IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17557 of 2018

With
R/SPECIAL CIVIL APPLICATION NO. 18372 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MR. JUSTICE ILESH J. VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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HEVAL NAVINBHAI PATEL C/O KETAN H SHAH
Versus
INCOME TAX OFFICER WARD 3(2)(2)

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Appearance:
MR KETAN H SHAH(2705) for the Petitioner(s) No. 1
MR. AMAN K SHAH(9992) for the Petitioner(s) No. 1
MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/02/2021

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Since the issues raised in both the captioned writ applications are the same and the reasons assigned for the reopening of the assessment are also the same, those were heard analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Special Civil Application No. 17557 of 2018 is treated as the lead matter.

3. By way of this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

> *"A) This Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned 148 notice dated 05.03.2018 at Annexure -A and objection order dated 19.09.2018 at Annexure – E.*
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> *B) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction asking the respondent not to proceed further in pursuance of Section 148 notice at Annexure- A and objection order at Annexure – E.*
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> ***C)** Pending the hearing and final disposal of this application, this Hon'ble Court be pleased to stay further proceedings in pursuance of section 148 notice at Annexure-A.*
>
> ***D)** This Hon'ble Court be pleased to grant any further or other relief as this Hon'ble Court deems just and proper in the interest of justice, and*
>
> *E) This Hon'ble Court be pleased to allow this application with costs against the respondent"*

4. We may clarify at this stage that the writ applicant herein, namely Heval Navinbhai Patel is the unmarried daughter of the writ applicant of the connected writ application.

5. The subject matter of challenge in the present writ application is to the notice issued by the respondents under Section 148 of the Income Tax Act, 1961 (for short, 'the Act, 1961') for the Assessment Year 2012-13. The reasons assigned for reopening of the assessment for the relevant year vide order 30.07.2018, reads thus:

> *"2. In this connection, please find following reason recorded for reopening of assessment as per direction given by the Hon. Gujarat High Court in special civil application no 3955 of 2014 dated 31-03-2014 in the case of Sahkarikhand Udyog Mandal Ltd;*
>
> > *"Reason for reopening of the assessment in the case of Shri Heval Navinbhai Patel A.Y. 2012-13 u/s 147 of the I T Act."*
>
> *In this case, it is gathered by the undersigned that:*
>
> *The undersigned is in the possession of information that a search u/s. 132/Survey u/s. 133A of the I T Act, 1961, was carried out at the various premises of Venus Group. One of the premises i.e. Crystal Arcade at C G road, Ahmedabad was covered u/s. 132 of the I T Act, 1961 and documents related to unaccounted cash transactions of the Venus Group were seized. On analysis and co-relating of these documents, it was found that unaccounted cash transaction were first recorded on vouchers further these were recorded on the day cash-book.*
> ***(2)*** *Incriminating documents relating to unaccounted cash: The seized incriminating documents related to unaccounted cash transactions were from the period since January 2007 to 07*

March 2015. The transactions were recorded in continuous manner i.e. without any gap and these transactions of unaccounted cash are related to Venus Group and Vaswani Family member. The cash book is written in coded from for name, amounts, dates and estimates etc. Further, the signature on seized unaccounted day cash-book by Shri Deepak Bhudharmal Vaswani/ Ashok Sunderdas Vaswani proves about its verification and authenticity as these transaction entries were supported with supporting vouchers also.

(3) *Supporting Vouchers: There are two different colours of vouchers i.e. Green and pink coluors. The green colour vouchers are the indicators of receipt of cash whereas pink colour vouchers indicate expenses/ payments. Green colour envelopes contains details of land, survey no., name of broker and vouchers relating to persons(parties). On correlation of the seized evidences, found during the search operation, it has been noticed that the main persons of the group are engaged in huge land dealings and cash books/cash vouchers/day books with sale deeds of land transaction, it is ample clear that there were huge unaccounted cash transaction.*

(4) EC Transaction: During the search operation at the premise as discussed above, it is noticed that there is a noting as 'Against EC". It has been decoded that an "Against EC" transaction is unaccounted day cash receipt and payment of equivalent amount of RTGS in the bank account. For example, if there is cash receipt against EC, it indicated that the Equivalent amount of RTGS has been paid to the other party through banking channel. Thus, one leg of the transaction is reflected in cash book and another leg in the bank book. These 'Against EC' vouchers are recorded in the unaccounted day cash book'

(5) It is noteworthy that the entries of date and amount are coded from i.e. the date of transaction has been pre-dated by 10 years and the actual amount has been represented in the cash book by taking (1/100t) of the actual value. After, obtaining records from the Sub registrar(s) offices, various beneficiaries have been identified who have transacted in unaccounted cash while dealing with the entities of Venus Group. In addition to the above,

it is imperative, to notice that for each land transaction, the actual transaction as unaccounted cash is much higher than the actual value of shown in registered deeds.

(6) On the basis of the material seized, it has been found that Shri Heval Navinbhai Patel (PAN-CXSPP6745A), is one of the | confirming parties who have sold an immovable property at Village-Ognaj Survey No. 1292b registered on 21.10.2011 vide Sub Registrar, Ahmedabad-2 (Vadaj), registered No. 18921/2011. The total sale consideration as per sale deed is Rs. 5,38,00,000. However, it is gathered in light and on the basis of modus operandi, as discussed in above para(s), Shri Heval Navinbhai Patel has received Rs.9,07,26,000/- as unaccounted cash (on-money) over and above the registered sold value of the land in question.

(7) In view of the above and in the opinion of undersigned the income amounting to Rs. 9,07,26,000/- has escaped the assessment year for A.Y. 2012-13 within the meaning u/s. 147 of the I T Act, 1961. Accordingly, a notice under section 148 of the Income Tax Act, 1961 will be issued after obtaining kind approval of the Pr. Commissioner of Income Tax-3, Ahmedabad."

6. It appears that first in point of time, the writ applicants raised objections dated 03.08.2018 to the above referred reasons. The objections read as under:

"That, the reopening has been made based on so called information received during the course of search u/s. 132 survey u/s. 133A in the case of Venus Group and documents seized. It is said that, I have not entered into any transactions with the aforesaid group and facts mentioned in reason recorded, para 2 to 5 are general in nature and not applicable to me. However, if Your Honour is having any statements of Directors / Partners of Venus Group alleging that I have entered into any financial transaction with them, kindly provide the same since this would be "tangible material" for the purpose of sec. 148.

2. *Now, in reference to para 6 of your reason recorded, there is reference to land at survey no. 1292b, registered on 21.10.2011 wherein, I have been stated to be confirming party. I further say that I have not entered into any such transaction with the Venus Group and therefore, there is no question of the receipt of the amount of Rs. 9,07,26,000/-.*

3. I further strongly say that the so called reason recorded is not supported with any seized material found and seized from the premises of Venus Group nor forming part of the reason recorded and therefore, my saying that I have not received any amount of Rs. 9.07 crore is also supported in absence of any supporting evidence.

4. *I further object the search reopening which is based on mere general observation nor there is any tangible material or nexus with the so called escapement of income and therefore, the reopening is bad in law.*

5. I further say that, there is no reference to any information received from the Assessing Officer of Venus Group in the reason recorded nor there is any application of mind seems to be applied and therefore, the reopening made is bad in law, ab initio void and illegal and therefore, liable to be quashed in toto.

6. Further, there is no such approval u/s. 151 of the prescribed authority and therefore, the reopening made is itself bad in law and void.

I hereby say that any correspondence in this regards may please be made at e-mail id shh_ketan@yahoo.com and necessary speaking order may please be mailed with supporting evidences. "

7. It appears that the aforesaid noted objections came to be disposed of by the respondents vide order dated 19.09.2018. The same reads thus :

"7. After careful consideration of objections of the assessee and on verification of materials available on record it is found that the contention of assessee that the reopening has made on so called

information received during the course of search u/s. 132/Survey u/s. 133A is not tenable because the officer was having tangible material on record such as vouchers, day cash book and ledger account of Ognaj 1292, as found and impounded due to search in the form of the information received from the ACIT, Central Circle 1(1), Ahmedabad vide letter dated 07/03/2017. Further, assessee had entered into transaction of sale of immovable property at Village-Ognaj, survey No. 1292/b registration no. 18921/2011 as the capacity of the confirming party.

8. *In respect of third Para of objection letter it is to say that the AO had recorded reason on the basis of seize material available on record such as vouchers, day cash book and ledger account of Ognaj 1292, in the form of the information received from the Investigation Wing, Ahmedabad. Farther, the prima-facie belief was that the assessee had received an amount of Rs. 9.07 Crore from the Venus Group is also on the basis of material available on the record.*

9, In respect of fourth Para of objection letter it is to say that as discussed in above, reopening is neither mere general observation nor without any tangible material or nexus with escapement of income and therefore, the reopening is as per law.

10. Further, in Para first and sixth of reasons for reopening of assessment there is clearly mentioned that the assessing officer was in the possession of information that a search u/s. 132/Survey u/s. 133A of the I T Act, 1961, was carried out at the various premises of Venus Group. One of the premises i.e. Crystal Arcade at C G road, Ahmedabad was covered u/s. 132 of the I T Act, 1961 and documents related to unaccounted cash transactions of the Venus Group were seized. Therefore, the reopening made is as per law and it is legal.

11. The approval to issue notice u/s. 148 of the I T Act was accorded by the PCIT-3, Ahmedabad vide his letter no. F.No.PCIT3/Ahd/Tech/App.u/s.147/HNP/2017-18 dated 28/12/2017 u/s. 151 of the I T Act after his satisfaction on the reason recorded by the AO that it is a fit case of issuing notice u/s. 148 of the I T Act.

12. Further, it is to mention that the AO is not required to furnish any supporting evidences/material on the basis of that AO has recorded the reasons for reopening of assessment. There is nowhere in the provisions of Sec.147 r.w.s. 148 of the LT. Act to provide supporting evidence or material. Therefore, the assessee's request for providing supporting material evidences on the basis of which the AO-has formed the belief of escapement of income cannot be accepted and therefore, the same is hereby rejected.

13. Further, as per the decision rendered by the Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers P. Limited {2007} reported in 291 ITR 500, at the stage of initiation of reassessment proceedings under section 147 of the Act, it is not required to be conclusively proven that income has actually escaped assessment. The only requirement is that whether there was any relevant material on which a reasonable person can form the requisite belief that taxable income has escaped assessment.

14. In the case of Raymond Woollen Mills Ltd, vs. ITO [1999] reported in 236 ITR 34, the Hon'ble Supreme Court has held that at the stage of initiation of reassessment, the only thing required to be seen is that whether there is any prima-facie material on the basis of which a case can be reopened. It further held that the sufficiency or correctness of material is not a thing to be considered at this stage.

15. Further, the case of the assessee neither regular assessment u/s. 143(3) nor reopened assessment u/s. 147 of the Act has been conducted earlier in this case. The case of the assessee for A.Y.2012-13 was neither investigated earlier under any of the proceedings of the Income Tax Act. The final conclusion of the facts depends on the outcome of the findings of the presently ongoing re-opening/scrutiny proceedings.

16. In view of the above discussion and the judicial pronouncements in revenue's favour, the objections raised by the assessee against re-opening of assessment cannot be entertained as the same are without any basis. It may be seen that while re-opening the assessment, proper procedure as per

Income tax law has been followed by the Assessing Officer. The case has been reopened well within the time limit prescribed as per the provisions of income-tax Act, 1961 and also on account of the fact that there was reason to believe that the income chargeable to tax has escaped assessment.

Since this order has been passed covering all the objections raised by the assessee, all the ground/contentions/objections taken by the assessee in this regard may be treated as "disposed off'. In view of the facts discussed above, assessee's request to drop the proceedings initiated u/s.147 of the Act is 'hereby rejected. The facts narrated by the assessee shall be verified and due cognizance and ample opportunity would be given before finalizing the case."

8. Thereafter, once again the writ applicants lodged further objections dated 22.10.2018, which reads thus:

"1. That in para 2 you have stated that there is document seized from Venus Group for Ognaj land survey No.1292 as per A7, page 46 regarding payment made through Bhuro and you also relied upon cash payment voucher as per Annexure A7 page No. 2 to 45. In this connection we hereby say that, even as per the said seized material, there is a mentioning of payment made through Bhuro, however, the said seized material and cash voucher is not proved that the so called Mr.Bhuro has ultimately paid the amount to me. Further, I don't know any Mr. Bhuro and therefore the reopening made is not based on tangible material. Further, in the said seized material, there is no such signature of me regarding receipt of the said amount.

2. In reference to para 3 it is said that, the approval memo has been provided in a letter dated 19.09.2018. This is factually incorrect and we have not provided any such approval memo sent by you to higher authority as well as order passed by higher authority based on your memo and, therefore, kindly provide the same.

3. *Further, we strongly say that there is specific provision in ° search cases to apply section 153C based on the seized material referred by you and also after getting satisfaction note of AO of searched person which is absent in my case. Therefore, notice under Section 147/148 is itself bad in law and void and without jurisdiction or in excess of jurisdiction.*

4. Further, without prejudice to the above, there is land sold for survey No.1292B by Mr. Navinbhai, Nikunjbhai and Sachinbhai, however, the confirming parties are, Navin Patel HUF, minor Dishant, Nima N. Patel and Heval Navinbhai. The name of confirming party has been incorporated in the said document without any rights in the aforesaid land but at the instance of the purchaser of the land since he want to incorporated all the family members to avoid future claim by them in the proposed land. As per clause No.2 to 12, there is no such mentioning the facts regarding the legal right of all the confirming parties. Therefore, not a single rupee has been paid by the purchaser to the confirming parties and, therefore, even otherwise so called on money cannot be received by me or any other confirming party. My birth date is 19.07.1993 and, therefore, become major in FY 2010-11.

5. Therefore, we request that kindly dispose of this objection which is based on facts within reasonable which enable us to approach higher authority in the matter. Further, the so called reopening made based on the seized material found, terrace of Crystal Arcade/ Venus Group and therefore there might be some question answer paused to them regarding the seized material relied upon by you and, therefore, kindly provide the same which enable me to give further reply in reference to para 5 of you notice under Section 142(1). "

9. Being dissatisfied with the aforesaid, the writ applicants have come up before this Court with the present writ applications.

10. The coordinate Bench of this Court passed the following order dated 26.11.2018 :

"1. Mr. Ketan Shah, learned advocate for the petitioner has invited the attention of the court to the reasons recorded for reopening the assessment for assessment year 2012-13, to submit that the same is based upon some material from where it is found that the petitioner is one of the confirming parties who sold the immovable property at village Ognaj, Survey No.1292/B, registered on 21.10.2011 and that the total sale consideration as per the sale deed is Rs.5,38,00,000/-. It was pointed out that on the basis of the material seized, the Assessing Officer has sought to reopen the assessment of the petitioner on the ground that the petitioner has received Rs.9,07,26,000/- as unaccounted cash (on-money) over and above the registered sold value of the land in question. The attention of the court was invited to the sale deed of the subject land, to point out that the same reflects that the sale consideration has been received by three persons, viz., Navinbhai Ramabhai, Nikunjkumar Bhikhabhai and Sachin Bhikhabhai, and that nowhere it is reflected in the sale deed that the petitioner has received any consideration. Referring to the copies of the seized material, it was pointed out that insofar as the subject land being village Ognaj, Survey No.1292/B is concerned, the on-money is said to have been paid to Shri Bhuro and that there is no material to connect the petitioner with the seized material. It was submitted that therefore, based upon the seized material, the Assessing Officer could not have formed the requisite belief that any income chargeable to tax has escaped assessment in the case of the petitioner.

2. It was further submitted that in the present case, the material has been seized during the course of search and hence, there is a specific provision in such cases to apply section 153C of the Income Tax Act based on the seized material and hence, the notice under section 148 of the Act reopening the assessment of the petitioner under section 147 of the Act is void and without jurisdiction or in excess of jurisdiction.

3. Having regard to the submissions advanced by the learned counsel for the petitioner, Issue Notice returnable on 24th December, 2018. By way

of ad-interim relief, the respondent is permitted to proceed further with the assessment; he, however, shall not pass the final order without the permission of this court.

Direct Service is permitted."

11. The connected writ application was ordered to be tagged and heard along with the present writ application.

12. The order passed by the coordinate bench dated 03.12.2018 in the connected writ application reads thus:

"1. Mr. Ketan Shah, learned advocate for the petitioner invited the attention of the court to the order dated 26.11.2018 passed by this court in Special Civil Application No.17557 of 2018 in the case of Heval Navinbhai Patel, who is the son of the petitioner whose income is sought to be added to the income of the present petitioner, wherein this court has issued notice and granted interim relief.

2. For the reasons recorded in the order dated 26.11.2018 passed in Special Civil Application No.17557 of 2018, Issue Notice returnable on 24th December, 2018. By way of ad-interim relief, the respondent is permitted to proceed further with the assessment; he, however, shall not pass the final order without the permission of this court.

Direct Service is permitted."

13. Mr. Ketan Shah, the learned counsel appearing for the writ applicants submitted that the Assessing Officer had no tangible material to form a belief that the income chargeable to tax has escaped the assessment. He would argue that there was no material having any live link with the formation of such belief. Mr. Shah conceded to the fact that so far as the writ applicant of the Special Civil Application

No. 17557 of 2018 is concerned i.e. Heval Navinbhai Patel, she had not filed her return of income for the relevant assessment year. So far as writ applicant of the connected writ application is concerned i.e. Navinbhai Patel, his return was filed under Section 143 (1) of the Act and the reopening of assessment is beyond the period of 4 years. In the case of Heval Navinbhai Patel, the reopening is within the period of 4 years. Mr. Shah would submit that in a case where the return was originally accepted then, reopening of the assessment would not be permissible. He would further submit that the reasons recorded nowhere indicate or suggest that during the search operation of the premises at the Venus Group, to whom the writ applicants sold the land, it was revealed that there was a huge cash transaction for such purchases. Merely because, the seized documents and other materials prima-facie suggest cash transactions with respect to the sale transaction between the Venus Group and writ applicants, would not automatically imply that the writ applicants had received such cash money. Mr. Shah, would submit that so far as Heval Navinbhai Patel is concerned, she has put her signature in the sale deed as one of the confirming parties. So far as Navinbhai Patel is concerned, his name figures as one of the recipients of a particular amount towards the sale consideration. Mr. Shah would submit that there is nothing to even remotely suggest that Heval Navinbhai Patel had received any cash amount in the sale transaction. He pointed out that so far as Navinbhai Patel is concerned, he

received Rs. 26 lakh by way of a cheque towards his share in the property. Mr. Shah submitted that the Assessing Officer has thus proceeded on mere conjunctures and surmises. It is argued that as there is no material on record with the aid of which, the Assessing Officer could form a belief that the income chargeable to tax has escaped assessment, the question of sufficiency of the material would not arise. Mr. Shah would submit that as per the settled law, the notice of reopening has to be evaluated on the basis of the reasons recorded therein. The Assessing Officer cannot improve upon such reasons or deviate from such reasons to support the notice.

14. The second limb of Mr. Shah's argument is that the case on had is one of search. He would argue that the search proceedings were carried out at the premises of the Venus Group and some incriminating material is said to have come to the hands of the Assessing Officer, on the basis of which, he seeks to reopen the assessment. The argument is that the proceedings should have been initiated under Section 153(C) of the Act and not by issuing a notice under Section 148 of the Act for the purpose of reopening of the assessment.

15. In such circumstances referred to above, Mr. Shah prays that there being merit in both his writ applications, those be allowed and impugned notices be quashed.

16. On the other hand, both the writ applications

have been vehemently opposed by Ms. Mauna Bhatt, the learned Senior Standing Counsel appearing for the revenue.

17. Ms. Bhatt would submit that Assessing Officer has recorded proper reasons. There was tangible material collected during the search operations in the case of the Venus Group, *prima-facie* revealing that huge cash transactions have been taken place in the sale of certain parcels of land. Ms. Bhatt submits that in the case of Heval Navinbhai Patel, the return of income for the relevant assessment year was not filed and the reopening is also within the period of 4 years. She would submit that in view of the explanation 2 to Section 147 of the Act, even where no return of income has been furnished by the assessee though his total income or the total income of any other person in respect of which he is assessable under this Act, it would be deemed to be one of the cases where the income chargeable to tax has escaped the assessment. She would submit that there was material *prima-facie* suggesting that there were cash transactions.

18. In such circumstances referred to above, Ms. Bhatt prays that there being no merit in both the writ applications, those may be rejected.

ANALYSIS :-

19. At the outset, we may record three settled principles of law which would have some bearing in the present

set of cases. First is that in a case where the return filed by the assessee is accepted under Section 143 [1] of the Act without scrutiny, since the Assessing Officer had not formed any opinion, the principle of change of opinion would not apply. This has been made sufficiently clear in the case of Assistant Commissioner of Income-Tax v. Rajesh Jhaveri Stock Brokers Private Limited, reported in [2007] 291 ITR 500 [SC] in which it was held and observed as under :-

> *"One thing further to be noticed is that intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand Page 9 of 21 C/SCA/16385/2017 JUDGMENT notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from April 1, 1989 to March 31, 1998, the second proviso to section 143(1)(a), required that where adjustments were made under the first proviso to section 143(1) (a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till June 1, 1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between April 1, 1998 and May 31, 1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word intimation as substituted for assessment that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first*

proviso to section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to section 143 by the Finance (No. 2) Act of 1991 with effect from October 1, 1991, and subsequently with effect from June 1, 1994, by the Finance Act, 1994, and ultimately omitted with effect from June 1, 1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under section 143(1)(a) was deemed to be an order for the purposes of section 246 between June 1, 1994, to May 31, 1999, and under section 264 between October 1, 1991, and May 31, 1999. It is to be noted that the expressions intimation and assessment order have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax payer. In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(l)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J) in Apogee International

> *Limited v. Union of India (1996) 220 ITR 248]. It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any assessment is done by them? The reply is an emphatic no. The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a) the question of change of opinion, as contended, does not arise."*

20. The aforesaid principles were reiterated by the Supreme Court in its later judgment in the case of Deputy Commissioner of Income- Tax & Anr. vs. Zuari Estate Development & Investment Company Limited, reported in [2015] 373 ITR 661 [SC].

21. Despite the position as aforesaid, even in a case where the return of the assessee is accepted without scrutiny under Section 143 [1] of the Act, in order to reopen the assessment, the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment. This issue has been discussed at considerable length by this Court in the case of Inductotherm [India] Private Limited v. M. Gopalan, Deputy Commissioner of Income-Tax, reported in [2013] 36 taxman.com.401/217 Taxman 132 (Mag.)/356 ITR 481 (Guj.)

> "*13. Despite such difference in the scheme between a return which is accepted under section 143(1) of the Act as compared to a return of which scrutiny assessment under section 143(3) of the Act is framed, the basic requirement of section 147 of the Act that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment is not done away with. Section 147 of the Act permits the Assessing Officer to assess, re-assess the income or re-compute the loss or depreciation if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. This power to reopen assessment is available in either case, namely, while a return has been either accepted under section 143(1) of the Act or a scrutiny assessment has been framed under section 143(3). A common requirement in both of cases is that the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment.*
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> *16. It would, thus, emerge that even in case of reopening of an assessment which was previously accepted under section 143(1) of the Act without scrutiny, the Assessing Officer would have power to reopen the assessment, provided he had some tangible material on the basis of which he could form a reason to believe that income chargeable to tax had escaped assessment. However, as held by the Apex Court in the case of Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd., (supra) and several other decisions, such reason to believe need not necessarily be a firm final decision of the Assessing Officer.*"

22. The requirement, thus for reopening of assessment, is "reasonable belief". This expression is not synonymous with Assessing Officer having finally ascertained the fact by any legal evidence or conclusion. In this context, the Supreme Court in the case of Rajesh Jhaveri Stock Brokers Private Limited [Supra] had observed as under :-

> "*Section 147 authorizes 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. As observed by the Delhi High Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991 (191) ITR 662], for initiation of action under section 147 (a) [as the provision stood at the relevant time] fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. Pvt. Ltd. [1996 (217) ITR 597 (SC)]; Raymond Woollen Mills Ltd. v. ITO (236) ITR 34 (SC)].*"

23. In the case of Raymond Woollen Mills Limited v. Income Tax Officer & Ors. [1999] 236 ITR, the Apex Court held and observed as under :-

> "*In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the*

> *material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs.*"

24. Lastly, it is well settled that the validity of the notice of reopening would be judged on the basis of reasons recorded by the Assessing Officer for issuance of such notice. It would not be permissible for the Assessing Officer to improve upon such reasons or to rely upon some extraneous material to support his action. Reference in this respect can be made to the decision of this Court in the case of Aayojan Developers v. Income-tax Officer, reported in [2011] 10 taxmann.com226/201 Taxman 154 (Mag.)/335 ITR 234 (Guj.)

25. Thus, from the above, the following principles of law are discernable on the subject of reopening of assessment under Section 147 of the Act, 1961.

> *"(I) The Court should be guided by the reasons* recorded for the reassessment and not by the reasons or explanation given by the Assessing Officer at a later stage in respect of the notice of reassessment. To put it in other words, having regard to the entire scheme and the purpose of the Act, the validity of the assumption of *jurisdiction under Section 147 can be tested only* by reference to the reasons recorded under Section 148(2) of the Act and the Assessing Officer is not authorized to

refer to any other reason even if it can be otherwise inferred or gathered from the records. The Assessing Officer is confined to the recorded reasons to support the assumption of jurisdiction. He cannot record only some of the reasons and keep the others upto his sleeves to be disclosed before the Court if his action is ever challenged in a court of law.

(ii) At the time of the commencement of the reassessment proceedings, the Assessing Officer has to see whether there is prima facie material, on the basis of which, the department would be justified in reopening the case. The sufficiency or correctness of the material is not a thing to be considered at that stage.

(iii) The validity of the reopening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment.

(iv) The basic requirement of law for reopening and assessment is application of mind by the Assessing Officer, to the materials produced prior to the reopening of the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied- a-postmortem exercise of analysing the materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.

(v) The crucial link between the information made available to the Assessing Officer and the formation of the belief should be present. The reasons must be self evident, they must speak for themselves.

(vi) The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. To put it in other words, something therein, which is critical to the formation of the belief must be referred to. Otherwise, the link would go missing.

(vii) The reopening of assessment under Section 147 is a potent power and should not be lightly exercised. It certainly cannot be invoked casually or mechanically.

(viii) If the original assessment is processed under Section 143(1) of the Act and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In

other words, although the reopening may be after the expiry of four years from the end of the relevant assessment year, yet it would not be necessary for the Assessing Officer to show that there was any failure to disclose fully or truly all the material facts necessary for the assessment.

(ix) In order to assume jurisdiction under Section 147 where assessment has been made under subsection (3) of section 143, two conditions are required to be satisfied;

(I) The Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment;

(ii) Such escapement occurred by reason of failure on the part of the assessee either (a) to make a return of income under section 139 or in response to the notice issued under subsection

(1) of Section 142 or Section 148 or (b) to disclose fully and truly all the material facts necessary for his assessment for that purpose.

(x) The Assessing Officer, being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria.

(xi) While the report of the Investigation Wing might constitute the material, on the basis of which, the Assessing Officer forms the reasons to believe, the process of arriving at such satisfaction should not be a mere repetition of the report of the investigation. The reasons to believe must demonstrate some link between the tangible material and the formation of the belief or the reason to believe that the income has escaped assessment.

(xii) Merely because certain materials which is otherwise tangible and enables the Assessing Officer to form a belief that the income chargeable to tax has escaped assessment, formed part of the original assessment record, per se would not bar the Assessing Officer from reopening the assessment on the basis of such material. The expression "tangible material" does not mean the material alien to the original record.

(xiii) The order, disposing of objections or any counter affidavit filed during the writ proceedings before the Court cannot be substituted for the "reasons to believe.

(xiv) The decision to reopen the assessment on the basis of the report of the Investigation Wing cannot always be condemned or dubbed as a fishing or roving inquiry. The expression "reason to believe" appearing in Section 147 suggests that if the Income Tax Officer acts as a reasonable and prudent man on the basis of the information secured by him that there is a case for reopening, then Section 147 can well be pressed into service and the assessments be reopened. As a consequence of such reopening, certain other facts may come to light. There is no ban or any legal embargo under Section 147 for the Assessing Officer to take into consideration such facts which come to light either by discovery or by a fuller probe into the matter and reassess the assessee in detail if circumstances require.

(xv) The test of jurisdiction under Section 143 of the Act is not the ultimate result of the inquiry but the test is whether the income tax officer entertained a "bona fide" belief upon the definite information presented before him. Power under this section cannot be exercised on mere rumours or suspicions.

(xvi) The concept of "change of opinion" has been treated as a built in test to check abuse. If there is tangible material showing escapement of income, the same would be sufficient for reopening the assessment.

(xvii) It is not necessary that the Income Tax Officer should hold a quasi judicial inquiry before acting under Section 147. It is enough if he on the information received believes in good faith that the assesee's profits have escaped assessment or have been assessed at a low rate. However, nothing would preclude the Income Tax Officer from conducting any formal inquiry under Section 133(6) of the Act before proceeding for reassessment under Section 147 of the Act.

(xviii) The "full and true" disclosure of the material facts would not include that material, which is to be used for testing the veracity of the particulars mentioned in the return. All such facts would be expected to be elicited by the Assessing Officer during the course of the assessment. The disclosure required only reference to those material facts, which if not disclosed, would not allow the Assessing Officer to make the necessary inquiries.

(xix) The word "information" in Section 147 means "instruction or knowledge derived from the external source concerning the facts or particulars or as to the law relating to a matter bearing on the assessment. An information anonymous is information from unknown authorship but nonetheless in a given case, it may constitute information and not less an information though anonymous. This is now a recognized and accepted source for detection of large scale tax evasion. The nondisclosure of the source of the information, by itself, may not reduce the credibility of the information. There may be good and substantial reasons for such anonymous disclosure, but the real thing to be looked into is the nature of the information disclosed, whether it is a mere gossip, suspicion or rumour. If it is none of these, but a discovery of fresh facts or of new and important matters not present at the time of the assessment, which appears to be credible to an honest and rational mind leading to a scrutiny of facts indicating incorrect allowance of the expense, such disclosure would constitute information as contemplated in clause (b) of Section 147.

(xx) The reasons recorded or the material available on record must have nexus to the subjective opinion formed by the A.O. Regarding the escapement of the income but then, while recording the reasons for the belief formed, the A.O. Is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the A.O had cause or justification to know or suppose that the income had escaped assessment [vide Rajesh Jhaveri Stock Brokers (P.) Ltd.'s case (supra)]. It is also well settled that the sufficiency and adequacy of the reasons which have led to the formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the court."

26. Having regard to the materials on record, it cannot be said that there is total non-application of mind on the part of the Assessing Officer while recording the reasons for reopening of the assessment. It also cannot be said that his conclusion was merely based on some documents seized in the

course of search undertaken at the premises of the Venus Group under Section 132 of the Act. The Assessing Officer cannot be said to have merely concluded without verifying the fact that it is a case of reopening of the assessment.

27. It is not in dispute, as evident from the reply filed by the department that the search and survey proceedings were carried out under Section 132 and documents were seized under Section 133A of the Act from the various premises of the Venus Group. One of the premises of the Venus Group i.e. the Crystal Arcade situated at the C.G. Road, Ahmedabad was covered under Section 132 of the Act. During the course of the search, various documents related to the unaccounted cash transactions of the Venus Group were seized. Upon due verification of all such seized documents, it was found that the unaccounted cash transactions were first recorded on the vouchers and thereafter in the day cash book. The seized documents reflected the unaccounted cash transactions for the period between January, 2007 to March, 2015. The cash book was written in the coded form. Further details and documents were obtained from the office of the Sub-Registrar for the purpose of identifying the beneficiaries in the transactions with the Venus Group.

28. It can thus be seen that the Assessing Officer had analyzed the voluminous material collected by the Revenue during the search operations in connection with the Venus Group. This material, *prima facie*

suggested huge cash transactions in connection with sale of lands against the total declared sale consideration of Rs. 5.38 Crore [rounded off]. The material *prima facie* suggests that the total cash transactions of Rs. 9,07,26,000/- had taken place.

29. At this stage, when we are concerned with the re-opening of the assessment, that too, in the case of Heval Navinbhai Patel, where the return was not filed for the assessment year and in the case of Navinbhai Patel, where the return filed by him was accepted without scrutiny, the material at the command of the Assessing Officer is sufficient to permit the process of reopening. As held by the Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers Private Limited [Supra] and Raymond Woolen Mills Limited [Supra], the reason to believe cannot be equated with finally established fact that the income chargeable to tax having escaped assessment additions will invariably be made and further, the sufficiency of reasons enabling the Assessing Officer to form such a belief would not be gone into.

30. The aforesaid now takes us to deal with the second limb of argument canvassed by Mr. Shah. According to Mr. Shah, the proceedings under Section 148 of the Act are not tenable in law, as the case falls within the ambit of Section 153(C) of the Act.

31. In the aforesaid context, we should take note of Section 153C of the Act:

*"**2.2.2 UPTO 01.06.2015**:*

***Assessment of income of any other person**.*

153C.[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in subsection (1) of section 153A]:]

2.2.3 WITH EFFECT FROM 01.06.2015:

***Assessment of income of any other person**.*

--153C.[(1)] [Notwithstanding anything contained in section 139. section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, ~ belongs to; or

(b) any books of account or documents, seized or requisitioned, or any information contained therein, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person]-- [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other

person for the relevant assessment year or years referred to in subsection (1)of section 153A] :]"

32. A perusal of the above noted provisions would reveal that in the case of search action, carried out under section 132 of the Income Tax Act, prior to 1.6.2015, if any money, bullion, jewellery or other valuable article or thing, or books of accounts or documents, seized or requisitioned "belongs" or "belong" to a person other than the person referred to section 153A, then the AO of the searched person while passing the assessment order under section 153A or prior to that, will have to record his satisfaction about those documents, and if such documents would reveal any undisclosed income of the person other than the searched person, then he will transmit those documents along with his satisfaction note to the AO having jurisdiction over that other person. The jurisdiction under section 153C of the Act prior to 1.6.2015 could be invoked only if the material seized during the course of search in the case of third person "belongs to" to some persons other than the searched person. However, after 1.6.2015, the Legislature has categorized two situations. If the recovery of any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to person other than the searched person, then section 153C would be justified. However, with regard to the recovery of any books of accounts or documents, seized or requisitioned, then if they pertain to other person, or any information contained therein relates to person other than the searched person, then the action under section 153C could be there. The scope of section 153C after 1.6.2015 has been enlarged; i.e. if a person at whose premises search was carried out, has been maintaining certain details in his regular day today business,

and that contain certain information exhibiting the undisclosed income of the person other than the searched person, then the action under section 153C could be justified. But prior to 1.6.2015, the documents ought to be "belonged to" person other than the searched person. There is a clear distinction between both the conditions. Subsequent to 1.6.2015, the information embedded in the document is sufficient for taking action under section 153C, but prior to 1.6.2015 action under section 153C could be taken if documents belong to the person other than the searched person was found during the course of search.

33. A clear analysis of the Section 153(C) of the Act would indicate that the section comes into play only if the following conditions are fulfilled:

> *• search or requisition must have taken place*
>
> *• any money, bullion, jewellery or other valuable articles or other things or books of account or documents (hereinafter called "assets/documents") are found belonging/pertaining to "such other person", or even any information contained therein relates to a person other than the person on whom the said search is conducted*
>
> *• Satisfaction of AO that it belongs to or relates to "such other person"*
>
> *After finding any books account or documents or assets seized or requisitioned, the same shall be handed over to the **AO having jurisdiction over such other person**. The AO (having jurisdiction) has to be satisfied that the "assets/documents" seized or requisitioned have a bearing on the determination of the total income of such other person. Only then the AO (having jurisdiction) can proceed /s. 153C against such other person in the manner provided u/s. 153A.*
>
> *It is apparent from the above that two separate satisfaction ought to be recorded which is*
>
> *• First by the AO of the person on whom search was*

conducted i.e "searched person" for any "documents/assets" found pertaining to or belonging to the "such other person"

• Secondly by the AO of other person, regarding "assets/documents" seized or requisitioned have a bearing on the determination of the total income of such other person.

From the above analysis, it is clear that the provision of Section 153C can be invoked in case of "Other Person" only if the assets or documents as mentioned above are seized in the search u/s. 132(1) or requisitioned u/s. 132A in case of any other person. ***From this it follows that if documents are impounded u/s. 133A then provisions of Section 153C cannot be invoked****.*

34. **Section 148** : The general principle is that once an assessment is completed it becomes final. The power of assessment or reassessment of any income chargeable to tax that has escaped assessment has been provided under section 147 r.w.s 148 of Income Tax Act of 1961. If the assessing officer has the reason to believe that any income chargeable to tax has escaped assessment then the assessing officer may subject to the provisions of section 147 to 153 assess or reassess such income.

Section 147 empowers the Assessing Officer to reopen an assessment if the conditions prescribed therein are satisfied. The conditions are:

• AO has to record the reason for taking action under section 147. Only on the basis of such reasons recorded (a live link with the formation of the belief) in the file that the validity of the order reopening a assessment has to be decided.

• AO must also have reason to believe that income chargeable to tax has escaped assessment for any assessment year

• The jurisdictional condition is that the formation of belief by the AO that income has escaped

assessment

• No action can be initiated after the expiry of 4 years from the end of the relevant assessment year unless reason for the failure is on the part of the taxpayer to disclose fully all material facts necessary for assessment and the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

For better understanding of both the sections the same are reproduced below and read parallelly

Section 153C	*Section 147*
(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,— (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and ***that Assessing Officer "shall" proceed against each such other person and issue notice and assess or reassess the income of the other person*** *in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that* ***the books of account or documents or assets seized***	*If the Assessing Officer* ***has reason to believe that any income chargeable to tax has escaped assessment*** *for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned*

or requisitioned have a bearing on the determination of the total income of such other person *for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.*	

35. Indisputably in the case on hand, the search was undertaken prior to 01.06.2015. If that be so then, it is clear that before issuing the notice under Section 153(C) of the Act, the primary condition has to be fulfilled and which is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken u/s. 153C of the Act. The seized documents do not belong to the two writ applicants herein but were seized from the premises of the Venus Group. It is not the case of the revenue that the seized documents are in handwriting of the two writ applicants. In such circumstances, the Assessing Officer could not have initiated proceedings under Section 153(C) of the Act but based on the information, could be said to be justified in reopening the assessment for the reasons assigned and referred to above.

36. In such circumstances referred to above, we are not impressed with the submissions canvassed by Mr. Shah that the proceedings under Section 147 are not tenable in law, as the case is covered by Section

153(C) of the Act.

37. In overall view of the matter, we are convinced that we should not interfere in this matter.

38. In the result, this writ application fails and is hereby rejected.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

P.S. JOSHI