IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.05.2025

+ **W.P.(C) 14082/2018**

CNB FINWIZ LTD .....Petitioner
Through: Mr. S. Krishnan & Mr. Harshit, Advs.

Versus

DCIT, CIRCLE 6(1) .....Respondent
Through: Mr. Gaurav Gupta, Mr. Shivendra Singh and Mr. Yojit Pareek, Advs.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning a notice dated 31.03.2018 [**impugned notice**] issued by the respondent [**Assessing Officer** – **the AO**] under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of Assessment Year [**AY**] 2011-12. The petitioner also impugns an order dated 10.12.2018 [**impugned order**] passed by the AO rejecting the petitioner's objections to the reasons recorded in writing for reopening of the assessment and issuance of the impugned notice.

2. The petitioner, essentially, challenges the jurisdiction of the AO to commence the reassessment proceedings in respect of AY 2011-12, *inter alia*, on the ground that the AO did not have any reason to believe

that the petitioner's income for AY 2011-12 had escaped assessment. It is the petitioner's case that the impugned notice has been issued based on surmises and suspicion, and not on the basis of any tangible material, which would furnish any reason to believe that the petitioner's income for AY 2011-12 had escaped assessment.

PREFATORY FACTS

3. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of trading in shares, securities, equity and currency derivatives, mutual funds, and providing DP Services. During the previous year relevant to AY 2011-12, the petitioner's turn-over was ₹1,54,917.76 Crores and it had filed its return of income declaring a taxable income of ₹1,02,04,640/-.

4. The petitioner's return was picked up for scrutiny and the assessment proceedings that ensued, culminated in an assessment order dated 31.01.2014 passed under Section 143(3) of the Act. The AO assessed the petitioner's income at ₹1,04,93,646/- by adding an amount of ₹1,88,506/- as well as an amount of ₹1,00,500/- on account of penalty and ROC fee respectively to the petitioner's returned income.

5. The petitioner appealed the said assessment order dated 31.01.2014 before the Commissioner of Income Tax (Appeals)-14, New Delhi [**CIT(A)**] challenging the addition of ₹1,88,506/- made by the AO. It is relevant to note that the AO had added the said sum of ₹1,88,506/- to the petitioner's returned income on the ground that it related to imposition of fines and penalties by the National Stock

Exchange [**NSE**]. According to the AO, this expenditure could not be construed as expenditure incurred wholly and exclusively for the purposes of business.

6. The petitioner prevailed in the appellate proceedings and the CIT(A) passed an order dated 25.02.2015, deleting the addition of ₹1,88,506/- made on account of penalty levied by NSE. The CIT(A) held that the penalty imposed by the NSE was not for infraction of law but was compensatory in nature. Therefore, the same was allowable under Section 37(1) of the Act. The petitioner withdrew its challenge to disallowance of ₹1,00,500/- paid as fee for increase in share capital.

7. Thus, the returned income as enhanced by ₹1,00,500/- was accepted.

8. On 31.03.2018, the AO issued the impugned notice seeking to reopen the petitioner's assessment for AY 2011-12.

9. In response to the impugned notice, the petitioner filed a copy of its original return and requested for the copy of the reasons recorded for issuance of the impugned notice.

10. The AO furnished the reasons recorded for reopening the petitioner's case for AY 2011-12 on 06.04.2018. Thereafter, on 25.05.2018, the petitioner filed its objections (which were dated 19.05.2018) to the reasons recorded for reopening of the assessment.

11. It is the petitioner's case that the necessary jurisdictional conditions for initiating proceedings for reassessment of the petitioner's

income under Section 147 of the Act were not satisfied. It is contended that there was no failure on the part of the petitioner to disclose true and full information in its return, and therefore, the extended period of limitation of six years was not applicable. Further, the petitioner also disputed that the AO had any reason to believe that the income for AY 2011-12 had escaped assessment. The petitioner also contested the factual assumptions on the basis of which the impugned notice was issued.

12. However, the objections raised by the petitioner were rejected by the AO in terms of the impugned order.

ANALYSIS

13. At the outset, it would be relevant to refer to the reasons recorded by the AO for initiation of the reassessment proceedings and issuance of the impugned notice. The relevant extracts of the said reasons are set out below:

> "2. A letter was received from the office of ADIT(Inv.), Unit-1(3), Mumbai dated 21.03.2018 in the case of the assessee company, M/s CNB Finwiz Pvt. Ltd. passing on information about the tax- evasion detected by them. As per the information, M/s DMC Education Ltd, is a penny stock listed with BSE and trading in this scrip is suspicious and this company has been used to facilitate introduction of income of members of beneficiaries in the form of exempt capital gain or short term capital loss in their books of accounts. The financials of the company for the relevant period do not show any substantial change so as to support such huge share price movement. The sharp rise in the market price of this entity is not supported by financial

fundamentals of the company. Both purchase and sale of the shares are concentrated within few persons/ entities which were either non-filers or have filed nominal return of income.

3. Subsequently, trade data of M/s DMC Education Ltd. was called by ADIT(Inv.) Unit-1(3), Mumbai from BSE and analysed, from which it was determined that the assessee company, M/s CNB Finwiz Pvt. Ltd., was one such beneficiary.

4. On perusal of the above information given by ADIT(Inv.), Unit-1(3), Mumbai the case was analysed. M/s DMC Education Ltd. is a company registered with RoC-Delhi. This company was incorporated on 30.06.1984, M/s DMC Education Ltd.'s Corporate Identification Number is (CIN).L80211DL1984PLC018554. The company claims to be in the business of Secondary/Senior Secondary education. The company is listed on Bombay Stock Exchange (BSE) under the Security ID: DMCEDU and the Security Code is 517973.

5. Penny Stock is a stock that trades at a relatively low price and market capitalization. These types of stocks are generally considered to be highly speculative and high risk because of their lack of liquidity, large bid-ask spread, small capitalization and limited following and disclosure. The shares of the penny stock are closely held as the general public is not interested in these stocks due to poor results. This makes it feasible for miscreants to manipulate the holdings of such stocks as they are never spread out too vide or randomly, as compared to other companies. It has come to the notice of the Income Tax Department, and was agreed upon by SEBI too, that these penny stock company shares were manipulated by groups of brokers, promoters, entry and exit providers by providing accommodation entries. One such penny stock is M/s DMC Education Ltd.

6. An analysis of the financials of M/s DMC Education Ltd. reveals that the company did not make such large-profits to warrant such large increase in the share price. This is a company which is neither well-known for giving out dividends to its shareholders nor expected to generate a lot of capital gain due to an anticipation of a large increase in share price, unless the gain/loss was pre-meditated. As on date, the trading in the scrip has been suspended from trading on BSE due to penal reasons.

7, The assessee company has traded in the scrip during A.Y. 2011-12 to the tune of Rs, 1,11,89,100/-. From the discussion above it is clear that this investment is actually bogus done only to create an adjustment or a set off in the books of accounts. This is actually assessee's own money which has been routed through closely held penny stock of M/s DMC Education Ltd.

8. On perusal of the-above information received from ADIT (Inv.), Unit-1(3), Mumbai and other related details of the assessee and M/s DMC Education Ltd., it is clear to me that the assessee has entered into these transactions to evade payment of due taxes. These are sham transactions and I am convinced that they should be brought to taxation.

9. Therefore, I have reason to believe that the sum of at least Rs. 1,11,89,099/- has escaped assessment. In this case a return of income for the A.Y. 2011-12 was filed and scrutiny assessment u/s 143(3) of the Act has been completed on 31.01.2014, It is also submitted that the assessee had not disclosed the true and full information for the A.Y. 2011-12. Therefore, there is failure on part of the assessee to disclose the information truly and fully. In this case, four years from the end of relevant assessment year have elapsed and income which has been escaped assessment is more than Rs.1 lac. Accordingly, in this case, the only requirement to initiate

proceedings u/s 147 is reason to believe which has been recorded above."

14. It is apparent from the above that the AO's reason for issuance of the impugned notice rests on the information received from the Investigation Wing, which reported that equity shares of M/s. DMC Education Ltd. [**DEL**], a company listed with the Bombay Stock Exchange, was a penny stock; trading in the said scrip was suspicious; and the company (DEL) was used to facilitate introduction of income of members of the beneficiary as exempt capital gains or short term capital loss in their books of accounts. The AO had found that the petitioner had traded in the equity shares of DEL and the value of such trades was ₹1,11,89,100/-.

15. The principal question that arises is whether the aforesaid material provides sufficient reasons for the AO to believe that the petitioner's income for AY 2011-12 had escaped assessment.

16. According to the petitioner, the said information could lead to some suspicion but would not furnish any reasons to the AO to believe that the petitioner's income for AY 2011-12 has escaped assessment. It is contended that the observations made are general observations regarding a penny stock. There is no material whatsoever to indicate that the petitioner's own money had been routed "through closely held penny stock of M/s. DMC Education Ltd."

17. It is also the petitioner's case that it had truly and fully disclosed material particulars in its original return and also during the course of

the assessment proceedings. The petitioner had in fact produced its balance-sheet, the profit and loss account, and further details as sought by the AO during the course of the assessment proceedings.

18. The petitioner had disclosed that its turnover during the year in question was ₹1,54,917.76 crores. The amount of ₹1,11,89,100/- (alleged value of the trades in the share of DEL) was an extremely small fraction of its turnover. The petitioner claimed that as on 01.04.2010, it had 3,70,000 equity shares of DEL as a part of its stock and trade. The petitioner also pointed out that it held as many as 473 scrips as stock in trade as on the said date. The petitioner's closing stock as on 31.03.2011 did not include the shares of DEL. This clearly indicated that the opening stock of 3,70,000 shares of DEL had been disposed of during the course of Financial Year [**FY**] 2010-11. The petitioner also furnished the details of purchases and sales during the said year which indicated that its turnover in respect of shares of DEL was ₹1,67,70,490/- and the same was a miniscule fraction of the total turnover of ₹2,53,11,60,37,185/-.

19. The question whether the jurisdictional condition of the AO having reason to believe that the petitioner's income for AY 2011-12 has escaped assessment needs to be addressed bearing in mind the import of the expression 'reason to believe' as used in Section 147 of the Act. The jurisdictional precondition requiring the AO to have reason to believe that income of an assessee has escaped assessment, for reassessing/assessing the income relating to past assessment years, has been included in the provisions for reopening of the assessments over

the past century. The said condition also finds mention in Section 34 of the Income Tax Act, 1922, which required existence of definite information leading to discovery of income escaping assessment. The words "*reason to believe*" as used in Section 147 of the Act was substituted by the words "*for reasons to be recorded by him in writing, is of the opinion*" by virtue of the Direct Tax Laws (Amendment) Act, 1987. However, certain reservations were expressed that the change in language may give arbitrary powers to the AO to reopen assessments on a mere change in opinion. This again led to a statutory amendment by enactment of the Direct Tax Laws (Amendment) Act, 1989, whereby the words "*reason to believe*" were once again introduced and replaced the words "*for reasons to be recorded by him in writing, is of the opinion*". The meaning of the expression "reason to believe" and its import is a subject matter of various decisions rendered by the courts. It would be apposite to refer to some of them.

20. In ***Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta & Anr.***[1], Justice J.C. Shah had observed as under:

> "37. The notices issued by the Income Tax Officer in the case before us undoubtedly fulfil conditions (2) and (3). Notices of reassessment were served before the expiry of eight years of the end of the relevant years of assessment. The Income Tax Officer also recorded his reasons in the reports submitted by him to the Commissioner and the Commissioner was satisfied that they were fit cases for the issue of such notices. The dispute in the appeal relates

[1] (1961) 41 ITR 191

> merely to the fulfilment of the two branches of the first condition and that immediately raises the question about the true import of the expression "has reason to believe" in Section 34(1)(a). The expression "reason to believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith : it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer : the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under-assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information."

21. Although Justice J.C. Shah had penned a dissenting opinion, there was no difference of opinion regarding his exposition of expression "reason to believe" as used in Section 34(1)(a) of the Income Tax Act, 1922.

22. In ***Chhugamal Rajpal v. S.P. Chaliha & Ors.***[2], the Supreme Court considered the question whether in the given facts, the Income

[2] (1971) 1 SCC 453

Tax Officer has any reason to believe that the assessee's income had escaped assessment. It would be instructive to refer to the following extracts of the said decision:

> "5. In his report the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the CIT, Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. further his report mentions: "Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income Tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that

there has been no omission or failure as mentioned above on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income Tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the

> Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

23. It is clear from the above that there is a clear distinction between reasons, which lead the Assessing Officer to suspect that income had escaped assessment and thus may warrant further enquiries; and material that furnish the reasons for the Assessing Officer to believe that an assessee's income had escaped assessment.

24. In a subsequent decision in the case of ***Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta***[3], the Supreme Court referred to the earlier decisions and observed as under:

> "10. In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip, or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court."

[3] (1972) 3 SCC 234

25. In ***Joti Parshad v. State of Haryana***[4], the Supreme Court considered the expression 'reason to believe' as used in penal laws and observed as under:

> "5. ….We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise, "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same……"

26. Although the said decision was rendered in the context of Section 26 of the Indian Penal Code, 1860, however, the distinction drawn by the Supreme Court between 'reasons to believe' and mere 'suspicion' or 'doubt' is relevant in construing the meaning of the said expression "reason to believe" as used in Section 147 of the Act.

27. The present discussion would not be complete without reference to the oft cited decision of the Supreme Court in ***The Income-Tax Officer, I Ward, District VI, Calcutta and Ors. v. Lakhmani Mewal Das***[5]. In the said case, the respondent's tax assessment for assessment year 1958-59 was sought to be reopened. The Income Tax Officer had mentioned two grounds in his report for reopening of the assessment.

[4] 1993 Supp (2) SCC 497
[5] (1976) 3 SCC 757

The first was that one Shri Mohan Singh Kanayalal, who was shown as one of the creditors of the assessee, had confessed that he was only lending his name. The second was that names of some known name lenders were mentioned in the list of creditors of the assessee. The Supreme Court found that there was nothing in the confession of Mohan Singh Kanayalal that indicated that the same related to the loan to the assessee and not to some other person. There was also no indication as to when the confession was made and thus held that there was no material to infer that the confession related to the financial year 1957-58. Insofar as the second ground – that the list of creditors included the names of non-money lenders – is concerned; the Supreme Court noted that the High Court had rejected the said ground referring to the earlier decision of the Supreme Court in ***Chhugamal Rajpal v. S.P. Chaliha***[2] (*supra*). In the given facts of the case, the Supreme Court observed as under:

> "8. The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be

challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot he merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law see observations of this Court in the cases of Calcutta Discount Co. Ltd. v. Income Tax Officer [AIR 1961 SC 372 : (1961) 2 SCR 241 : 41 ITR 191] and S. Narayanappa v. CIT [AIR 1967 SC 523 : (1967) 1 SCR 590 : 63 ITR 219] while dealing with corresponding provisions of the Indian Income Tax Act, 1922).

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11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

12. The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the

> income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs."
>
> [emphasis supplied]

28. In ***ACIT v. Rajesh Jhaveri Stock Brokers Private Ltd.***[6], the Supreme Court once again considered the import of the fresh reason to believe in the context of Section 147 of the Act. It is relevant to refer to the following observations made by the Supreme Court in the said decision:

> "19. Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers."

29. We also consider it apposite to refer to the following observations made by the Supreme Court in ***CIT v. Kelvinator India of Ltd.***[7]***:***

> "6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power

[6] (2008) 14 SCC 208
[7] (2010) 2 SCC 723

to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."

30. In ***Pr. Commissioner of Income Tax v. Meenakshi Overseas Pvt. Ltd.***[8], a coordinate bench of this court had held that initiation of reassessment proceedings by the Assessing Officer by mere repetition of observations made by any other authority, without independent application of mind, was impermissible. We consider it apposite to refer to the following extract of the said decision. The same is reproduced as under:

"24. The reopening of assessment under section 147 is a potent power not to be lightly exercised. It certainly cannot

[8] (2017) 395 ITR 677

be invoked casually or mechanically. The heart of the provision is the formation of belief by the Assessing Officer that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of section 147(1) of the Act.

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26. The first part of section 147(1) of the Act requires the Assessing Officer to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The Assessing Officer being a quasi-judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre-condition to the assumption of jurisdiction under section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."

31. The question whether the AO has any reason to believe that the petitioner's income had escaped assessment must be tested considering the meaning and import of the said expression as enunciated in the aforementioned decisions.

32. In the present case, the Revenue claims that the AO's reasons to believe that the petitioner's income for AY 2011-12 has escaped assessment is premised on the information as provided by the Investigation Wing. A brief analysis of the said information as gleaned from the reasons recorded by the AO, indicates that the Investigation Wing had flagged the following:

(i) that DEL was a penny stock listed with BSE and trading in the said scrip was *"suspicious"*; and

(ii) that the stock of DEL was being *"used to facilitate introduction of income of members of beneficiaries in the form of exempt capital gains or short term loss in the books of accounts*"; and

(iii) that there was a sharp rise in the market price of the shares of DEL, which was not supported by fundamentals of the company; and

(iv) investigation had reported that purchase and sale of shares was concentrated with few persons/ entities which were either non-filers or had nominal return of income.

33. As is apparent from the above, information provided was of a general nature. It was more in the nature to flag trading transactions in the listed stock of DEL as against credible and definite information that all transactions in the shares of DEL were sham transactions. It is material to note that there is no indication that this information was

applicable or related in any manner to the petitioner. The reasons recorded do not mention the period for which the information relates. There is also no indication of the range of the sharp increase in price or the movement of price of shares of DEL during the period. The information does not disclose the period during which the share prices of DEL are stated to have widely fluctuated.

34. It is also important to note that the information mentioned that purchase and sale of share of DEL was concentrated with few persons/entities who are non-filers or had filed nominal return of income. It is *ex facie* evident that the petitioner is not a non-filer and its return of income could not be considered as nominal. As noted above, the petitioner had filed a return disclosing an income of ₹1,02,04,640/- during FY 2010-11 relevant to AY 2011-12.

35. The information clearly furnished no reason for the AO to believe that the petitioner's income for AY 2011-12 had escaped assessment. The information clearly lacked particulars and provided little material to form any belief that the petitioner's income had escaped assessment for AY 2011-12.

36. The AO had recorded the financials of DEL and concluded that the company did not earn significant profits to justify the increase in share price and it is not a company known for issuing dividends to its shareholders nor was it expected to generate capital gains due to anticipation of a large increase in share price. It is apparent that the aforesaid observations made by the AO (in paragraph 6 of the reasons

recorded by the AO) do not stem from an analysis carried out by the AO but appear to be borrowed from general observations made by the Investigation Wing. Further, the observations made by the AO in paragraph 5 are clearly general observations.

37. The AO found that during AY 2011-12, the petitioner had traded in the scrip of DEL to the extent of ₹1,11,89,100/-. And, on this basis, the AO concluded that the investment was (i) bogus; (ii) intended to create an adjustment or set off in the books; and (iii) it was the petitioner's money that was "*routed through closely held penny stock*". The AO also observed that the transactions in DEL were sham transactions and not brought to taxation.

38. The inference drawn by the AO does not stem from the fact that the petitioner had traded in the scrip to the extent of ₹1,11,89,100/-. The fact that the petitioner had sold and purchased shares of DEL on the stock market would not lead to a reason that the transactions were fraudulent or that the petitioner had routed its own money. The said inferences are based on mere suspicion fuelled by the information that DEL is a penny stock and that the shares of DEL were concentrated in the hands of few shareholders which were either non-filers or had filed nominal returns.

39. It is apparent that the AO also did not examine whether there was any wide fluctuation in the price of shares of DEL during the previous year relevant to AY 2011-12. The petitioner had stated that during the relevant previous year the price of shares of DEL had gradually fallen

from about ₹20 to ₹11 and there was no wide fluctuation. The AO does not contradict this claim.

40. It is thus apparent that the AO had issued the impugned notice only on the basis of general information as reported by the Investigation Wing, which may have required the AO to make some enquiries but did not furnish reasons to believe that the petitioner's income has escaped assessment for AY 2011-12.

41. It is also material to note that the petitioner had furnished the data of summary of its turnover during the previous year relevant to the AY 2011-12 as under:

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DETAILS OF PURCHASE AND SALE DURING THE YEAR

CASH MARKET

Total Turnover

Particulars	Purchase	Sale	TOTAL
Delivery Based	4,94,01,28,116	4,96,14,98,637	9,90,16,26,754
Jobbing	1,21,59,78,23,752	1,21,61,65,86,680	2,43,21,44,10,431
Total	1,26,53,79,51,868	1,26,57,80,85,317	2,53,11,60,37,185

Turnover in DMC Education Limited

Particulars	Purchase	Sale	TOTAL
Delivery Based	15,81,934	72,21,211	88,03,145
Jobbing	39,99,456	39,67,889	79,67,345

Total	55,81,390	1,11,89,100	1,67,70,490

FUTURE & OPTION (DERIVATIVE)

Particulars	TOTAL
Future & Option	12,96,06,15,69,066
Total	12,96,06,15,69,066

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FY 2010-11

CHART OF TURNOVER IN DMC EDUCATION LIMITED IN COMPARISION TO TOTAL TURNOVER

PARTICUALRS	TOTAL (Rs.)	TURNOVER DMC Education Ltd. Turn. (Rs.)	%
Cash Market Delivery Turnover	9,90,16,26,754	88,03,145	0.0889%
Cash Market Jobbing Turnover	2,43,21,44,10,431	79,67,345	0.0033%
Cash Market Total Turnover	2,53,11,60,37,185	1,67,70,490	0.0066%"

42. It is also submitted that during the relevant previous year, the petitioner had incurred a nominal trade loss of ₹7,93,289.96 in respect of trading in shares of DEL. It is material to note that the loss incurred by the petitioner was a trading loss. The information received from the Investigation Wing was to the effect that the shares of DEL were traded by the persons to book long terms capital gains (which are exempt from tax) or short term capital loss by non-filers or the persons filing nominal returns. This is plainly not in consonance with the petitioner's profile.

43. As explained by the Supreme Court in ***The Income-Tax Officer, I Ward, District VI, Calcutta and Ors. v. Lakhmani Mewal Das***[5] and several other decisions, "reasons to believe" cannot be conflated with

"reasons to suspect" that an assessee's income has escaped assessment. Whilst it is not necessary for the AO to arrive at a firm conclusion that the assessee's income for the relevant assessment year has escaped assessment – that conclusion is to be drawn during the assessment proceedings – it is necessary that the AO has reasons to believe based on tangible material that has a live nexus with the belief that income has indeed escaped assessment. Concluded and closed assessments cannot be reopened merely on suspicion. In the present case, we find that there is no reason to believe that the petitioner's income has escaped assessment.

44. In view of the above, the impugned order and impugned notice are set aside. The appeal is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 20, 2025/tr