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

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Date of Decision: 20.12.2019

% **W.P.(C) 13036/2019**

VEDANTA LIMITED

..... Petitioner

Through: Mr. Sachit Jolly, Mr. Rohit Garg and
Mr. Vasudevan G, Advocates.

versus

ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE 26(1) & ANR.

..... Respondents

Through: Ms. Vibhooti Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

C.M. No. 53160/2019

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13036/2019 and C.M. No. 53159/2019

3. The petitioner has preferred the present writ petition to assail the notice dated 31.03.2019 issued to the petitioner under Section 148 of the Income Tax Act in respect of the Assessment Year 2012-13, and the proceedings arising therefrom. The petitioner also seeks a restraint against



the respondents from proceeding with the framing of assessment under Section 147/ 148 of the Act.

4. The notice dated 31.03.2019 under Section 148 of the Act is addressed to the petitioner M/s Vedanta Limited as the successor of M/s Sterlite Industries Private Limited (SIPL). The petitioner was provided with the reasons for re-opening the assessment. The crux of the reasons is that SIPL had received an amount of Rs. 90.32 crores in the FY 2011-12 from Moral Alloys Private Limited (hereinafter referred to as Moral), and investigation had shown that Moral was heavily engaged in the activity of providing accommodation entries, thus giving rise to the belief that SIPL's income chargeable to tax had escaped assessment. The reasons, inter alia, state that the Assessing Officer had received information on 28.03.2019 from the Office of ADIT (Inv.) (HQ-2) in respect of the, prima facie, beneficiaries in the case of Moral. The notice extracts the summary of the said investigation report, wherein it is stated that Moral in an effective period of four years (FY 2011-12 to 2014-15) had shown turnover of Rs.856 Crores in its bank accounts, details whereof were disclosed in the report. After its incorporation in September 2010, Moral had declared its activity as trading in metals at its address at Darya Ganj, New Delhi. Moral had opened an account on 23.08.2011 with Axis Bank, Sadar Bazar Branch, New Delhi. Cash deposits and cash withdrawals in the said account were to the tune of Rs.93 Lakhs and Rs.21 Lakhs respectively.

5. The said report disclosed that the outflows from the said account of Moral were exact equivalent to the inflows in the said account, and on the same day. The outflows observed from the said account were to similar



entities only. A large number of debits to companies like SIPL – which merged in the petitioner, were also noticed in the account. After every withdrawal, the account was left with minimum balance. The trend of transactions in the account of Moral raised suspicion. The account showed exceptionally high turnover in a short span of time by recording two and four transactions with the same group of industries in a similar trend. The ITR profile of Moral, tabulated in the information received by the Assessing Officer, was as follows:

<i>“AY</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>
<i>Gross Sales/ Turnover (in Rs.)</i>	<i>6,08,95,72,648</i>	<i>4,65,51,78,891</i>	<i>11,56,68,567</i>	<i>4,92,65,500</i>	<i>3,40,32,938</i>
<i>Gross Total Income (in Rs.)</i>	<i>3,97,538</i>	<i>12,27,252</i>	<i>2,24,320</i>	<i>2,54,338</i>	<i>1,65,413</i>
<i>Total Tax Payable (in Rs.)</i>	<i>1,29,490</i>	<i>3,79,220</i>	<i>69,315</i>	<i>78,591</i>	<i>51,112”</i>

6. The statements of two bank accounts of Moral were investigated. In respect of Account No.911020042960662 opened on 23.08.2011, for FY 2011-12, the total inflow and outflow were found to be Rs.2,89,11,30,738/- and Rs.2,87,58,32,620/- respectively. Almost all funds credited in the bank accounts were transferred further to other entities and accounts on the same day, leaving minimal balance.

7. Another bank account of Moral with Punjab National Bank was also examined by requisition of the bank account statement. The same disclosed total inflow of Rs.25.10 Crores and outflow of Rs.24.98 Crores. This account also showed similar trend of activity, namely, the amounts were



transferred out to other entities on the same day on which the account was credited with monies. During the Financial Year 2011-12, SIPL received Rs.90,32,00,000/-, which the petitioner claims to be the sale proceeds. The investigation report also notices the ITR profile of SIPL for the Assessment Year 2012-13.

8. Significantly, the investigation report states that summons were issued to Moral on 13.03.2019 to furnish a detailed note of its business activity carried out during the period 2011-12 to 2015-16 and to explain the very low income offered by it for taxation despite very large turnover/ gross sales during the said period, along with supporting documents and other relevant details. The investigation report states that the Inspector, OCM Cell-2 was deputed to serve the summons on the registered address of Moral as per its latest ITR; *“however, though the address was there, no entity in the name of Moral Alloys Pvt. Ltd. ever existed at the said address. Subsequently, summonses were issued to Sh. Deepak Bansal and Nitin Kumar, directors of the company at their residential address (as per their latest ITRs) on 13.03.2019 and Inspector, OCM Cell-2 was deputed to serve the said summonses, but they also could not be traced out at the said addresses and no one in the vicinity had ever heard about them. Further, MCA data of Moral Alloys Private Limited and KYC documents submitted to the bank were analysed but address provided in those were the same addresses as provided in its latest ITR”*. (emphasis supplied)

9. The extract of the investigation report contained in the notice further states that inquiries were made from those entities, whose gross taxable income for the Financial Year 2011-12 was miniscule despite having



substantial turnover and dealings with Moral. Summonses were issued to such entities, namely M/s Brilliant Metals Pvt. Ltd., M/s Progressive Alloys (India) Pvt. Ltd, M/s Unnati Alloys Pvt. Ltd., M/s JBN Impex Private Limited, M/s Forward Minerals & Metals Private Limited, M/s Bafna Metals Put Ltd, M/s Misawa Impex Pvt. Ltd, M/s Durga Enterprises and M/s QNS Metals. However, in most cases, summonses could not be served because these entities were not found to exist at their respective addresses. M/s Brilliant Metals Pvt. Ltd. – though found at the given address, had only one person/ Caretaker. On inquiry, he states that no business activity had ever been undertaken on that premises. Investigation further found that the two Directors of Moral were also the Directors of M/s Forward Minerals & Metals Private Limited and M/s Unnati Alloys Pvt. Ltd.

10. The Investigation Report, relied upon by the Assessing Officer, further reveals that Moral has share holding in M/s Brilliant Metals Pvt. Ltd., M/s Progressive Alloys (India) Pvt. Ltd, M/s Unnati Alloys Pvt. Ltd. and M/s JBN Impex Private Limited. Moral also had undertaken transactions with the said four companies during the financial year 2011-12. The income shown by majority of these entities in their ITR for assessment years 2012-13 were miniscule, compared to the volume of their banking transactions with Moral Alloys Private Limited and also the turnover reported by them in their ITRs.. Investigation also showed that Moral had transferred substantial amounts, inter alia, to SIPL, which merged with the petitioner, to the tune of Rs. 90.32 crores during the financial year 2011-12. The two entities with whom Moral had the highest money transactions were M/s Unnati Alloys Pvt. Ltd. and M/s Misawa Impex Pvt. Ltd. The amounts



credited into the account of Moral, as depicted from the account of Moral, in respect of both these entities were almost equal. Moreover, the amounts credited into the account of Moral from these two entities were further transferred to other entities on the same day and the accounts of Moral were left with minimal balance. The Investigation Report contained the analysis in respect of the ITR of Moral for the Assessment Year 2012-13. The same has been extracted by the Assessing Officer in his reasons and it reads as follows:

“7.

> Total sales/gross receipt of business and purchases shown by Moral Alloy Pvt. Ltd for FY 2011-12 were Rs 608.95 Cr and 608.21 Cr respectively.

> Balance sheet of Moral Alloys Pvt Ltd for AY 2012-13 does not support any significant loan advanced by Moral Alloy (loan advanced worth Rs 2.03 Cr only) or received by it (Rs zero) as on the year end date. Therefore, transactions done by Moral Alloys Pvt Ltd with above mentioned entities vide para 5 appear to be mainly in the nature of sale and purchase.

> Moral Alloys Pvt Ltd claimed very less operational expenses for FY 2011-12 against huge revenue from sales of Rs 608.95 Cr. It claimed Employee benefit expenses- Rs 5.39 lac, depreciation expense- Rs 1.37 lac, Rent- Rs 1.63 lac, Commission paid-Rs 11.87 lac, and cost freight- Rs 20.73 lac only. Its total paid up capital is only Rs 1.0 Lac and fixed assets are only Rs 2.22 Lac for A Y 2012- 13. These facts further corroborate that it has/had no genuine business.

> It is also evident from ITRs of both the directors of Moral Aloys Pvt Ltd for A Y 2012-13 that no salary income was shown by them.



8. In view of the above, ITR profile done vide para 6 & 12 and comparative chart tabulated vide para 11 & 12 it becomes clear that Moral Aloys Pvt Ltd and other entities such as Brilliant Metals Pvt. Ltd, Progressive Alloys (India) Pvt. Ltd, Unnati Alloys Pvt. Ltd., JBN Impex Private Limited, Forward Minerals & Metals Private Limited, SWift: VanijaPvt Ltd, Bafna Metals Pvt Ltd, Misawa Impex Pvt. Ltd, Durga Enterprises and ONS Metals, etc. are involved in similar nature of activity of giving and taking non-genuine accommodation entries. Other entities identified are prim a facie beneficiaries are ultimate beneficiaries of these sham transactions/ non -genuine entries.”
(emphasis supplied)

11. The Assessing Officer proceeded to analyse the information collected/received. The said analysis is elaborate. Since one of the primary submissions advanced by learned Senior counsel for the petitioner is that the Assessing Officer has not independently applied his mind, and he has proceeded on the borrowed conclusions contained in the Investigation Report, we deem it appropriate to set out, in extenso, the analysis undertaken by the Assessing Officer; the enquiries made by the Assessing Officer; the findings of the Assessing Officer, and; the reasons for formulation of his belief. The same reads as follows:

“3. Analysis of information collected/received:

3.1 I have perused and analyzed the information available with this office. The following facts emerged from the inputs which are mentioned above:-

The assessee M/s Sterlite Industries Pvt. Ltd. (now merged into Vedanta Ltd.) is one of the beneficiary in case of Moral Alloys Pvt. Ltd. and has received accommodation entries from Moral Alloys Pvt. Ltd. The assessee has received accommodation entries to the tune of Rs. 90,32,00,000/- from round routing of



funds through Moral Alloys Pvt. Ltd. In the investigation report mentioned above the modus operandi of cash deposit and cash withdrawal has been duly noted. After each withdrawal account was left with minimal balance.

There is exceptionally high turnover. Further summons issued to Moral Alloys Pvt. Ltd, by the Investigation Wing has not been complied in law and spirit as discussed above. Several round routing of funds have been established in the investigation report, Further, field investigation have shown that it is appearing as bogus company.

I have perused the above detailed information received from the Investigation Wing and after analysing the above information I am satisfied that the assessee has received accommodation entries from Moral Alloys Pvt. Ltd. This receipt of accommodation entries from the above Company was not known to the AO at the time of completion of original assessment, hence, no inquiry was conducted on this issue.

4. Enquiries made by AO as sequel to information collected/received:

4.1 The above report was received on 29.03.2019 and it has been perused thoroughly. It is evident that the assessee has received accommodation entries and as a result of which income of Rs.90,32,00,000/- has escaped assessment within the meaning of Section 147.

5. Findings of AO:

5.1 In view of the facts discussed above, I have reasons to believe that the income of Rs.90,32,00,000/-, chargeable to tax, has escaped assessment and re-assessment proceeding u/s 147 for the AY 2012-13 is required to be initiated u/s 147.

6. Reasons for formation of belief:

6.1 The reasons for the formation of belief that the income chargeable to tax amounting to Rs,90,32,00,000/- has escaped



assessment have been discussed in details in the above paragraphs 3.4 and 5. This office was in possession of credible information that Moral Alloys Pvt. Ltd., in an effective period of 4 years (FY 2011-12 to 2014-15) has made turnover of Rs. 856 crores in its bank account no. 9110200042960662. Cash deposits and cash withdrawals in the said account were Rs. 93 lacs and Rs. 21 lacs respectively.

As per the information, the said account was opened on 23.08.2011 in Axis Bank, Sadar Bazar Branch, New Delhi. The assessee company was incorporated in September, 2010 and declared its activity as trading in metals with address registered as "205, Ajeet Bhawan, Gali no, 214697/6, Ansari Road, Daryaganj, Delhi-11 0006".

The outflows in the said account were exact equivalent to inflows and on the same day.

The outflows observed in the account were observed to the similar entities only. A large no, of debits to companies like Sterlite Industries Limited was also noticed in the account. After every withdrawal, the account was left with minimal balance. Though account had witnessed transactions with entities into the same line of activity, trend of transactions raised the suspicion.

Account had seen exceptionally high turnover in a short span of time and that too, by recording to and fro transactions with the same group of entities in a similar trend.

In this back ground enquiry has been done for FY 2011-12 only and findings are discussed below accordingly.

3. The ITR profiling of Moral Alloys Private Limited is tabulated below:

AY	2012-13	2013-14	2014-15	2015-16	2016-17
Gross Sales/ Turnover (in Rs.)	6,08,95,72,648	4,65,51,78,891	11,56,68,567	4,92,65,500	3,40,32,938



<i>Gross Total Income (in Rs.)</i>	3,97,538	12,27,252	2,24,320	2,54,338	1,65,413
<i>Total Tax Payable (in Rs.)</i>	1,29,490	3,79,220	69,315	78,591	51,112

The directors of the company are Deepak Bansal (AQOPB3529R) and Nitin Kumar (BCTPK0498J). The ITR profiling of the directors is as follows:

Deepak Bansal (AQOPB3529R)

<i>AY</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>
<i>Gross Total Income (in Rs.)</i>	5,12,330	272830	233860	246640	2724050
<i>Total Tax Payable (in Rs.)</i>	35500	7501	1430	6	250

Nitin Kumar (BCTPK0498J)

<i>AY</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>
<i>Gross Total Income (in Rs.)</i>	383190	314600	261570	244900	281449
<i>Total Tax Payable (in Rs.)</i>	20929	11804	4282	0	1179

9. To investigate the matter, the bank accounts statement of Moral Alloys Pvt. Ltd. was requisitioned;

10. It is found from these accounts that major funds were further transferred to the following entities during FY 2011-12.

<i>Name of Entities</i>	<i>Total Amount in INR</i>	<i>PAN</i>
<i>Sterlite Industries Private Limited</i>	90,32,00,000	AABCS4955Q



5. The ITR profiling of the aforementioned entities that have major credit and debit entries in the bank accounts of **Moral Alloys Pvt Ltd.**, as mentioned above, are as follows:

STRELITE INDUSTRIES PVT. LTD. (AABCS4955Q)

AY	2012-13	2013-14	2014-15	2015-16	2016-17
Gross Sales/Turnover	1,80,92,06,00,000	E-filing record not found in the name of the company (this company was amalgamated with Sesa Goa and became SesaSterlite (Vedanta))			
Gross Total Income	5,24,60,75,074				
Total Tax Payable	2,76,65,03,940				

5. In furtherance of the investigation, summons was issued to **Moral Alloys Pvt Ltd.** on 13.03.2019 to furnish a detailed note on its business activity carried out during 2011-12 to 2015-16, explanation for offering very low income for taxation despite very high turnover/ gross sales during the said period with supporting documents along with other relevant details.

The Inspector, OCM Cell-2 was deputed to serve the summons at its registered address as per latest ITR; however, **though the address was there, no entity in the name of Moral Alloys Pvt. Ltd. ever existed at the said address. Subsequently, summonses were issued to Sh. Deepak Bansal and Nitin Kumar, directors of the company at their residential address (as per their latest ITRs) on 13.03.2019 and Inspector, OCM Cell-2 was deputed to serve the said summonses, but they' also could not be traced out at the said addresses and no one in the vicinity had ever heard about them.**

Further, MCA data of Moral Alloys Private Limited and KYC documents submitted to the bank were analysed but address provided in those were the same addresses as provided in its latest ITR.



From the ITR profiling done, as per Para 6, those entities were chosen for further enquiries whose GTI for FY 2011-12 were miniscule though their turnover was substantial with Moral Alloys Pvt Ltd and summonses were issued (ITI of OCM Cell-2 was deputed to serve the summonses) to these prim a facie non-genuine/ accommodation entry parties (based in Delhi NCR). These entities are **Brilliant Metals Pvt. Ltd, Progressive Alloys (India) Pvt. Ltd, Unnati Alloys Pvt. Ltd., JBN Impex Private Limited, Forward Minerals & Metals Private Limited, Bafna Metals Pvt Ltd, Misawa Impex Pvt. Ltd, Durga Enterprises and ONS Metals**. However, in most cases, summonses could not be served because though the addresses were found, no such entities ever existed at their respective addresses. In the case of Brillaint Metals Pvt Ltd, the existence of the entity was found at the given address and only one person (caretaker type) was there. Summon was served upon him. On enquiry, it was found that there has been no business activity ever on that premises.

7. The Inspector, OCM Cell-2 was deputed to serve the said summons at his residential address (as per his latest ITR); **however, he could also not be traced at that address and no one in the vicinity had ever heard about him.**

8. From further enquiry, it has been found that both the directors of Moral Alloys Private Limited are also directors in the below mentioned companies:

<i>Name of entity</i>	<i>PAN</i>
<i>Forward Minerals and Metals Private Limited</i>	<i>AABCF4318A</i>
<i>Unnati Alloys Private Limited</i>	<i>AABCU1531E</i>

It is pertinent to note that Moral Alloys Private Limited also had banking transactions with the aforementioned companies. Further, Sh. Nitin Kumar, Director of assessee company has a proprietorship concern, namely Durga Enterprises, which also had banking transactions with Moral Alloys Private Limited. Summonses were issued to all these entities but could not be



delivered as the entities were found to be non-existent at those addresses.

*It is found from the Balance sheet of Moral Alloys Private Limited for A Y 2012- 13 that **Moral Alloys Pvt. Ltd had shareholdings** in Brilliant Metals Pvt Ltd, Progressive Alloys Pvt Ltd, JBN Impex Pvt. Ltd and Unnati Alloys Pvt Ltd. The transactions done by Moral Alloys Pvt Ltd with these entities are tabulated below for FY 2011-12-*

<i>Transactions done by Moral Alloys Pvt Ltd with these entities</i>		
	<i>Sales to Moral Alloys Pvt. Ltd. (Dr.) (In Rs)</i>	<i>Purchase from Moral Alloys Pvt. Ltd. (Cr.) (In Rs)</i>

<i>Brilliant Metals Pvt. Ltd.</i>	<i>20,00,000</i>	
<i>Progressive Alloys (India) Pvt. Ltd.</i>	<i>1,75,00,000</i>	
<i>JBN Impex Private Limited</i>	<i>20,00,000</i>	
<i>Unnati Alloys Pvt. Ltd.</i>	<i>8,70,50,000</i>	<i>1,18,54,08,494</i>

9. From the ITR profile, as mentioned in Table A at para 6, it is observed that the income shown by majority of these entities in their ITRs of AY 2012-13 are miniscule as compared to the volume of their banking transactions with Moral Alloys Private Limited and also the turnover reported by them in their ITRs. Therefore, comparison between transactions made by these entities with Moral Alloys Pvt Ltd and their GTI for AY 2012-13 has been drawn and the same is tabulated below-

*Parties to whom funds were further **TRANSFERRED** (i.e. from whom purchases have been claimed by Moral Alloys Private Limited or other credits in the nature of unsecured loan, etc. have been given by Moral Alloys Private Limited to them) from the bank accounts of Moral Alloys Private Limited during FY 2011-12-*



<i>Name of Entities</i>	<i>Total Amount of transaction in INR</i>	<i>PAN</i>	<i>GTI as per ITR</i>	<i>Registered address</i>	<i>Remarks</i>
<i>Sterlite Industries Private Limited</i>	<i>90,32,00,000</i>	<i>AABCS4955Q</i>	<i>5,24,60,75,074</i>	<i>Chennai</i>	<i>Prima facie Beneficiary</i>

Summary of total transaction done by these beneficiaries and intermediaries with Moral Alloy Pvt Ltd during FY 2011-12.

<i>Prima facie nature of transaction</i>	<i>Nature of Other entities</i>	<i>Amount involved (In Rs)</i>
<i>Purchase by Moral Alloys Pvt. Ltd. or advancement of credits by it during FY 2011-12</i>	<i>Flow of funds to prima facie beneficiaries</i>	<i>2,28,58,89,997</i>
	<i>Flow of funds to prima facie intermediaries</i>	<i>26,18,08,000</i>
<i>Sale by Moral Alloys Pvt Ltd or advancement of credits to it during FY 2011-12</i>	<i>Flow of funds from prima facie beneficiaries</i>	<i>40,62,41,572</i>
	<i>Flow of funds from prima facie intermediaries</i>	<i>1,60,76,35,833</i>

5. As the two biggest intermediary entities which transferred funds to Moral Alloys Pvt Ltd during FY 2011-12 were Unnati Alloys Pvt Ltd and Misawa Impex Private Limited, their bank account statements (as found from examination of bank statements of Moral Alloys Pvt. Ltd) were requisitioned, analysed and major findings are as follows-

<i>Unnati Alloys Pvt Ltd. (A/c No. 911020021179216) for FY 2011-12</i>	
<i>Total Credit (INR)</i>	<i>3,47,33,18,549.58</i>
<i>Total Debit (INR)</i>	<i>3,46,65,40,176.46</i>
<i>Misawa Impex Pvt Ltd. (A/c No. 911020025200169) for FY 2011-12</i>	
<i>Total Credit (INR)</i>	<i>2,43,76,40,456.85</i>
<i>Total Debit (INR)</i>	<i>2,42,87,26,207.60</i>



It is seen from both the above bank statements that almost all fund credited in the bank account is transferred further to other entities on the same day and accounts are left with minimal balance.

12. In furtherance of the investigation, ITR of Moral Alloys for AY 2012-13 has been analysed and found following facts-

> Total sales/ gross receipt of business and purchases shown by Moral Alloy Pvt Ltd for FY 2011-12 were Rs 608.95 Cr and 608.21 Cr respectively.

> Balance sheet of Moral Alloys Pvt Ltd for AY 2012-13 does not support any significant loan advanced by Moral Alloy (loan advanced worth Rs 2.03 Cr only) or received by it (Rs zero) as on the year end date. Therefore, transactions done by Moral Alloys Pvt Ltd with above mentioned entities vide para 5 appear to be mainly in the nature of sale and purchase.

> Moral Alloys Pvt Ltd claimed very less operational expenses for FY 2011- 12 against huge revenue from sales of Rs 608.95 Cr. It claimed Employee benefit expenses- Rs 5.39 lac, depreciation expense- Rs 1.37 lac, Rent- Rs 1.63 lac, Commission paid-Rs 11.87 lac, and cost freight- Rs 20.73 lac only. Its total paid up capital is only Rs 1.0 Lac and fixed assets are only Rs 2.22 Lac for A Y 2012-13. These facts further corroborate that it has/ had no genuine business.

> It is also evident from ITRs of both the directors of Moral Aloys Put Ltd for AY 2012-13 that no salary income was shown by them.

13. In view of the above, ITR profile done vide para 6 & 12 and comparative chart tabulated vide para 11 & 12 it becomes clear that Moral Aloys Pvt Ltd and other entities such as Brilliant Metals Pvt. Ltd, Progressive Alloys (India) Pvt. Ltd, Unnati Alloys Pvt. Ltd., JBN Impex Private Limited, Forward Minerals & Metals Private Limited, Swift: Vanija Pvt Ltd, Bafna Metals Pvt Ltd, Misawa Impex Pvt. Ltd, Durga Enterprises and ONS Metals, etc. are involved in similar



nature of activity of giving and taking non-genuine accommodation entries. Other entities identified are prim a facie beneficiaries are ultimate beneficiaries of these sham transactions/non-genuine entries.

The assessee M/s Sterlite Industries Pvt. Ltd. (now merged into Vedanta Ltd.) is one of the beneficiary in case of Moral Alloys Pvt. Ltd. and has received accommodation entries from Moral Alloys Pvt. Ltd. The assessee has received accommodation entries to the tune of Rs. 90,32,00,000/- from round routing of funds through Moral Alloys Pvt. Ltd. In the investigation report mentioned above the modus operandi of cash deposit and cash withdrawal has been duly noted. After each withdrawal account was left with minimal balance.

There is exceptionally high turnover. Further summons issued to Moral Alloys Pvt. Ltd. by the Investigation Wing has not been complied in law and spirit as discussed above. Several round routing of funds have been established in the investigation report. Further, field investigation have shown that it is appearing as bogus company.

I have perused the above detailed information received from the Investigation Wing and after analysing the above information I am satisfied that the assessee has received accommodation entries from Moral Alloys Pvt. Ltd. This receipt of accommodation entries from the above Company was not known to the AO at the time of completion of original assessment, hence, no inquiry was conducted on this issue.

The above report was received on 29.03.2019 and it has been perused thoroughly. It is evident that the assessee has received accommodation entries and as a result of which income of Rs.90,32,00,000/- has escaped assessment within the meaning of Section 147.

In view of the facts discussed above, I have reasons to believe that the income of Rs:90,32,00,000/- , chargeable to tax, has escaped assessment and re-assessment proceeding u/s 147 for the AY 2012-13 is required to be initiated u/s 147.



Discussion on "change of opinion"

It is pertinent to mention that though assessment has been completed u/s 143(3) in the above case but there was no formation of opinion by the AO on the above issues as no specific questionnaire on the above issues were raised by the AO nor there was any submission on the above issues by the assessee. Thus, it is not a case of change of opinion as for the change of opinion there has to be an opinion first.

The Hon'ble Delhi High Court has held in case of Commissioner of Income-tax-VI, New Delhi v. Usha International Ltd. [2012] 25 taxmann.com 200 (Delhi) (FB) has held in respect of principle of "change of opinion" that when specific query is raised by the AO and it is answered by the assessee then it will be termed as 'change of opinion'. The relevant extract of the above judgment is reproduced below:-

13. It is, therefore, clear from the aforesaid position that:

(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;

(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of "change of opinion".

{3} Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.



The Hon'ble Apex Court in case of CIVIL APPEAL NO. 2732 OF 2007 Income Tax Officer Ward No. 16(2) Versus M/s TechSpan India Private Ltd. & Anr. Has held that-

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

The above judgement is squarely applicable in case of assessee as the AO in the original assessment has nowhere discussed the above issue.

Fresh material/information

In this case fresh facts/materials regarding the escapement of income was received from the Investigation Wing as discussed above.

The Hon'ble Madras High Court in case of M/s. SUN Direct TV Pvt. Ltd. v ACIT (W.P. No.44311 of 2016, 10.10.2018) has held that – “if the assessment is finalised, the reopening in respect of the escaped assessments can be made if any new materials or suppression of materials are identified.”

The Hon'ble Apex Court has held in case of M/s Larsen & Toubro Ltd. v. State of Jharkhand & Others CIVIL APPEAL NO. 5390 OF 2007 that Audit Objection is an "information" .

The Hon'ble jurisdictional Delhi High Court in case of FIS GLOBAL BUSINESS SOLUTIONS INDIA PVT. LTD. v. Pr. CIT-3 W.P.(C) 12277/2018, C.M. APPL.47539/2018 has also held that Audit Objection is "information" for the purpose of Section 147.



No "full and true disclosure" in the original assessment proceeding

There was no full and true disclosure by the assessee as the assessee failed to disclose that it has received accommodation entries from the above Company.

Explanation to Section 147 of the Income Tax Act is reproduced below:-

"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."

In case of Sri Krishna (P) Ltd. v. ITO [1996] 221 ITR 538/87 Taxman 315 (SC) it has been held by the Hon'ble Apex Court, in the context of "full and true disclosure" that:-

"Every disclosure is not and cannot be treated to be a full and true disclosure. A disclosure may be a false one or true one. It may be a full disclosure or it may not be. A partial disclosure may often be a misleading one. What is required is a full and true disclosure of all material facts necessary for making assessment for that year. This calls for examination of the decisions of the court analyzing and elucidating section 147 and 148. The obligation on the assessee to disclose the material facts - or what are called primary facts- is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full 'fully and truly'. A fake assertion, or statement, of material fact, therefore, attracts the jurisdiction of the ITO under section 147."

In case of Honda Siel Power Products Ltd. vs. The Deputy Commissioner of Income Tax ,and Anr., W.P.(C) No. 9036/2007, decision dated 14th February, 2011, the jurisdictional High Court has held that :-



"10. The term "failure" on the part of the assessee is not restricted only to the income-tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The said expression "failure to fully and truly disclose material facts" also relate to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the / assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details it is required and under an obligation to disclose. Burden is on the assessee to make full and true disclosure. "

In Kantamani Venkata Narayana and Sons v. First Addl. ITO [1967] 63 ITR 638, the Hon'ble Apex Court has held that from a mere production of the books of account, it could not be inferred that there had been full disclosure of the material facts necessary for the purposes of assessment. The terms of the Explanation, declared the court, were too plain to permit an argument that the duty of the assessee to disclose fully and truly all material facts would stand discharged when he produces the books of account or evidence which has a material bearing on the assessment. The Hon'ble Court has observed that:-

"It is the duty of the assessee to bring to the notice of the Income tax Officer particular items in the books of account or portions of documents which are relevant. Even if it be assumed that from the books produced, the Income- tax Officer, if he had been circumspect, could have found out the truth, the Income-tax Officer may not on that account be precluded from exercising the power to assess income which had escaped assessment. "

Thus, neither this is a case of "change of opinion." nor there was a "full and true disclosure" by the assessee.

Therefore, I have reason to believe that Rs.90,32,00,000/- has escaped assessment and its unexplained. It is evident that income chargeable to tax has escaped assessment for this year



by the reasons of the failure on the part of the assessee to disclose fully and truly all material facts. Therefore it is a fit case for the issuance of notice u/s 148 of the Act for the financial year 2011- 12 relevant to assessment 2012-13.

7. Applicability of the provisions of section 147/151:

7.1 In this case return of income was filed for the year under i.e. A.Y.2012-13 at an income of Rs. 519,60,75,070/- on 30.11.2012 and the only requirement to initiate proceedings u/s 147 is reason to believe which have been recorded above.

In this case, return was filed and regular assessment u/s 143(3) was made on 03.05.2016. It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.

It is true that the assessee has filed a copy of annual report and audit P&L A/c and balance sheet alongwith return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited P&L and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence.

It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of regular assessment/reassessment. In view of above, provisions of clause(c) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.”

(emphasis supplied)



12. When the matter came up before this Court for preliminary hearing on 12.12.2019, the submission advanced on behalf of the petitioner was that the Investigation Report relied upon by the Assessing Officer drew a distinction between entities – who had genuinely transacted business with Moral during the financial year 2011-12, and who had not. It was argued that so far as SIPL is concerned, the Investigation Report itself found the sales undertaken by it to Moral to be genuine. It was argued that merely because Moral may have had transactions with others, which may raise doubts about their genuineness, is no reason to suspect all transactions undertaken by Moral, including those with SIPL, and that SIPL is only concerned with its transactions with Moral, and nothing more.

13. In the light of the aforesaid submission, we directed the Revenue, who was represented on advance notice, to produce the Investigation Report before this Court in a sealed cover on the next date of hearing. The matter was adjourned to 19.12.2019 for the said purpose. On 19.12.2019, it was further adjourned to 20.12.2019, when it was heard.

14. Ms. Malhotra, learned senior standing counsel produced the Investigation Report, which is referred to, and forms the basis of the impugned notice, in a sealed cover. The same was opened and report perused by us. A perusal of the said Investigation Report reveals that there is no such distinction sought to be made with regard to SIPL, or any other entity, in the said report. The said Investigation Report does not carve out SIPL as an exception, and does not state that the transactions undertaken between Moral and SIPL were found to be genuine, unlike the other transactions undertaken by Moral with other entities named in the



Investigation Report. On the contrary, the said Investigation Report highlights SIPL as one of the entities in whose account, large amounts have been transferred by Moral during the financial year 2011-12. Paragraph 5 of the said Investigation Report contains the said tabulation, enlisting the entities to whom funds were transferred by Moral. We find that SIPL is the recipient of the highest amount from Moral, as found in the said tabulation, of Rs. 90.32 crores. A perusal of the Investigation Report extracts whereof are contained in the reasons for re-opening, belies the submission of learned counsel for the petitioner that the transactions undertaken by Moral were found to be partly genuine, if not completely genuine.

15. The submission of learned counsel for the petitioner that the Assessing Officer has acted on the basis of borrowed wisdom contained in the Investigation Report is also meritless. We have consciously extracted the discussion/ analysis found in the reasons recorded by the Assessing Officer to justify the re-opening of the re-assessment. The Assessing Officer states that he has perused and analysed the investigation report. The mere fact that SIPL has accounted for all the receipts from Moral in its books of accounts, and has also offered the same to tax, can never be a defence when a serious allegation – of the transactions undertaken by SIPL with Moral not being genuine, has been raised. Ms. Malhotra has pointed out that the sale transactions allegedly undertaken by SIPL with Moral in the financial year 2011-12 were all exempted from payment of other taxes and, consequently, the possibility of the said transactions being sham, and merely paper transactions, is accentuated.



16. In *Assistant CIT Vs. Rajesh Jhaveri Stock Broker Pvt. Ltd.*, (2008) 14 SCC 208, the Supreme Court has held that the expression ‘*reason*’ in Section 147 of the Act means a “cause” or “justification”. The Assessing Officer can be said to have reason to believe that income has escaped assessment, if he has a cause or justification to know, or suppose, that income has escaped assessment.

17. In *Sri Krishna Pvt. Ltd. V. Income Tax Officer*, (1996) 87 Taxman 315 (SC), it was emphasised that the enquiry at the stage of finding out whether the reassessment notice is valid, is only to see whether there are reasonable grounds for the Income Tax Officer to believe – and not that the omission and escapement of income is established.

18. We have dealt with similar submissions – as advanced by learned counsel for the petitioner, in several other decisions recently. It is obvious that whenever an assessee takes or provides accommodation entries, one part of the transaction would appear to be completely transparent; through banking channels, and the recipient of the funds would disclose the same in his returns and offer the same to tax – if such receipts constitute income liable to tax. The mere disclosure of a part of the transaction in its records by the assessee is not sufficient to establish the genuineness of the transaction. In *RDS Project Limited Vs. Asst. Commissioner of Income Tax New Delhi & Anr.*, W.P.(C.) No. 11274/19 decided on 23.10.2019, the petitioner’s assessment was sought to be re-opened under Section 148 of the Act on the premise that it had received funds from two entities viz. M/s Shail Investment Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd. – two



companies promoted by one Tarun Goyal. We rejected the challenge to the re-opening while observing as follows:

*“38. 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.***

39. 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. 4.10 crores from M/s Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd. – each. 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.

*40. 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 accommodation entry***



providers, including of the kind noticed hereinabove, giving rise to a serious and 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.” (emphasis supplied)

19. In this decision, we also noticed the 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 payee 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.

20. 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.

21. The replies 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.

With respect to the Guwahati companies - Ispat Sheet Ltd. and Novelty Traders Ltd., enquiries revealed that they were non-existent at the given address.”

22. 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.”

23. 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.



24. The CIT (Appeals) allowed the assessee'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) relied upon 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.

25. 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”*

26. 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 assessee's 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.”

27. 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.

28. 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 is 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.”



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

30. 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 un rebutted 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”

ii. In CIT v. P. Mohankala, 291 ITR 278, this Court held that:

“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.”

31. 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.

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.”

32. 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 Assessee 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)*



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

34. 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.

35. The petitioner does not deny the fact that it, indeed, had financial transactions with Moral, whereunder it received substantial amounts of Rs.90.32 crores in FY 2011-12. Moral has been found to be indulging in provision of accommodation entries, and it appears that it carried out only that business and nothing else. There is nothing to show that while passing the assessment order, the Assessing Officer had examined the aspect of genuineness of the transaction undertaken by the petitioner with Moral. A perusal of the original assessment order shows that the Assessing Officer had accepted the claim made by the petitioner/ assessee with regard to the genuineness of the transaction without any scrutiny, and by accepting the statement of the petitioner as truthful. At that stage, the material information, which the petitioner withheld, and did not disclose, was that it was dealing with an entity who was engaged in the business of providing accommodation entries.

36. Thus, the Assessing Officer had very good reasons to believe that the amounts received by the petitioner from Moral also partake of the same colour as the other transactions of Moral undertaken with other entities. The



whole business model of Moral, as is evident from the Investigation Report, was merely to rotate funds by resort to a process of layering through other entities such as M/s Brilliant Metals Pvt. Ltd., M/s Progressive Alloys (India) Pvt. Ltd, M/s Unnati Alloys Pvt. Ltd., M/s Forward Minerals & Metals Private Limited etc., taken note of in the Investigation Report. It appears from the Investigation Report that Moral had nothing to show for, to establish the undertaking of any genuine sale and purchase, of much less of the products that the petitioner claims to have sold to Moral.

37. In ***RDS Project Limited*** (supra), we further observed:

“31. One is known by the company one keeps. Sh. Tarun Goyal has been established to be engaged in the business of providing accommodation entries. He is the promoter of about 90 companies from the same set of addresses as aforesaid. Amongst the companies promoted by him are M/s Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd. These two companies have made investments in the petitioner/ assessee company during the previous year relevant to the assessment year in question as share application money. The aforesaid background raises serious doubts about the character of M/s Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd., as being mere vehicles for providing accommodation entries. These two companies appear to have dubious character and, thus, the genuineness of the transactions that these two companies have undertaken with the petitioner has come under a serious cloud, 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 Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd. to launder its undisclosed income.

32. Pertinently, the petitioner does not dispute having received monies from these two dubious companies.



33. *In our view, since the petitioner does not dispute the receipt of monies from M/s Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. 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.*

34. *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 Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd., and the fact that M/s Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd. may have invested monies 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 Shail Investments Pvt. Ltd. and M/s New Delhi Credits Pvt. Ltd., are promoted by Sh. Tarun Goyal, who is engaged in the business of providing accommodation entries, and the Assessing Officer had no basis to so assume. In fact, the assessment order dated 07.07.2014 passed by him is completely silent and innocuous on the said aspect.*

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41. *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 appeal under the Act.”

38. This Court also noticed its earlier decision 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)

39. Learned counsel for the petitioner has sought to place reliance on *Signature Hotels (P) Ltd. V. Income Tax Officer - WARD 8(4) & Anr.*, 2011 338 ITR 51 (Delhi) to submit that in this case, the Court held that the reasons do not satisfy the requirements of Section 147 of the Act, since they were found to be extremely scanty and vague. In *Signature Hotels* (supra), the reasons recorded by the Assessing Officer for initiation of proceedings under Section 148 read as follows:

“Information received from the office of the DIT (Inv.)-VI, New Delhi, revealed that M/s. Signature Hotels (P) Ltd. has introduced unaccounted money in its books of account during the financial year 2002-03 through accommodation entry from M/s. Swetu Stone PV for Rs. 5 lakhs.

In view of the above, I have reasons to believe that the taxable income to the tune of Rs. 5 lakhs has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961.”



40. After discussing on the legal position with regard to the obligation of the Assessing Officer to record reasons for the formation of his belief that income liable to tax has escaped assessment, the Division Bench observed in respect of the reasons extracted hereinabove as follows:

“The aforesaid reasons do not satisfy the requirements of section 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement, except the annexure, which has been quoted above. The annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. The annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-tax (Investigation) and arrive at a belief whether or not any income had escaped assessment.”

41. The Division Bench also examined the allegation that a company by the name of Swetu Stone PV had invested Rs.5 lakhs by cheque towards allotment of shares in the petitioner company. The statements of the 2 directors of the Investor Company M/s. Swetu Stone PV were also referred to, wherein they had not named the petitioners as an entity to whom they had provided accommodation entries.

42. We are afraid that the position in the present case is starkly different. We have consciously set out hereinabove, the analysis and discussions found



in the reasons recorded by the Officer. The same is elaborate and discloses the extent of business undertaken by Moral to provide accommodation entries through a process of layering. Moral was not found at the given address and even the other entities through whom the process of layering was undertaken were not found. The petitioner, admittedly, had received Rs. 90.32 crores from Moral in FY 2011-12. Thus, the decision in *Signature Hotels* (supra) is not attracted in the facts of the present case.

43. Reliance has also been placed by learned counsel for the petitioner on *Principal Commissioner of Income Tax -6 v. Meenakshi Overseas Pvt. Ltd.*, 395 ITR 677. Firstly, we may observe that the said decision was rendered in an appeal preferred under Section 260 A of the Income Tax Act by the Revenue against the decision of the ITAT. The ITAT had quashed the assessment proceedings under Section 147/148 of the Act. This Court had upheld the said decision. Even in this case, the reasons recorded by the Assessing Officer for formulation of belief that income had escaped assessment were sketchy. The same read as follows:

“Reasons for the belief that income has escaped assessment:

In this case, information has been received from the Director of Income Tax, (Investigation) New Delhi that the Assessee has received amount of Rs. 5,00,000/- as follows:

<i>Beneficiary's Name</i>	<i>Meenakshi Overseas P. Ltd.</i>
<i>Beneficiary Bank Name</i>	<i>State Bank of Hyderabad</i>
<i>Beneficiary Bank Branch</i>	<i>Karol Bagh</i>



<i>Value of entre taken</i>	500,000
<i>Instrument no. by which entry taken</i>	8628
<i>Date on which entry taken</i>	31.03.2004
<i>Name of A/c Holder of entry giving account</i>	Shubham Electronic & Electric
<i>Bank from which entry given</i>	SBH
<i>Branch of entry given bank</i>	KB
<i>A/c No. Entry giving account</i>	50038

Information so received has been gone through. The above said instruments are in the nature of accommodation entry, which the Assessee has taken after paying unaccounted cash to the accommodation entry given, who is a known entry operator as per the report of the Investigation Wing. In view of these facts, the alleged transaction is not the bonafide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment so far as this amount is concerned. Therefore, this case is fit for issuing notice under Section 148 of the Income Tax Act, 1961. In this case the assessment was made under Section 143 (1) not under Section 143 (3) of the IT Act, 1961.

I am therefore, satisfied that the said income, on account of accommodation entry worth Rs. 5,00,000 received by the Assessee has escaped assessment and accordingly after recording the above said reasons as laid down under the



provisions of Section 148 (2) of the Income Tax Act, 1961 under Section 148 is being issued.”

44. From the aforesaid reasons itself it would be evident that there is no basis disclosed as to how the Assessing Officer had come to believe that the transfer of Rs. 5 lakhs to the assessee was in the nature of accommodation entry, and that the same had been taken by the assessee after putting unaccounted cash to the accommodation entry provider. Since the reasons in the present case are elaborate and betray due application of mind by the Assessing Officer, in our view, the decision in *Meenakshi Overseas* (supra) has no application to the facts of the present case.

45. It has been argued on behalf of the petitioner that since the petitioner had fully disclosed the transactions undertaken with Moral, there is no suppression on the part of the petitioner and that it could not be said that income chargeable to tax had escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment in relation to the assessment year 2012-13. This submission too has no merit in the light of the above discussion, and in the light of the decisions cited hereinabove in the case of *RDS Project Limited* (supra). Mere production before the Assessing Officer of the Account Books, or other evidence, from which material evidence could, with due diligence, have been discovered by the Assessing Officer, would not necessarily amount to disclosure within the meaning of the First Proviso to Section 147. The Assessing Officer, while framing the assessment for the assessment year 2012-13 took the assessee SIPL for its word – when it claimed that the transactions undertaken by it with Moral were genuine sale transactions.



However, that fundamental premise is now shaken, since Moral has been found to be a completely tainted entity embroiled in very large scale dubious transactions of providing accommodation entries. If the transactions undertaken by SIPL with Moral are indeed not genuine, as now reasonably believed by the Assessing Officer, it would not be correct to say that SIPL had disclosed fully and truly all the material facts for its assessment for the relevant assessment year.

46. Despite the aforesaid being a gross case and despite the decision of the Supreme Court in *NRA Iron & Steel Pvt. Ltd.* (supra) and our earlier decision in *RDS Project Limited* (supra) being brought to the notice of learned counsel for the petitioner, learned counsel for the petitioner continued to press the matter at the expense of judicial time, which could have been better utilised to deal with other pending cases. We are, therefore, inclined to subject the petitioner to costs for unjustifiably pressing the petition beyond a point.

47. We, accordingly, dismiss this petition with costs of Rs. 1 lakhs to be paid to The Delhi High Court Advocates Welfare Trust. The costs shall be paid within four weeks of the receipt of this decision. A copy of this decision should also be communicated to the trustees of The Delhi High Court Advocates Welfare Trust. In case, the costs are not so paid, the matter may be brought to the notice of the Court.

48. We make it clear that no observation made by us should come in the way of the Assessing Officer in independently framing the re-assessment



order, as the above observations have been made only to examine the challenge to the notice issued to the petitioner under Section 148 of the Act.

49. Dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 20, 2019