

The details filed by the assessee were examined and have been placed on record. The books of accounts of assessee were test checked.

The assessee company is exploring the mining activity for supply of coal to various big Industrial client as well as to provide consultancy in the field of real estate and mining.

Assessed at Nil. Issue demand notice and challan and a copy of ITNS 150. "

23. We may also refer to Explanation 1 to Section 147 of the Act which reads "*Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

24. The information/ knowledge that M/s Prraneta Industries Ltd. (now known as M/s Adhar Venture India Ltd.) is engaged in the business of providing accommodation entries dawned upon the Assessing Officer only upon receipt of information from DCIT, Central Circle-2(2), Mumbai, which is well after the framing of the assessment order dated 24.03.2014.

25. We are not suggesting that all monetary transactions of a person/

entity indulging in the activity of providing accommodation entries, would justify the entertainment of a belief, that the taxable income of the third parties – with whom such monetary transactions are undertaken, has escaped assessment. This is because, the person/ entity found to be indulging in the activity of providing accommodation entries, may have entered into some genuine transactions as well. It would be essential for the Assessing Officer of such third party/ parties to find a live-link, i.e. a link which is actionable between the person/ entity indulging in the activity of providing accommodation entries and such third party/ Assessee. The person who has undertaken such financial transaction(s) with such a person/ entity (the bogus entry provider) cannot avoid further scrutiny of such a transaction by laying a challenge to the re-opening of the assessment under Section 147/148 of the Act when the re-opening is, otherwise, within the period of limitation.

26. In the present case, the live-link between the said material information, and the formation of the belief that taxable income has escaped assessment is the fact that the petitioner, admittedly, received Rs.3 crores from M/s Prraneta Industries Ltd., now known as M/s Adhar Venture India Ltd. This live-link is actionable as it was found and acted upon within the period of limitation under the proviso to Section 147 of the Act.

27. No doubt, on the one hand, sanctity of concluded assessment proceedings needs to be protected, and an assessee should be protected against undue harassment by the taxation authorities by resort to re-opening of the concluded assessment. However, when subsequently, it comes to

light that the assessee has had financial/ monetary dealings with dubious entities/ persons – such as bogus entry providers, including of the kind noticed hereinabove, giving rise to a serious well founded doubt about the creditworthiness of the investor and genuineness of the transaction, the endeavour of the Assessing Officer to re-open the assessment in terms of section 147/148 of the Act should normally not be thwarted by the Court if the same is done within the limitation period, and the same is not merely a case of change of opinion on the same set of facts. A serious and well founded doubt about the genuineness of the transaction would justify formation of the reasonable belief that taxable income has escaped assessment in the light of the scheme of Section 68 of the Act, which provides that cash credits which, in the opinion of the Assessing Officer are not satisfactorily explained, would be charged to income tax as the income of the assessee. The subsequent acquisition of knowledge that the monetary transaction (including of the kind discussed above) undertaken by the assessee was with a bogus entity/ person such as an accommodation entry provider – which knowledge was not available to the Assessing Officer at the time of completion of the scrutiny assessment, would be a material change of circumstances, and the formation of belief that taxable income has escaped assessment would not suffer from the taint of simplicitor change of opinion.

28. One cannot lose sight of the fact that once the proceedings are re-opened, the assessee would have full opportunity to meet the material/ evidence that the Assessing Officer may seek to rely upon to re-compute the taxable income in accordance with law. Moreover, an assessment order

passed by the Assessing Officer would be open to challenge in appeals under the Act.

29. Ms. Aggarwal has strongly placed reliance on the decision of this Court in ***Sabh Infrastructure Ltd. v. Assistant Commissioner of Income Tax***, (2017) 398 ITR 198 (Delhi). In our view, the said decision has no application in the facts of the present case since, in the present case, the re-assessment has been ordered on the basis of not merely statements of the alleged accommodation entry provider, but on the basis of completed Assessment Proceedings of the entry provider. In fact, in the said decision in ***Sabh Infrastructure Ltd.*** (supra) in paragraph 12, the Court observed that there was no new material which had been found or mentioned in the reasons to believe, which is not the position in the present case. In fact, the present case is squarely covered by the decision of this Court in ***Chetan Sabharwal v. Assistant Commissioner of Income Tax, Circle 28 (1)***, W.P.(C.) No. 10897/2015 along with other connected petitions, decided on 06.08.2019. In the said decision, the Court, inter alia, held as follows:

> *41. As far as the case of Mr. Chetan Sabharwal is concerned,* ***the original assessment orders for both AYs under Section 143(3) of the Act do not give any indication on the AO having formed any opinion whatsoever on the basis of which the reopening has been ordered.*** *In this context the following observations in Income Tax Officer Ward No. 16 (2) v. Techspan India Pvt. Ltd. are relevant.*
>
> > *"18. Before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion,* ***the court ought to verify whether the assessment***

> ***earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable.*** *If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address, itself to a given aspect sought to be examined in the reassessment proceedings."*

42. Consequently, even in the cases of Mr. Chetan Sabharwal in view of the fact that the original assessment orders are totally silent on this aspect of the matter, it cannot be said that the reason to believe constitutes a "change of opinion".

43. At this juncture it must be stated that on a perusal of the report of the investigation which was produced before this Court, it appears prima facie that there was sufficient material to justify the reopening of the assessment in both sets of cases. Further, upon reading the reasons to believe as a whole the "live link"between the material in the form of the investigation report and the formation of belief that income that has escaped assessment is prima facie discernable. The Court hastens to add that this is a prima facie view which is all that is necessary at this stage.

44. The Court in this context would like to refer to the following observations of the Supreme Court in ITO v. Selected Dalurband Coal Limited (supra) where it was considering the effect of a letter of the Chief Mining Officer which emerged after the conclusion of the assessments:

> *"After hearing the learned Counsel for the parties*

at length, we are of the opinion that we cannot say that the letter aforesaid does not constitute relevant material or that on that basis, the Income-tax officer could not have reasonably formed the requisite belief. The letter shows that a joint inspection was conducted in the colliery of the respondent on January 9, 1967 by the officers of the Mining Department in the presence of the representatives of the assessee and according to the opinion of officers of the Mining Department; there was under reporting of the raising figure to the extend indicated in the said letter. The report is made by Government Department and that too after conducting a Joint inspection. It gives a reasonably specific estimate of the excessive coal mining said to have been done by the respondent over and above the figure disclosed by it in its returns. Whether the facts stated in the letter are true or not is not the concern at this stage. It may well be that the assessee may be able to establish that the fact stated in the said letter are not true but that conclusion can be arrived at only after making the necessary enquiry. At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since, we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our order, the reassessment proceedings have now to go on we do not and we ought not to express any opinion on merits."""

(emphasis supplied)

30. As noticed herein above, the AO while making the regular assessment did not undertake the scrutiny that he should have undertaken in respect of

the investment into the share capital of the petitioner by Pranetta Industries Ltd. Though the identity of the investor Pranetta Industries Ltd. stood established, neither the financial capacity/ creditworthiness of the said investor companies, nor the genuineness of the transaction was examined. We have already extracted herein above the assessment order passed by the AO during regular assessment. Since the investor company Pranetta Industries Ltd. (now known as Aadhar Venture India Limited) has been found to be an entry provider, most certainly, there was reasonable cause for belief that the monies received by the petitioner from Pranetta Industries Ltd. may also be part of the bogus entries provided by Pranetta Industries Ltd. and, consequently, the taxable income of the petitioner had escaped the assessment.

31. We, therefore, do not find any merit in the present petition, so far as the challenge to the issuance of notice under Section 148 of the Act is concerned, on the ground of wrong assumption of jurisdiction. The notice dated 29.03.2019 is sustained.

32. Another grievance raised by the petitioner is that along with the reasons to believe, the petitioner was not provided with any material on the basis of which the reasons are recorded. The submission is that due to the relevant material and documents not being provided, the right of the

petitioner to raise objections has been effectively curtailed.

33. Ms. Malhotra has submitted that she is carrying the Assessment orders in respect of M/s Adhar Venture India Ltd. and Shri Shirish C Shah, which form the basis of the reasons recorded by the Assessment Officer. She has provided copies of the same to learned counsel for the petitioner in Court today.

34. The right vested in the assessee to raise objections and invite an order thereon, has been conferred by the Supreme Court on the assessee by its decision in ***M/s GKN Driveshafts (India) Ltd Vs ITO,*** (2003) 259 ITR 19 (SC). The purpose of such an opportunity appears to be, to explore the possibility of the re-assessment proceedings being dropped, even if validly re-opened, after consideration of objections that the assessee may have. The said right cannot be reduced to an empty formality.

35. Therefore, we set aside the order dated 30.08.2019, passed by the respondent disposing of the objections of the petitioner. We permit the petitioner to raise its objections in the light of the documents provided by the respondent today in Court within seven days from today. No further time shall be granted for that purpose. The Assessing Officer shall decide the objections that may be raised within two weeks from today. The assessee shall co-operate and shall not take any adjournments before the Assessing Officer. During the said period, the re-assessment proceedings shall not be undertaken. In case, the Assessing Officer rejects the objections that the petitioner may raise, he shall be at liberty to proceed

with the re-assessment proceedings so that they are completed before they get time barred.

36. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 31, 2019
N.Khanna