IT : Where assessee received Rs. 80 lakhs on account of share application money from two companies, however there was nothing to establish genuineness of share subscription transactions as assessee did not know anything about these companies and had no financial documents about their financial activities or their balance sheets, thus, these companies were shell companies and Commissioner(appeals) rightly confirmed action of Assessing Officer in making addition of Rs. 80 lakhs on account of share application money received by assessee from two shell companies under section 68

• Onus of assessee, of explaining nature and source of credit, did not get discharged merely by filing confirmatory letters, or demonstrating that transactions were done through banking channels or even by filing income tax assessment particulars. It was necessary for assessee to prove genuineness of transactions which assessee had failed to do.

■■■

[2018] 96 taxmann.com 602 (Delhi - Trib.)

IN THE ITAT DELHI BENCH 'A'

Pee Aar Securities Ltd.

v.

Deputy Commissioner of Income-tax,Circle-14(1), New Delhi

PRAMOD KUMAR, ACCOUNTANT MEMBER
AND SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
IT APPEAL NO. 4978 (DELHI) OF 2014
[ASSESSMENT YEAR 2005-06]
AUGUST 23, 2018

Vinod Bindal *for the Appellant.* **Ravi Kant Gupta** *for the Respondent.*

ORDER

Pramod Kumar, Accountant Member - When the hearing in this case was concluded on 30th May 2018, the following noting was made in the record of proceedings:

Dismissed. Pronounced in the open court. Detailed reasons to follow.

xx	***xx***
JM	**AM**

2. It is in this backdrop that the detailed order, setting out reasons for our conclusions, is being pronounced today.

3. By way of this appeal, the assessee appellant has challenged correctness of the order dated 24th June 2014 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2005-06.

4. Grievances raised by the assessee appellant are as follows:

1. That having regard to the facts and circumstances of the case, the issue of notice under section 148

by the AO for reopening the assessment was not in accordance with the provisions of Section 151 of the Income Tax Act, 1961.

2. That having regard to the facts and circumstances of the case, the learned CIT(A) erred in law and on facts while upholding the issue of notice under section 148 by the AO for reopening the assessment.

3. That having regard to the facts and circumstances of the case, the learned CIT(A) erred in law while upholding the reopening of the assessment when the AO failed to comply with the procedure laid down by Hon'ble Supreme Court in the case of *GKN Driveshafts India Pvt Ltd* v. *ITO* [(2003) 179 CTR 11 (SC)].

4. That having regard to the facts and circumstances of the case, the learned CIT(A) has erred in law and on facts in confirming the action of the learned AO in making aggregate addition of Rs 80,00,000 on account of share application money received from M/s Geefcee Finance Limited and M/s Mahanivesh India Limited under section 68 of the Income Tax Act, 1961.

5. That having regard to the facts and circumstances of the case, the learned CIT(A) has erred in law and on facts in confirming the action of the learned AO in making aggregate addition of Rs 2,00,000 on account of alleged commission paid in relation to the above share capital money received from M/s Geefcee Finance Limited and M/s Mahanivesh India Limited

6. That the action of the learned CIT(A) in dismissing the ground nos. 1,2,3,4 and 5 was bad in law and facts keeping in view the fact that the inspection of AO's file was allowed in June 2013, i.e. about 4 months after completion of the assessment.

7. That learned CIT(A) failed to appreciate that amended provisions of Section 68 which are substantive in nature were applicable prospectively and were not applicable for the AY 2005-06.

8. That the action of the CIT(A) in confirming the action of the learned Assessing Officer in making the impugned addition and framing the impugned assessment order is contrary to law and facts, void ab initio, beyond jurisdiction and without giving adequate opportunity of hearing, by recording incorrect facts and finding, and the same is not sustainable on legal and factual grounds.

9. That the learned CIT(A) failed to appreciate that the AO had failed to follow the principles of natural justice.

5. In substance, thus, grievance of the assessee is that (a) learned CIT(A) erred in upholding the reopening the impugned assessment proceedings; and that (b) learned CIT(A) erred in upholding the addition of Rs 80,00,000 as unexplained credit in respect of share application money received by the assessee from Geefcee Finance Investments Limited and Mahanivesh India Limited, and the addition of Rs 2,00,000 as commission said to have been paid for arranging this alleged accommodation entry.

6. Let us take up grievance against the validity of reopening the assessment first.

7. Briefly stated, the relevant material facts are like this. It is a case of reopened assessment. Even though the assessee had filed the income tax return, disclosing an income of Rs 22,66,970, on 31st October 2007, the reassessment notice was issued on 30th March 2012, on recording, inter alia, the following reasons of reopening the assessment:

> Subsequently, information has been received from Directorate of Income Tax (Investigation) of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received during the period FY 2004-05, relevant to the assessment year 2005-06, received from established entry operators identified by investigation wing on the basis of search/survey conducted on Shfri Tarun Goyal CA. A comprehensive investigation was carried out by the investigation wing in this regard, and on the basis of investigation carried out and evidences collected, examination made a reported has been forwarded which showed that above named Tarun Goyal CA has floated a number of concerns/private limited companies for providing accommodation entries to various desirous persons.

These concerns/companies were found to be only paper entities providing accommodation entries and not doing any other real business. Shri Tarun Goyal CA was found controlling more than 90 such concerns/companies. He has been doing the business of providing accommodation entries through these concerns by giving cheques/PO/DD in lieu of cash with/without help of some agents/mediators. They have also been charging certain commission, for providing these entries, which usually varied from 1.5% to 3.5%. A perusal/examination of reported/related documents/related records show that M/s Pee Aar Securities Limited being assessed with the undersigned has also received a sum of Rs 80,00,000 from Shri Tarun Goyal CA through his concerns in the garb of share capital/share application money/loan which does not represent actual transaction but only accommodation entries.

Infact perusal/examination of report/document/records show that the entire transaction lacks ingredients of genuineness and is totally fishy. It can, therefore, be safely inferred that this amount is unaccounted money of the assessee introduced in his books of accounts after routing the same through these entry providers/groups to avoid taxing of such amounts.

In view of the above, I have reasons to believe that the assessee company has taken bogus/accommodation entries as discussed above to the tune of Rs 80,00,000 in the period relevant ton the assessment year 2005-06 resulting into an escapement of income to this extent plus the amount of commission paid out of the books.

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8. While there is not much discussions about the stand of the assessee against the initiation of these reassessment proceedings, the ground of appeal take before the CIT(A) show the following grievances raised by the assessee:

1. The learned Assessing Officer erred in issue of notice under section 148 for reopening the assessment without having adequate grounds to come to the conclusion that there existed reasonable belief that due to failure of the assessee to furnish full and true particulars, income had escaped assessment.

2. The learned Assessing Officer had no information whether the notice was in respect of information collected by the investigation wing during the search or the information was collected during a survey. This is important as remedial action in search cases are covered under section 153A for assessment/reassessment purposes, while section 148 will apply in respect of survey cases.

3. The learned Assessing Officer failed to furnish any material on record based on which reasons under section 148 was claimed to have been recorded, despite several requests by the appellant.

4. The learned Assessing Officer failed to confront any material information relied upon by him to draw conclusions adverse to the appellant.

9. Learned CIT(A), while dealing with the above grievances, was of the view that "there were sufficient reasons for the AO to believe that income had escaped assessment and proceedings were initiated after recording the reasons". He was of the view that " a reassessment is valid if there is prima facie reason to believe that income has escaped assessment" and that "information was received by the AO and reasons were recorded that there was escapement". He relied upon judicial precedents in the cases of *R S Utnal* v. *ITO* [(2004) 269 ITR 212 (Kar)] and *ITO* v. *Shri Bajrang Commercial Co Pvt Ltd* [(2004) 269 ITR 338 (Cal)]. Learned CIT(A) further observed that, post amendment, all that Section 147 with effect from 1st April 1989, the only requirement under this section is that the Assessing Officer must have prima facie reasons to believe that any income has escaped assessment, and the AO "is not required to conclusively prove escapement of income at the stage of issuance of notice under section 148". While on this aspect, learned CIT(A) extensively referred to, and relied upon, the observations made by Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd* v. *Income Tax Officer* [(1999) 236 ITR 34 (SC)] and *ACIT* v. *Rajesh Jhaveri Brokers Pvt Ltd* [(2007) 291 ITR 500 (SC)]. As regards plea of the assessee that section 148 comes into play only in the cases of survey, learned CIT(A) observed that "the assertion of the appellant is not correct" as "section 148

will apply in cases other than survey cases also". As regards the plea of the assessee that the material used against the assessee was not confronted to him, learned CIT(A) observed that "it is seen that the appellant was provided inspection of file by the AO and photocopies of the relevant documents provided" and, thus, rejected this plea as well. Coming to the plea that "material information" was not confronted to the assessee, learned CIT(A) observed that "since the appellant has inspected the file and taken photostat copies of the material, it is not known what other material was required to be given to the appellant" and rejected this plea as well. It was in this backdrop that the CIT(A) confirmed the reopening of assessment. The assessee is not satisfied and is in further appeal before us.

10. Learned counsel for the assessee begins by pointing out that the very notice under section 148 is vitiated in law for more reasons than one. It is pointed out that the said notice states that "this notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income Tax/Additional Commissioner of Income Tax" but it does not strike off any of these two authorities. It is then pointed out that the said notice also states that "the copy of reasons recorded for initiating proceedings under section 147/148 are enclosed herewith" but no such attachment was furnished alongwith the notice. He submits that for these reasons, the initiation of reassessment proceedings must be held to be unsustainable in law. Learned counsel then submits that in this case the approval was required from the Additional Commissioner of Income Tax, but then it is an admitted position that the approval was obtained from the Commissioner of Income Tax. He submits that in a case in which the approval is required to be given by the Additional Commissioner of Income Tax, but approval is given by a higher authority i.e. Commissioner of Income Tax, the approval granted for reopening the assessment is vitiated in law. For this reason also, according to the learned counsel, the initiation of reassessment proceedings must be held to legally invalid. It is then contended that there is nothing to show that the Assessing Officer has even applied mind of his own and, in a stereo typed manner, he has simply acted upon sweeping generalizations based on the material gathered by someone else i.e. investigation wing. Learned counsel submits that the scheme of the Act does not permit reopening of completed assessments in such a situation. There has to be some material on record which indicates involvement of the assessee and this involvement cannot be assumed or inferred; it is something which material on record must unambiguously indicate even if not establish. There was no material whatsoever, according to the learned counsel, to even indicate that the assessee had committed any error, evades any taxes or involved in any malpractice. Just because the assessee dealt with certain companies which were involved in some dubious transactions with someone else, the Assessing Officer cannot reach a conclusion that there were some irregularities in transactions entered into by the assessee with those entities. Learned counsel then takes us through the material on record and submits that there are missing gaps in the inferences drawn by the Assessing Officer, as also his supervising officers, which shows that as a matter of fact, these authorities did not even see the assessment records while granting permission to reopen the assessment. All this indicates, according to the learned counsel, non application of mind by the Assessing Officer and his supervising officers, and for this short reason independently as well, the impugned reassessment deserves to be quashed. Learned counsel then submits that the Assessing Officer did not furnish, despite specific requisitions of the assessee, the material based on which the Assessing Officer had formed his opinion that income had escaped the assessment. It is only elementary that unless an assessee is confronted with the material which is being used against him, such a material has no evidentiary value. Accordingly, as per the stand taken by the learned counsel, the material on the basis of which is impugned reassessment proceedings are resorted to, does not have any legally sustainable foundation. When the material does not have legally sustainable foundation, the reassessment, on the basis of such material, is inherently bad in law. He then submits that since the reasons for reopening the assessment were not given alongwith the basis of reopening the assessment, for this reason also, the impugned reassessment proceedings are vitiated in law. It is not submitted that it is not only the reasons for reopening the assessment, but the material constituting basis for coming to this conclusion, must also be shared with the assessee. He then submits that even during inspection of record, no such basis was found by the assessee. Learned counsel then referred to, and extensively read out from, a large number of judicial precedents, including *Pardesi Developers and Infrastructure Pvt Ltd* v. *CIT* [(2013) 351 ITR 8 (Del)], *PCIT* v. *Best Infrastruture Pvt Ltd* [(2017) 397 ITR 82 (Del)], Dharmavir Singh Rao Vs ACIT [(2017) TIOL 2447 HC DEL IT], PCIT Vs N C Cables Limited [(2017) 88 taxmann.649 (Del)]. In addition to these judicial precedents addressed to in the course of arguments, learned counsel has also filed, and relied upon, certain other judicial precedents in the cases of *CIT* v. *SPLS Siddartha Limited* (ITA No 836 of 2011; judgment dated

14th September 2011 from Hon'ble Delhi High Court) *DSJ Communications Ltd* v. *DCIT* (WP No 722 of 2011; Hon'ble Bombay High Court's judgment dated 13th September 2012), *Smt Ghanshyam K Karbani* v. *ACIT* (WP No 1246 of 2012; Hon'ble Bombay High Court's judgment dated 12th March 20120), *Hi Gain Investments Pvt Ltd* v. *ITO* (ITA No. 4250/Del/2014; order dated 15th May 2017 by a coordinate bench), *Praful Chandaria* v. *ADIT* (ITA Nos. 4313 and 4717/Mum/2013; order dated 26th August 2016 by a coordinate bench) *Roshanlal Jain & Co Ltd* v. *ITO* (2017 TIOL 248 ITAT DEL by a SMC bench of this Tribunal), *Virendra Jain* v. *ACIT* (2016 TIOL 2555 ITAT DEL by a coordinate bench of this Tribunal), *ACIT* v. *Ottoman Steel Tubes Pvt Ltd* (2016 TIOL 1291 ITAT DEL by a coordinate bench of this Tribunal), *H R Mehta* v. *ACIT* (ITA No. 58 of 2001; Hon'ble Bombay High Court's judgment dated 30th June 2016), *Signature Hotels Pvt Ltd* v. *ITO* (WPC No. 8067/2010; judgment dated 21st July 2011 by Hon'ble Delhi High Court), *ITO* v. *Vivsun Properties Pvt Ltd* (2016 TIOL 749 ITAT DEL by a coordinate bench of this Tribunal) and *Tarun Goyal & Others* v. *ACIT* (2013 TIOL 1314 ITAT DEL by a coordinate bench of this Tribunal). On the strength of these submissions and these judicial precedents, we were urged to quash the reassessment proceedings. Learned Departmental Representative, on the other hand, vehemently opposed these submissions. He submitted that these heroics are completely out of place and the judicial precedents relied upon donot deal with the fact situation before us. It is pointed out that admittedly the assessee had entered into transactions with the entities owned by Tarun Goyal group and it is finding of this very Tribunal that Tarun Goyal as running a racket of providing accommodation entries by floating various entities and this modus operendi is not disputed even by Tarun Goyal himself. The painstaking investigation by the investigation wing also brought on record these facts. It is not even the case of the assessee, or, for that purpose, anyone, that these group entities were involved in any genuine business activities. On these facts, the inputs from investigation wing coupled with the fact of the assessee having entered into transactions with these entities, which were solely involved in the business of providing accommodation entries, was a reasonable material for coming to the conclusion that the assessee has introduced own ill gotten funds with the help of the accommodation entries provided by these entities. The decision of the Assessing Officer was a well considered decision and a right decision. It is not the requirement of law that at the stage of the reopening the assessment, the Assessing Officer must have conclusive evidence to establish escapement of income. A bonafide reasonable belief for holding the belief that income has escaped assessment is good enough for reopening the assessment, and the law is well settled on that aspect. Learned Departmental Representative took us through, and relied upon, the findings of, and judicial precedents relied upon by, learned CIT(A) on this aspect. Learned Departmental Representative also pointed out that the assessee had inspected the records at the assessment stage and even taken copies from the same. It cannot thus be said that the assessee was not provided with the reasons for reopening the assessment. As regards learned counsel's submission that the basis on which the reopening proceedings are initiated must also be shared with the assessee, learned Departmental Representative points out that it is not at all the requirement of law that all the inputs available to the Assessing Officer must also be shared with the assessee also. All that is required to be given by the Assessing Officer to the assessee is a copy of the reasons recorded for reopening the reassessment, and that was undisputedly given to the assessee. There is no judicial precedent for this claim of the assessee. Simply because the reasons for reopening the assessment were not furnished alongwith the notice under section 148, even if that is true- though there is nothing to establish that, the reassessment itself cannot be said to be invalid, particularly when these reasons have been subsequently furnished to the assessee. As regards approval by the CIT, and invalidation of approval for that count alone, learned Departmental Representative submits that when a statutory authority is specifically conferred a power of approval, merely because an even higher authority has granted approval the proceedings cannot be held to be valid. However, the present fact situation is materially different inasmuch as the approval has been obtained from the Additional CIT as also the CIT, and, as such, the approval by CIT is not in substitution of approval by the Additional CIT but in addition to approval by the CIT. Learned Departmental Representative then submits that the allegation about non-application of mind by the Assessing Officer, Additional CIT and the CIT, are based on surmises and conjectures. In any case, the assumption on the basis of which such allegations are made are not really relevant. The question of application of mind comes into play vis-à-vis the question as to whether income has escaped assessment or not. As for this aspect, as submitted earlier, there is no dispute that the Assessing Officer had material to show that Tarun Goyal group entities were solely involved in the business of providing accommodation entries and that the assessee had received share subscriptions from such entities. Learned Departmental Representative submits that, on these facts, any

reasonable person would have prima facie belief that income, to the extent of such alleged share capital subscription as also to the extent of expenses incurred to obtain these accommodation entries for share capital subscription, has escaped assessment. That was the material before the AO, the Addl CIT and the CIT. This material, according to learned counsel, was reasonable basis for coming to the conclusion that income has escaped assessment. Learned Departmental Representative further submits that the assessment was reopened on the basis of reasons recorded by the Assessing Officer, which constituted reasonable basis for coming to the conclusion that income has escaped assessment, and that it did not suffer from any legal infirmity. We are thus urged to confirm the action of the CIT(A) in this regard, and decline to interfere in the matter. In brief rejoinder, learned counsel for the assessee reiterated and relied upon his submissions recorded earlier.

11. We find that in the present case, the assessee appellant had not only taken the inspection of the file and also taken copies of the documents on the assessment file. It is not the case, therefore, of the assessee that he had no occasion to know the reasons for which the reassessment proceedings are initiated. As a matter of fact, as evident the letter dated 22nd February 2013, extracts from which have been extensively reproduced at page 3 onwards of the assessment order, the assessee had not only received the reasons for reopening the assessment but he was also aware of all the nuances thereof. When he states that "the reason (for reopening the assessment) recorded by predecessor is vague and without substance" and that "your assessee is yet to receive the copy of information or the alleged statement of the person on the basis of which the reasons have been recorded". His grievance is that while the notice under section 148 stated that the reasons for reopening the assessment are attached therewith, no such reasons were actually attached thereto, and that, in any event, what was shared with the assessee was only the copy of reasons recorded and not the material on the basis of which such reasons were formed. Even if we assume that the reasons for reopening the assessment were not really attached to the notice, even though neither this plea was taken before the CIT(A) nor there is any material in support of this plea, this lapse, by itself, cannot invalidate the reassessment proceedings. As a matter of fact not only this allegation of the assessee is unproved, it is obvious from the submissions of the assessee that the assessee was fully aware of the said reasons- something which raises serious doubts on this unsubstantiated allegation. Its is not a statutory requirement that the reasons for reopening the assessment must be attached with the notice issued under section 148. Nothing, therefore, turns on the reasons for reopening the assessment not being furnished with the notice under section 148. In any event, as evident from the submissions made by the assessee at the assessment stage, he was fully aware of the reasons and he raised specific issues with respect of the same, but what he really wanted was the basis on which the Assessing Officer had recorded the reasons. As regards sharing of the basis on which conclusions were arrived at and the material on the basis of which the opinion was formed, we donot find any support, either in law or even in judicial precedents, for this proposition. All that the Assessing Officer is required to share with the assessee are the reasons recorded for reopening the assessment. Rather than objecting to the reasons recorded by the Assessing Officer, the assessee kept on asking for the basis of forming such reasons. That requisition by the assessee, in our humble understanding, was well beyond what was permitted to the assessee. All that is required to be looked into at this stage is whether the Assessing Officer had a reasonable ground to reopen the assessment. There was no occasion to examine fine points about the legality and legal nuances about the material based on which such prima facie opinion is formed by the Assessing Officer. In any case, despite our several specific questions, learned counsel could not point out any legal support in response to this requisition.

12. Coming to the approval by the Commissioner, in the place of Additional Commissioner, we see merits in the plea of the learned Departmental Representative to the effect that there is a subtle difference between the situation in which the approval is granted by the Commissioner in the place of approval by the Additional Commissioner, and in the situation in which approval is granted by Commissioner in addition to the approval by the Additional Commissioner. There cannot be, and there is no, dispute about the proposition that in the former case, the reassessment proceedings will be legally unsustainable for want of approval by the appropriate authority, but, as to what happens in the later case, we find guidance from a coordinate bench decision in the case of *Mayurbahi Mangaldas Patel* v. *ITO* [(2018) 168 ITD 317 (Ahd)] wherein, speaking through one of us, the coordinate bench observed as follows:

> *5.1 Let us, in the light of this factual position, revert to the provisions of section 151, which reads as follows:*

"151 - Sanction for issue of notice

(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]"

6. As evident from the plain reading of the above statutory provision, all that is necessary for the prescribed authority to satisfy himself that "on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice"; that is all that, for the purpose of section 151, expression "sanction" or "approval" refers to. The sanction consists of recording the satisfaction that, on the reasons recorded by the Assessing Officer, it is a fit case for issue of such notice for reopening the assessment. What is material is that such a satisfaction is recorded by the prescribed authority, and it is this satisfaction, we may clarify at the cost of repetition, which is statutorily treated as "sanction" in the heading of section 151. The words "approved" or "sanctioned" are not even required to be used by the prescribed authority, because, under the scheme of section 151, it is satisfaction of the authority, on the reasons recorded by the Assessing Officer, that this is a fit case for reopening the assessment. The use of words that the reassessment is being done with the "approval" of the Commissioner is meaningless unless the actual satisfaction of the Commissioner is actually seen, and we see that actual processing sheet for so called approval of the Commissioner, it is plain on facts that the satisfaction "on the reasons recorded by the Assessing Officer that it is a fit case for issuance of notice under section 148" is not only of the Commissioner but also of the Joint/Additional Commissioner concerned.

7. There is no doubt that in the present case the Joint/Additional Commissioner of Income-tax has categorically expressed his satisfaction about the fact that on the reasons recorded by the Assessing Officer, it is fit case for issuance of notice under section 148. The requirements of approval under section 151 are thus clearly satisfied. Merely because an even higher authority has expressed similar satisfaction does not obliterate the satisfaction of appropriate authorities. What we have seen in this particular case appears to be a part of the standard operating procedure in the income tax department, and, if that be so, there can hardly be a case in which the Commissioner has granted the approval for reopening of assessment and the Joint/Additional Commissioner of the range concerned has not recorded his satisfaction to the effect that on the reasons recorded by the Assessing Officer, it is a fit case for reopening the assessment. Even if there is any defect in the proceedings, as long as it is in substance and effect of the same is in conformity with the scheme of the Act, section 292B prevents it's being rendered invalid on that count. Section 292B, inter alia, categorically provides that "no ….. proceeding …… taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such …….. proceeding if such …….. proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act". Quite clearly, therefore, it is indeed an inherent part o the approval being granted by the Commissioner that the Joint/Additional Commissioner of Income-tax expresses his satisfaction about the reason of reopening of assessment being sufficient to issue notice under section 148 and thus initiate the reassessment process, and, in the case before us, this aspect of the matter has come to the light. Ironically, however, this aspect of the matter is not adequately highlighted and properly demonstrated, in most of the cases before the judicial forums, and that obviously is the reason that there are several

judicial precedents quashing the reassessment proceedings on the ground that the approval is of the Commissioner concerned, and not of the Joint/Additional Commissioner. All the judicial precedents filed before us fall in the category in which there is nothing on the record to demonstrate, or even suggest, that the Joint/Additional Commissioner concerned has recorded his satisfaction that, on the reasons recorded by the Assessing Officer, it is a fit case for initiating the reassessment proceedings. We have carefully perused these precedents but we do not find any reference to the finding that in those cases satisfaction of the Joint/Addl. Commissioner of Income-tax, to the effect that, on the reasons recorded by the Assessing Officer, it was a fit case for initiating the reassessment proceedings, was also on record. A decision rendered without taking note of this fact cannot be an authority for the proposition that even when such a satisfaction by the appropriate authority is on record, just because similar satisfaction is expressed by the higher authority is also on record, requirements of section 151 cannot be taken as having been complied with. The binding nature of judicial precedents is only for what they actually decide and not what can be inferred from these judicial precedents. Nothing, therefore, turns on these precedents in the present case. On the contrary, being satisfied that sanction envisaged by the scheme of section 151, i.e. by recording satisfaction on the reasons recorded by the Assessing Officer that it is a fit case for initiating reassessment proceedings, is given by the prescribed authority on the facts of this case, these judicial precedents are not clearly relevant in the present context.

8. In view of the detailed reasons set out above, we are of the considered view that the hyper technical grievances raised before us are devoid of legally sustainable merits. We accordingly reject the same.

9. As we part with the matter, we must that we have taken note of the fact that as reassessments after reassessments are being quashed by the judicial authorities, on the ground as raised before us in this case, the income tax authorities have not taken pains either to follows the standard operating procedure or to demonstrate to us that this standard operating procedure was followed, and there cannot, thus, be a case in which approval of the Commissioner was obtained without the satisfaction of the Range Head (i.e. concerned Joint/Additional Commissioner of Income Tax) qua the reasons recorded by the Assessing Officer for reopening the assessment, Commissioner could have granted the approval for reopening. It is for the income tax authorities to present to the judicial forums the actual facts, with supporting evidences, to the judicial forums and thus properly assist these forums in dispensing justice to the parties. It is extremely painful to us to depart from the views that the coordinate benches have taken in the earlier cases, or to distinguish the judgments of Hon'ble Courts above, but then, as complete facts having come to light, and duly evidenced, before us, we cannot knowingly perpetuate the errors in the name of reverence to binding judicial precedents. In the case of Kamgar Sabha v. Abdulbahi Faizullbhai AIR 1976 SC 1455 Their Lordships have, in their inimitable and felicitous words observed thus, "It is trite, going by anglophonic principles that a ruling of a superior Court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark". Lest we may be blamed for departing from, in the name of reverence to the judicial precedents, a judicial forum's unflinching commitment for the cause of justice, once the factual matrix has admittedly shown a different shade of truth, we must not remain constrained by the judicial precedents which were given oblivious of the facts now glaring at us.

13. The views so expressed by the coordinate bench were approved by Hon'ble Gujarat High Court in the judgment reported as *Mayurbahi Mangaldas Patel* v. *ITO* [(2018) 93 taxmann.com 220 (Gujarat)]. While approving the conclusions arrived at by the coordinate bench, Their Lordships have, inter alia, observed as follows:

10. The legal proposition is that when the statute casts a duty on a certain administrative officer, the same must be performed by him and the satisfaction arrived at even by the higher authority would not be sufficient. However, in the present case, there was no lack of satisfaction or exercise of power by the Joint Commissioner. He in clear terms, expressed his satisfaction that on the basis of the reasons recorded by the Assessing Officer, it was a fit case for issuance of notice under section 148 of the Act.

Merely because the papers were thereafter for some erroneous reason also placed before the Commissioner who also recorded his similar satisfaction would not take away anything from the previous conclusion.

14. When the above position was pointed out to the learned counsel, he was somewhat dismissive of this precedent and he submitted that the decision of Hon'ble Gujarat High Court is not binding in this jurisdiction, and, while in the jurisdiction of Hon'ble Delhi High Court, we must not feel fettered by what views are held by a non jurisdictional High Court. Our careful analysis of the material on record, as also additional research work, could not help us lay hands on any judicial precedents which supports or approves the proposition that even though there is an approval by the Additional CIT on record, the initiation of reassessment proceedings will stand invalidated simply because an additional approval, for whatever reasons, has been obtained by even higher authority. The judicial precedents in support of the assessee proceed on the basis that the approval was given by a higher authority apparently in substitution of, rather than in addition to, approval by the authority in which statute has vested the powers. As to what is the status of non jurisdictional High Court decisions, particularly in a situation in which Hon'ble jurisdictional High Court does not offer any guidance on that issue, we find guidance from a coordinate bench decision in the case of *ACIT* v. *Aurangabad Holiday Resorts Pvt Ltd* [(2009) 118 ITD 1 (Pune)] as follows:

5. As observed by a Co-ordinate Bench of this Tribunal, in the case of Tej International (P.) Ltd. v. DCIT (69 TTJ 650), in the hierarchical judicial system that we have in India, the wisdom of the court below has to yield to the higher wisdom of the court above and, therefore, once an authority higher than this Tribunal has expressed its esteemed views on an issue, normally the decision of the higher judicial authority is to be followed. The Bench has further held that the fact that the judgment of the higher judicial forum is from a non-jurisdictional High Court does not really alter this position, as laid down by the Hon'ble Bombay High Court in the case of CIT v. Godavari Devi Saraf (113 ITR 589). For slightly different reasons and alongwith some other observations on the issue, which we shall set out a little later, we are in agreement with the conclusions arrived in this case.

6. That takes us to the question whether this decision stands overruled by the Hon'ble Bombay High Court's later judgment in the case of Thana Electricity Co. Ltd. (supra), as submitted by the learned Departmental Representative.

7. It is also important to bear in mind that the question requiring adjudication by Their Lordship was whether or not decision of one of the High Courts was binding on the other High Courts. This will be clear from following observations made by Their Lordships in the beginning of the judgment :

"On a careful consideration of the submissions of the learned counsel for the assessee, we find that before taking up the issue involved in the question of law referred to us in this case for consideration, it is necessary to first decide.... whether this Court, while interpreting an all India statute like Income-tax Act, is bound to follow the decisions of any other High Court and to decide accordingly, even if its own view is contrary thereto, because of the practice followed in this Court. Because, if we are to accept this submission, it will be an exercise in futility to examine the real controversy before us...."

8. One of the propositions that Their Lordships took note of was that 'the decisions of the High Court on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction (but) it does not extend beyond its territorial jurisdiction.' Their Lordships in the same paragraph also noted that 'A Division Bench of the High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court', and 'if one Division Bench differs with another Division Bench of the same High Court, it should refer the case to a larger Bench'. Having thus noted the proposition, Their Lordships proceeded to 'analyse the decisions of this Court, on which reliance has been placed by the learned counsel for the assessee, in support of his contention that decision of any other High Court on all India statute like Income-tax Act, is binding even on this Court and on the Tribunals outside jurisdictions of that High Court'. On Godavari Devi Saraf's case (supra), which was delivered by a Division Bench of equal strength of this very Hon'ble High Court, Their Lordships took note of revenue's stand as follows :

"Referring to the observations of Godavari Devi (supra), that an all India Tribunal acting anywhere should follow the decisions of any other High Court on the point, it was submitted by the counsel of the revenue that this observation itself would show that the High Court was aware of the fact that different High Courts were not bound by the decisions of each other and, as such, there may be contrary decisions of different High Courts on the same point."

9. The issue of consideration was thus confined to the question whether or not a High Court decision is binding on another High Court or not. That admittedly was the core issue decided by Their Lordships. As for the binding nature of non-jurisdictional High Court decisions on the Tribunal, the observations made by Their Lordships were no more than obiter dictum and in this very judgment, Their Lordships have held that even in the case of Hon'ble Supreme Court judgments, which are binding on all Courts, except Supreme Court itself, but 'what is binding, of course, is the ratio of the decision and not every expression found therein'. Their Lordships have also referred to the oft quoted judgment of the Hon'ble Supreme Court in the case of CIT v. Sun Engg. Works (P.) Ltd. (198 ITR 297) wherein it is held that 'it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of question under consideration, and treat it to be complete law declared by this Court." [Emphasis supplied].

10. In this light, and bearing in mind the fact that limited question before Their Lordships was whether or not decision of one of the High Courts is binding on another High Court, it would appear to us that ratio decidendi in Thana Electricity Co. Ltd. (supra), is on the non-binding nature of a High Court's judgment on another High Court. In any case, this Division Bench did not, and as stated in this judgment itself, could not have differed with another Division Bench of the same strength in the case of Godavari Devi Saraf (supra). Therefore, it cannot be open to a subordinate Tribunal like us to disregard any of the judgments of the Hon'ble Bombay High Court, whether in the case of Thana Electricity Co. Ltd. (supra) or in the case of Godavari Devi Saraf. It is indeed our duty to loyally extend utmost respect and reverence to the Hon'ble High Court, and to read these two judgments by the Division Benches of equal strength of the Hon'ble jurisdictional High Court, i.e., in the cases of Thana Electricity Co. Ltd. (supra) and Godavari Devi Saraf (supra), in a harmonious manner.

11. Let us now take a look at the Hon'ble jurisdictional High Court's judgment in the case of Godavari Devi Saraf (supra). In this case, question before Their Lordships was as follows :

"Whether, on the facts and circumstances of the case, and in view of decision in the case of A.M. Sali Maricar (90 ITR 116), the penalty imposed on the assessee under section 140A(3) was legal?"

12. The specific question before Their Lordships was whether the Tribunal, while sitting in Bombay, was justified in following the Madras High Court decision holding the relevant section as unconstitutional. Hon'ble High Court concluded as follows :

"It should not be overlooked that Income-tax Act is an all India statute, and if a Tribunal in Madras has to proceed on the footing that section 140A(3) was non-existent, the order of penalty under that section cannot be imposed by any authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on the Tribunal in the State of Bombay (as it then was), it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land .....an authority like Tribunal has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision on that issue by any other High Court "

13. It is thus clear that while the issue before the Hon'ble High Court in Thana Electricity Co. Ltd.'s case (supra) was whether or not a High Court should follow another High Court, whereas in Godavari Devi Saraf's case (supra), Their Lordships dealt with the issue whether or not a non-jurisdictional High Court is to be followed by a Bench of the Income-tax Appellate Tribunal. To that extent, and irrespective of some casual observations on the applicability of non-jurisdictional High Court judgments on subordinate courts and Tribunals, these two decisions deal in two different areas. As we have noticed earlier also, in Thana Electricity Co. Ltd.'s case, a note was taken of Godavari Devi Saraf's judgment and neither the said judgment was dissented nor overruled. In any event, in Thana Electricity Co. Ltd.'s case, Hon'ble

Court was alive to the fact, which was acknowledged in so many words, that a Co-ordinate Bench decision cannot be overruled. In this view of the matter, it is difficult to hold, as has been strenuously argued before us by the learned Departmental Representative, that the Hon'ble Bombay High Court's judgment in the case of Godavari Devi Saraf's case stands overruled by Their Lordship's judgment in the case of Thana Electricity Co. Ltd.'s case. The only way in which we can harmoniously interpret these judgments is that these decisions deal with two different issues and ratio decidendi of these decisions must be construed accordingly.

14. Let us also see this issue from a different perspective. Even if we are to assume that it is possible to interpret that Godavari Devi Saraf's decision stands overruled by judgment in the case of Thana Electricity Co. Ltd.'s case, one cannot be oblivious to the fact that an interpretation is indeed possible to the effect that even non-jurisdictional High Court's judgment, for the reasons set out above, is binding on the Tribunal. This non-jurisdictional High Court's judgment is in favour of the assessee. Now, as held by the Hon'ble Supreme Court's judgment in the case of CIT v. Vegetable Products Ltd. (88 ITR 192), when two interpretations are possible, one in favour of the assessee must be adopted. For this reason, in our humble understanding, the plea of the assessee deserves to be accepted.

15. We may, however, add that the observations that we have made are particularly with reference to the legal position in the jurisdiction in Hon'ble Bombay High Court, as the view so taken in Godavari Devi Saraf's case (supra) has not found favour with Hon'ble Karnataka High Court as well as Hon'ble Punjab and Haryana High Court, in the case of Patil Vijay Kumar v. Union of India (151 ITR 48) and CIT v. Ved Prakash (178 ITR 332). The observations made in this order are subject to this rider and, therefore, while we agree with the conclusions arrived at by a Co-ordinate Bench in Tej International (P.) Ltd. (supra), our reasons are not exactly the same as adopted by our distinguished colleagues.

16. There is one more issue raised by the learned Departmental Representative. He submits that we must decide all the issues raised in this appeal and urges us not to leave the matter by deciding only the preliminary issue. We are unable to approve this contention of the learned Departmental Representative either. The issue is covered by a Special Bench decision in the case of Rajul Kumar Bajaj v. ITO (69 ITD SB 1) which holds that once the issue is decided on the question of jurisdiction, it is not necessary to address the merits of the matter as well. Respectfully following the Special Bench decision, we reject the contention of the learned Departmental Representative. We are not really concerned with as to what should be done in ideal situation, but, as at present and given the fact that the assessment itself is quashed, we see no need to address matters which are rendered academic in the present context.

17. In this view of the matter, we are inclined to uphold the preliminary objection raised by the assessee. As rightly pointed by the learned counsel, Hon'ble Gauhati High Court has held that when the Assessing Officer does not issue notice under section 143(2) within one year from the end of the month in which block return is filed, it cannot be open to him to start the scrutiny assessment proceedings after the end of that period. A view indeed seems possible that it is not necessary that each of the block assessment return must be subjected to the scrutiny of the Assessing Officer. According to this school of thought, in the scheme of things is they exist today, assessment by scrutiny is an option available to the Assessing Officer and it is not always required to be followed in all the block assessment cases. We, however, see no need to go into all these issues. Suffice to say that respectfully following the Hon'ble Gauhati High Court's judgment in the case of Bandana Gogoi (supra) and having noted the position that notice under section 143(2) was admittedly not issued within one year from the end of the month in which block assessment return was filed, we quash the assessment proceedings .

15. Quite clearly, therefore, even the views expressed by a non-jurisdictional High Court, unless such a view comes in conflict with a view favourable to the assessee by any other non-jurisdictional High court and in the absence of guidance by Hon'ble jurisdictional High Court, are binding on us. The plea of the learned counsel does not merit acceptance.

16. Learned counsel has repeatedly stated that there is complete non-application of mind while recording, and while approving, the reasons for re-opening the assessment. As we deal with this aspect of the matter, it is necessary to understand as to what constitutes "reason to believe" in terms of provisions dealing with income

escaping assessment, and what kind of application of mind is required to believe that income has escaped assessment. In the case of *ACIT* v. *Rajesh Jhaveri Stock Brokers Pvt Ltd* [(2007) 291 ITR 500 (SC)], Hon'ble Supreme Court has, inter alia, observed as follows:

> ……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 Supreme 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) fulfilment 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 *ITO* v. *Selected Dalurband Coal Co. (P.) Ltd*. [1996] 217 ITR 597 (SC); *Raymond Woollen Mills Ltd.* v. *ITO* [1999] 236 ITR 34 (SC).

17. What essentially follows is that the Assessing Officer has a reasonable cause or justification to "know or suppose" that income has escaped assessment. As long as the Assessing Officer has that justification, he is legally permitted to reopen the assessment. It is this limited justification that is required to be examined while starting the process of reopening the assessment or to approve such an initiation of process of reopening the assessment. Hon'ble Supreme Court in the case of *Calcutta Discount Co. Ltd.* [(1961) 41 ITR 191 (SC)] has observed that "It is for him *(i.e. the Assessing Officer)* to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn." It is not for somebody else to tell the assessing authority what inferences, whether of facts or law, should be drawn. The question, therefore, that is required to be examined whether on the basis of material available at the time of forming, or approving, the opinion that income has escaped assessment, a reasonable person would come to that conclusion. Here is a case in which certain companies subscribing to the share capital of the assessee company, based on the inputs available to the Assessing Officer at the point of time when such an opinion is formed, are entities engaged wholly in the business of providing accommodation entries, without any involvement in the bonafide business activities. These companies, as the Assessing Officer categorically notes in the reasons recorded while reopening the assessment, are "found to be only paper entities providing accommodation entries and not doing any other real business" and are controlled by one Tarun Goyal who "was found controlling more than 90 such concerns/companies *(including these companies)*". It has also been noted in the reasons recorded for reopening the assessment that this Tarun Goyal "has been doing the business of providing accommodation entries through these concerns by giving cheques/PO/DD in lieu of cash with/without help of some agents/mediators". There is no, and there cannot be, any dispute about bonafides of these inputs. As a matter of fact, a coordinate bench of this Tribunal has in the case of *Tarun Goyal & Ors* v. *ITO* (*supra*), has noted that the undisputed fact accepted by the assessee (i.e. Tarun Goyal) is that he "was running a racket of providing accommodation entries by floating numerous companies". This finding of the coordinate bench is being referred to for the limited purposes of demonstrating bonafides of inputs available to the Assessing Officer. With all these facts about the actual business alleged share subscriber companies were involved in and the facts about the assessee having received entries as alleged share capital subscription from these companies, it is only reasonable, fair and logical to hold prima facie belief that the income to the extent of alleged share subscription and commission to obtain the entries for share subscription has escaped assessment. None of the facts available to have been challenged to be incorrect, even though the assessee has shown his curiosity to find out the material based on which such facts have been available to the assessee. There is no question of non-application of mind to come to this conclusion on the facts of this case. The Assessing Officer clearly applied as much of mind as much he was required to come to this belief about income escaping the assessment, and his supervising officials also clearly applied their mind as much as it was required to come to the conclusion that there is reason to believe that income, to the above extent, has escaped assessment in this case. As a matter of fact, the facts available with the assessee and the belief held

by the assessee are in perfect harmony with each other, and it is not a case that the reassessment has been initiated without any application of mind, though, given the simplicity of factual matrix, not much application of mind was needed anyway at the stage of recording reasons for holding this belief. It does not need rocket science to understand as to what is natural corollary of these entities admittedly being engaged "wholly" in the business of "providing accommodation entries" and the assessee admittedly having received alleged share subscription money from these entities. While coming to the firm conclusion about the income having escaped assessment, and brining it to tax will certainly need much more of an exercise than holding this prima facie belief, there can be little doubt that at the stage of reopening the assessment all that is needed is existence of a prima facie belief that income has escaped assessment. That condition is satisfied, and, by no stretch of logic, it can be said that the Assessing Officer had held this belief without application of mind. It is not clear to us as to what kind of detailed application of mind was needed, according to the learned counsel for the assessee, to come to hold this belief. In our humble understanding, the Assessing Officer, as indeed his supervising officials, had duly applied his mind on the core question about income escaping the assessment, and, if at all, there were certain things they overlooked, though no such lapse is established even though repeatedly alleged, those aspects were not really relevant in the context of adjudicating the core issue regarding validity of reassessment.

18. As regards learned counsel's reliance on Hon'ble Delhi High Court's judgment in the case of *Pardesi Developers* (*supra*), that was a case in which the Assessing Officer already had the information, based on which reassessment was initiated, and even notice under section 133(6) was issued to the assessee seeking comments on the same. Clearly, such facts are materially different from the facts on the records of this case. Learned counsel for the assessee has failed to demonstrate parity of the facts of the case before us with the case of *Pardesi Developers* (*supra*). As regards Best Infrastructure decision (*supra*), in response to our questions, learned counsel has fairly accepted that the facts of the said case are not in pari materia with the facts of the case before us, and he left at that. Coming to Hon'ble Delhi High Court's judgment in the case of *Dharmvir Singh Rao* (*supra*), against which SLP is said to have been dismissed by Hon'ble Supreme Court, that was a case in which the Assessing Officer received an STR (Suspicious Transaction Report) indicating huge cash deposits, the assessee was confronted with these inputs but the Assessing Officer proceeded to reopen the assessment on the ground that, inter alia, "cash book, presented to explain the transactions, is unreliable". On these facts, Hon'ble Delhi High Court quashed the reassessment proceeding, and, while doing so, observed as follows:

> It is contended that the reassessment notice is unsustainable since the rationale is vague and does not measure up to the standards required of such a notice in terms of Section 147/148. To say this, the petitioner first argues that the notice was not preceded by valid approval based upon proper application of mind by the concerned Commissioner; secondly, that it was not served in the proper manner and was rather served allegedly through affixation. Last and most importantly, it is urged that the "reasons to believe" furnished are not premised upon any tangible material, instead it vaguely refers to the report of the Investigation Wing.
>
> Counsel for the respondent/Revenue urged that the petition should not be entertained. It was pointed out that unlike the other cases (which the petitioner had relied upon in the first instance for AY 2008-09 and 2010-11, W.P.(C) 10664 and 11692/2015 - both of which were decided on 18.10.2016) in the present assessment year, the proviso to Section 147 is inapplicable. For that, it is contended that the assessment was not completed after scrutiny, but was more of an acceptance of intimation of the return. It is next urged that so far as the question of approval is concerned, CIT (A) had clearly considered the "reasons to believe" that was put up to him and approved the notice. Lastly, it was urged that affixation is a known and accepted mode of service; counsel relied upon the decision cited as *Commissioner of Income Tax* v. *Thayaballi Mulla Jeevaji Kapasi* (1967) 66 ITR 147 (SC) = 2002-TIOL-1598-SC-IT-LB.
>
> At this stage, this Court notices that for the two assessment years 2008-09 and 2010-11, the judgment rendered on 18.10.2016 clearly found that identical notices under Section 147/148 of the Income Tax Act, 1961 did not measure up to the standards of a valid opinion based upon tangible material, as clarified by the Supreme Court ruling in *Commissioner of Income Tax, Delhi* v. *Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC) = 2010-TIOL-06-SC-IT-LB. The same logic in our opinion is applicable in the present case. Furthermore, the reference by the Revenue to the third paragraph of the "reasons to believe"

in this case is of no consequence. The basic or necessary facts which led the AO to form the opinion are contained in the second paragraph of the impugned notice, i.e., the Investigation Wing's report. The wording and rationale in the impugned notice is identical to that in the previous years' case as well as for the AY 2010-11. **The basic premise upon which the Revenue can issue a valid notice is if tangible material is unearthed after the completion of assessment - or intimation is made under Section 143 (1) in the given facts of the case. This is because of the non-obstante clause. In other words whether there is a completed assessment under Section 143 (3) or intimation under Section 143 (1), the essential pre requisite for existence of tangible material has to be fulfilled. In the present case, clearly this pre-requisite was not fulfilled. Consequently, the impugned order cannot stand; it is hereby quashed. The writ petition is allowed in the above terms.**

(Emphasis, by underlining, supplied by us)

19. Clearly, the reassessment was held to be invalid on the ground that "no tangible material is unearthed after the completion of assessment" and that "in the present case, clearly this prerequisite is not fulfilled". That is not the situation before us. It is not the case of the assessee that the investigation wing report was available to the assessee at the point of time when the original assessment was framed. Learned counsel does not, therefore, get any support from this judicial precedent either.

20. As regards learned counsel's reliance on Hon'ble jurisdictional High Court's judgment in the case of *N C Cables* (*supra*), we find that in this case. Hon'ble Delhi High Court has also observed that "It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner". Given the simplicity of the factual matrix of this case, and clearly correct inference drawn from the same, learned CIT clearly showed application of mind when he observed that "based on the reasons recorded above, I am satisfied that this is a fit case for issue of notice under section 148 of the Income Tax Act". It has not been shown to us as to how this observation reflects non application of mind so far as concealment of income is concerned. We donot see as to how this decision supports the case of the assessee.

21. In the light of these discussions, as also bearing in mind, learned CIT(A) was indeed justified in upholding the validity of reassessment. We uphold his action and decline to interfere in the matter.

22. Lets now turn to the impugned additions of Rs 80,00,000, in respect of alleged bogus share capital subscription, and Rs 2,00,000 in respect of Rs 2,00,000 as commission said to have been paid for arranging this alleged accommodation entry. These additions were made by the Assessing Officer in the course of reassessment proceedings and confirmed by the CIT(A) in first appellate proceedings, aggrieved by which the assessee is in further appeal before us.

23. The relevant material facts are like this. In the course of the reassessment proceedings, the Assessing Officer noted that the assessee has received Rs 80,00,000 as share capital subscription from two entities – namely Geefcee Finance Investments Limited and Mahanivesh India Limited. As the Assessing Officer had good reasons to believe that these were merely accommodation entries and as, in the original assessment proceedings, the "the assessee company had simply submitted the names and address of the entities, who contributed to share capital, but did not furnish any details of source of funds received" and as "no documentary evidence in support of verification of genuineness of transaction, identity and credit worthiness of such entities/shareholders are submitted or produced", the Assessing Officer required the assessee to "bring on record material ingredients of genuineness of capital and share premium, as provided and required under section 68 of the Act, in respect of sums credited to the books of accounts of the assessee company". The Assessing Officer also required the assessee to produce principal officers of these two companies. The assessee, however, did not yield to the stand so taken by the assessee. It was submitted that "section 68 does not cast any onus to prove the credit worthiness of investor so long as investor exists and there is no denial from the investor about their investment in Pee Aar Securities", and that "it is true that the amended provisions of Section 68, which comes into force from 1st April 2013 (i.e. assessment year 2013-14), the burden of ensuring that a satisfactory explanation is available for the source of funds of investor received by the recipient private limited company has been made part of this section and the amount is to be considered for addition in the hands of the recipient company only if the investing company fails to prove its source

satisfactorily, but this provision cannot be applied retrospectively to your assessee's case". The assessee also submitted that "as the law was in force in the assessment year 2005-06, it is for the (income tax) department to satisfy itself to ascertain the credit worthiness of the investors failing which it undertakes suitable remedial measures in the hands of the investor(s) and not in the hands of the recipient company". The assessee also pointed out that the evidences submitted included PAN cards of these entities, board resolutions passed by these entities, related bank accounts of both the entities from which the payments for share capital subscriptions were made, copies of distinctive share certificates, copies of letter from these two entities confirming the fact of share subscriptions and extracts from the minutes of meeting of the directors of the assessee company authorising issuance of share capital to these entities. The submissions so made by the assessee did not satisfy the Assessing Officer. He was of the view that genuineness of these two companies subscribing to the share capital was not proved nor there were satisfactory details about the source of funds in the hands of these two companies. The Assessing Officer sent an inspector at the given address but he could not locate these companies or their shareholders. In this factual backdrop, and after a very elaborate discussion on the legal position with respect to scope of Section 68 and onus cast on the assessee- which we are not reproducing for the sake of brevity, the Assessing Officer noted that that the assessee has failed to discharge the onus of establishing genuineness of transaction, the Assessing Officer treated the entire amount of Rs 80,00,000 as unexplained credit in the hands of the assessee. The Assessing Officer further assumed that the assessee must have paid at least 2.5% commission to organize this accommodation entry. Accordingly, he made an addition of Rs 2,00,000 in respect of this unaccounted expenditure as well. Aggrieved by the additions of Rs 82,00,000 so made by the Assessing Officer, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

24. Learned counsel for the assessee begins by pointing out that all the documents establishing existence and genuineness of the investing companies were duly furnished by the assessee and yet the Assessing Officer has disregarded all these evidences on pure surmises and conjectures. He submits that the material on the basis of which the Assessing Officer has drawn the adverse inference was never shared with the assessee, and it is only elementary that the Assessing Officer cannot rely upon any material, gathered behind the back of the assessee, not confronted to the assessee. He submits that the inspector's report was not at all shown to the assessee, and merely because an inspector reports that he could not locate certain companies, such companies donot cease to exist. Learned counsel points out that even bank statements from which the payments have been made by the assessee have been furnished to the Assessing Officer, and yet the transactions have been held to be bogus. He submits that he has submitted all the information in his possession that he could furnish and if the Assessing Officer is not satisfied with the same, nothing prevents the Assessing Officer to ask the investor companies all these questions. The assessee had discharged initial onus by giving all the evidences and the onus now shifts on the Assessing Officer to show that the information furnished by the assessee is incorrect or lacks bonafides. He then turned to certain technicalities. It was submitted that while entire assessment order was word processed, only the dates were left out in all the crucial documents. This fact, according to the learned counsel, showed that the assessment order was ready much before the assessment proceedings were concluded and that the Assessing Officer was proceeding with a pre determined mind. Learned counsel then again referred to a large number of judicial precedents on the basis of sweeping generalizations. He submitted that the additions under section 68 cannot be made only because investigation wing believes that the entries are accommodation entries, and that there is nothing more, to support the case of the revenue, in the present case. We were thus urged to delete the impugned additions. Learned Departmental Representative, on the other hand, submits that in any unexplained credit addition, the most crucial element is genuineness and the assessee has not at all proved genuineness of the transaction. It is submitted that genuineness cannot be proved simply by giving evidences of existence of the assessee and procedural compliance, because even if the assessee is involving in not so genuine an activity, there will be a person dealing with the assessee nevertheless and the paper requirements will have to be complied with anyway. He goes on to say that in accommodation entries the entire emphasis is on the paper work and, therefore, there is paper work to support the transaction does not mean that it is a genuine commercial transaction. What is to be seen, according to the learned Departmental Representative, is whether the transaction was in the course of the normal business of the person alleged to be giving accommodation entries, and, unless that is proved, the assessee cannot be said to have discharged his onus. Our attention is

then invited to a decision of Ahmedabad bench, in the case of *Pavankumar M Sanghvi* v. *ITO* [(2017) 165 ITD 260 (Ahd)] which is now approved by Hon'ble Gujarat High Court in the case of *Pavakumar M Sanghvi* v. *ITO* [(2018) 404 ITR 601 (Guj)]. Learned Departmental Representative takes us through these judgments and submits that in the absence of any decision to the contrary by Hon'ble jurisdictional High Court, these decisions are binding precedents for this bench as well. Coming to the bank statement filed by the assessee, learned Departmental Representative submits that, if anything, these bank statements show lack of bonafides inasmuch as there are deposits shortly before each major payment which is typical of not so genuine transactions. We are taken through these statements in detail. It is then submitted that here is a case in which there is every indication, right from adjudication by a coordinate bench of the Tribunal in assessee's own case, that the companies subscribing to the share capital of the assessee company were wholly engaged in the business of providing accommodation entries, and yet the assessee claims these transactions to be genuine transactions without any cogent material to support the same. It is also pointed out that the assessee has been evasive about the actual facts, and has, all along, taken hyper technical legal objections to avoid inconvenient questions. In the light of these facts, and in the light of categorical findings about the conduct of Tarun Goyal group- as evident from the documents filed by the assessee himself, the alleged share subscription by these two companies was not genuine, and the learned CIT(A) was quite justified in confirming the impugned additions. We are thus urged to confirm the findings of the CIT(A) and decline to interfere in the matter. In rejoinder, learned counsel for the assessee once again reiterates his submissions and urged us to delete the impugned additions as there is no material to justify the same.

25. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

26. While dealing with the scope of Section 68 so far as alleged accommodation entries are concerned, we consider it appropriate to refer to the following observations made by Ahmedabad SMC bench of the Tribunal in the case of *Pavankumar M Sanghvi* (*supra*):

> 7. In my considered view, so far as the legal foundation of the impugned additions is concerned, it consists of assessee's inability to satisfy the Assessing Officer about all the three essential ingredients of a credit entry in the books of accounts- existence of the lender, ability of the lender to advance funds in question, and, above all, genuineness of the transaction. There is no dispute about the basic legal position about section 68 which provides that where any sum is found credited in the books of accounts of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and sources thereof, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as income of the assessee of that previous year. The expression 'nature and source' appearing in section 68 has to be understood as a requirement of identification of source and its genuineness. It is also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. In the case of *CIT* v. *United Commercial and Industrial Co (P.) Ltd* [1991] 187 ITR 596/56 Taxman 304 (Cal) , Hon'ble Calcutta High Court has held that "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of *CIT* v. *Precision Finance (P.) Ltd* [1994] 208 ITR 465/[1995] 82 Taxman 31 (Cal), it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". There is thus no escape from proving genuineness of a transaction. As regards learned counsel's contention that nothing can be added to the objections specifically taken by the Assessing Officer, I am unable to approve this plea for the simple reason that as long as subject matter of the disallowance or addition is the same, there is no bar on examination of any related aspect by the Tribunal, as has been specifically held by a full bench of Hon'ble Bombay High Court in the case of *Ahmedabad Electricity Co Ltd* v. *CIT* [1993] 199 ITR 351/66 Taxman 27 and reiterated by a Special Bench of this Tribunal in the case of *Tata Communications Ltd* v. *Jt. CIT* [2009] 121 ITD 384 (Mum). That is, of course, besides the fact that there is no attempt, direct or indirect, to enlarge the subject matter of appeal. The legal plea of the learned counsel proceeds on clearly fallacious assumptions.

8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-à-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realties. It will, therefore, be useful to understand as to how the shell entities, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities.

9. I have noted that the assessee has received an amount of Rs 10,00,000 from Natasha Enterprises on 12th August 2006, and, as a plain look at the Canara Bank statement of the lender, which is placed at pages 40 onwards of the paper book, would show, there is a credit of Rs 10,00,000 just before this cheque is paid. The bank balance before these two transactions, and after these two transactions, was only Rs 13,717. Quite interestingly, again on 14th August 2006 in the same bank account, there are debit and credit transactions of around Rs 15 lakhs each and the balance as on the end of that date is Rs 8,737. On 18th and 19th August 2006, again there are quite a few transactions aggregating to Rs 10 lakhs on debit as also credit side, and yet again closing balance is Rs 7,578. On 22nd August 2006, there are transactions of debits and credits of around R 32.50 lakhs each, and the closing balance at the end of the day is again Rs 7,578. As can be seen from this statement, on 29th August 2006, there are debit and credit transactions of Rs 15 lakhs each and once again the closing balance of the day is Rs 7,578. This kind of the state of bank account does not inspire any faith in the proposition that the entity in question is a genuine business concern. A look at the financial statements filed by the assessee does not lead to this conclusion either. The lender has shown a turnover of Rs 122.92 crores but there is no closing stock, and a profit of almost 0.09% on the turnover leading to a tax payment of Rs 1,96,138. The lender makes purchases of Rs 123.04 crores in such diversified areas as cut and polished diamonds (Rs 73.15 crores), plywood and aluminium (Rs 11.72 crore), rough diamonds (Rs 4.36 crores), software (Rs 25.01 crores) and other items (Rs 8.79 crores), and sells these products too but all that the lender has spent on salaries is Rs 2,26,000, on office expenses is Rs 8,560, on office rent is Rs 27,600 and on printing and stationery is Rs 8,560. All this is simply not representative of what a genuine business would typically be. As regards Mohit International also, the story is no different. The bank statement, which is placed at pages 75 onwards, has the same theme of high transactions during the day and a consistently minimal balance at the end of the working day. On 28th April 2006, i.e. the day the assessee is given Rs 10,00,000, there are credit entries of almost similar amounts, and he balance after these transactions is a small amount of Rs 13,020. Similar is the pattern of transactions on all the days in respect of which this statement is placed before me. On 23rd March 2007, for example, the opening balance is Rs 1,36,611 and there are huge debits and credit entries on 23rd and 24th March, aggregating to almost Rs 4 crores on debit as also credit, and the closing balance at the end of 24th March is Rs 85,991. On a turnover of Rs 127.87 crores, the profit is less than 0.09% resulting in tax outgo of Rs 2,96,218. To effect this scale of operations, the lender incurs no travelling or telephone expense, and entire expenses of the business, except on brokerage and assortment of diamonds, are less than Rs 5 lakhs in the year. Interestingly, in today's world where an average human being, much less a business organization, can live without telephones, this business entity has prospered without a rupee spent of telephones. The level of turnover and the expenditure incurred on achieving such high turnover do not match at all. The numbers do not add up

and the details filed in respect of these lenders donot convince me that the lenders are routine businesses. Given this background the assessee s inability to produce the related persons or even give their current whereabouts makes the story of genuine transactions even more unbelievable. It is also important to bear in mind the fact that lending for an interest @12% p.a. without any security is not something which people do for rank outsiders. There has to be some close association to get such a kind of unsecured credit at such low rates. When I consider this situation, coupled with the fact that (i) the assessee has not been able to produce these lenders for verification and reasonably explain the complete circumstances in which these lenders, who were not even routinely engaged in the business of giving loans and advances, gave him unsecured loans on 12% p.a interest- which essentially is possible in situations of close relationships and trust; and (ii) the assessee has maintained stoic silence on being told about these lenders being alleged to be shell entities, I am not inclined to believe that these are genuine business transactions. As I do so, I am reminded of Hon'ble Supreme Court's observation, in the case of *CIT* v. *Durga Prasad More* [1971] 82 ITR 540, to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Similarly, in a later decision in the case of *Sumati Dayal* v. *CIT* [1995] 214 ITR 801/80 Taxman 89 (SC), Hon'ble Supreme Court rejected the theory that it is for alleger to prove that the apparent and not real, and observed that, This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. . ..... Similarly the observation that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleger to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available..... In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably". I will be superficial in my approach in case I donot examine the claim of the assessee on the basis of documents and affidavits filed by the assessee and overlook clear the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of *Durga Prasad More*(*supra*),.....it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground realties. Genuineness is a matter of perception but essentially a call on genuineness of a transaction is to be taken in the light of well settled legal principles. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of *Durga Prasad More* (*supra*), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in my considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkers on. I may also add that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of financial world, about modus

operendi of shell entities. There were, therefore, not many questions raised about genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well. As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha* v. *Abdulbahi Faizullabhai* AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark". Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent. As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what I have done. In my considered view, and for the detailed analysis set out earlier in this order, the alleged loan transactions of the assessee cannot be held to be genuine on the peculiar facts and circumstances of this case. As the genuineness of transactions stands rejected, it is not really necessary to deal with other aspects of the matter.

27. These views were duly approved by Hon'ble Gujarat High Court, and, while approving these views, Their Lordships, inter alia, observed as follows:

3. Perusal of the orders on record and in particular, the above quoted portion of the order of the Tribunal would make it clear that the entire issue is based on appreciation of evidence on record and thus factual in nature. The Tribunal has given elaborate reasons to come to the conclusion that the entire transaction was not genuine. In absence of any perversity, we do not see any reason to interfere.

4. Learned counsel for the assessee however vehemently contended that the assessee had received loans through cheques from lenders who had confirmed the same. Their accounts are audited and filed before the Revenue authorities. Thus, the genuineness of the transactions, the capacity of the lender and the factum of lending all have been established. Addition under section 68 of the Act there could not have been made. However, as noted, the Tribunal has minutely examined the position of the lenders, the circumstances under which, the amounts were allegedly loaned to come to the conclusion that the transactions were not genuine.

5. Under the circumstances, Tax Appeal is dismissed.

28. We are unable to lay hands on any of the decisions of Hon'ble jurisdictional High Court which is contrary to the approach so adopted in this judicial precedent. Let us, in this light, revert to the facts of the case before us. The assessee before us is a private limited company which is, by law, prohibited from offering its securities for subscription by general public. It cannot, therefore, be really open to the assessee to say that we have no clue about who the subscribers to the share capital are; these cannot be rank outsiders or walk in subscribers- as perhaps in the cases of public limited companies. Yet, all that the company has to offer, to establish genuineness of transactions of subscribing to the shares, are the bank statements. The assessee is not able to produce the brains behind these companies and the documents with respect to the their financials either. As for the other documents, these documents have to be there for issuance of share capital anyway- genuine subscription or not so genuine subscription. Genuineness of a transaction cannot be demonstrated on the basis of these documents. The assessee has not been able to produce the principal officers of these entities, but then, given the way the facts about these entities have unfolded, the reasons for the limitations of the assessee are not difficult to seek. As per decisions of this Tribunal filed by the assessee on his own, these entities, as indeed other entities in Tarun Goyal group, were never involved in any genuine business anyway and were only in the business of providing accommodation entries. The shell entities, like these two entities before us, have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of

genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much a Member of this specialized Tribunal, cannot be oblivious of these ground realities. It would, therefore, not really be appropriate for us to be swayed by the documents like PAN cards, board resolutions passed by these entities, copies of distinctive share certificates, copies of letter from these two entities confirming the fact of share subscriptions and extracts from the minutes of meeting of the directors. As for the bank statements of these companies, as rightly pointed out by the learned Departmental Representative, these statements show the lack of genuineness. So far as Mahanivesh's bank statement with IDBI Bank is concerned, what is filed before us is the page containing entries from 1st June 2004 to 30th June 2004. On 1st June, this bank statement shows a credit balance of Rs 46,681. On 1st June, there is a credit of Rs 60,000 and the immediately following day, there is a withdrwal of Rs 50,000. On 8th June, there is a credit of Rs 10,00,000, and on the same day a debit of the same amount is also made. On 11th June, there are credits of Rs 20,00,000 and on the same day a debit of Rs 20,00,000 is given showing payment to the assessee. On 22nd June, there are credits of Rs 19,97,995 and, on the same day, another debit of Rs 20,00,000 is made showing payment to some other company. On 25th June and 28th June, it is the same story again though the amounts or debits and credits are Rs 15,00,0000 and Rs 10,00,000 respectively. As regards the other bank account of Geefcee in ABN Amro Bank is concerned, the situation is no better. On 3rd June, i.e. opening day of this bank statement, there is a credit balance of Rs 5,742.32. On June 9, there are deposits of Rs 20,10,000 and, on the same day, a payment of Rs 20,15,000 is made leaving a balance of less than Rs 1,000. On 11th June, there are deposits of Rs 10,00,000 and on the same day, there is a payment of Rs 10,00,000. On 16th June again, it is the same story but the amount is now Rs 20,00,000. On other dates in the ABN Amro Bank statement, as given to us, is the same story. What do we conclude from these statements? The overnight balance in the bank accounts are of small amounts and the payments made from these accounts are almost at the time of making payment are transferred from other sources, for which no explanation is available. This is typical of a situation in which the bank accounts are used as a conduit to launder the ill gotten money. It is impossible for even a layman, leave aside Members of this specialized Tribunal, to come to the conclusion that these transactions represent bonafide investment transactions. It is also important to note that there is nothing else about the genuine business activities, even if any, of the investor companies, about the backdrop of the promotors about the relationship these people had with the companies, and we are to take the call on genuineness only on the basis of these two bank statements for a limited period. We are unable to come to a positive conclusion about the bonafides of the investors on the basis of these bank statement, and quite to the contrary to the claim made by the assessee, these statements show lack of bonafides. Hon'ble Supreme Court has, in the case of *Durga Prasad More* (*supra*), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkers on. We may also add that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of financial world, about modus operendi of shell entities. There were, therefore, not many questions raised about genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well. As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha* v. *Abdulbahi Faizullabhai* AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark". Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases

in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent. As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what we have done. We are of the considered view that there is nothing to establish genuineness of the share subscription transactions on the facts of this case. The assessee does not know anything about these companies or these persons. The assessee has no documents about their financial activities or their balance sheets. The assessee is a private limited company and these entities could not have therefore been rank outsiders like walk in investors and yet the assessee does not throw enough light on these entities. A lot of emphasis is placed on bank transactions, on PAN cards and on board resolutions but all these factors have to be present in the cases of shell companies involved in money laundering as well. Nothing, therefore, turned on these documents so far as genuineness aspect is concerned. It is also a settled legal positon that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. In the case of *CIT* v. *United Commercial and Industrial Co (P.) Ltd* [1991] 187 ITR 596/56 Taxman 304 (Cal) , Hon'ble Calcutta High Court has held that "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of *CIT* v. *Precision Finance (P.) Ltd* [1994] 208 ITR 465/[1995] 82 Taxman 31 (Cal), it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". There is thus no escape from proving genuineness of a transaction. The assessee has failed to do so. We, therefore, confirm the addition in respect of alleged share subscriptions received from these two companies- namely Mahanivesh and Geefcee. As regards the addition in respect of commission, we have seen that there is a categorical finding that these entities were arranging the accommodation entries on the basis of 2.5% commission. We, therefore, confirm this addition as well.

29. Before parting with the matter, we may briefly deal with the contention of the assessee that since amendment in Section 68, with respect to addition for unverified share capital subscription, was effective from 1st April 2012, it can only be prospective and it will not apply for this assessment year. On a conceptual note, every specific amendment to the law, particularly when it is disadvantageous to the taxpayers and is enacted *ex abundanti cautela* (as a measure of abundant caution) is generally, fraught with, what tax academicians and policymakers term as, the risk of its 'kill effect'. The risk is that when a specific provision, to make the things clear and beyond any doubt, is enacted with respect to a particular point of time and a particular consequence is envisaged by the provision, interpretation of the law or treaty will invariably be inclined to draw to the inference that no such consequence was envisaged by the legislature or the treaty prior to the amendment coming into force. That is a common and fairly well accepted approach. There is, however, a rider. The rider is that even on the first principles and in a situation in which a binding judicial precedent or judicial analysis of the pre-amendment legal has already come to the same conclusions, as indicated by the specific amendment as a measure of abundant caution, such a "kill effect" is ruled out. That precisely is the situation before us. In such cases, the impact of amendment remains confined to the areas on which either (i) on the areas on which, with the help of pre- amendment provisions, the judicial conclusions are at variance with the conclusions arrived at with the help of amendment; or (ii) such areas have remained intact from the judicial precedent. Viewed thus, merely because there is a specific amendment to Section 68 with effect from 1st April 2012, it does not affect the interpretation of Section 68 on the basis of the binding judicial precedents, de horse this amendment, and the first principles.

30. In view of these discussions, as also bearing in mind entirety of the case, we are unable to see any merits in the grievances raised by the assessee. The conclusions arrived at by the learned CIT(A) are correct and donot call for any interference. While we have carefully perused all the judicial precedents cited at the bar, it is not possible to specifically deal all of these precedents as all of them are not really relevant in the perspective of our approach or are somewhat repetitive in effect.

31. In the result the appeal is dismissed.

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