HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
D.B: HON'BLE SHRI JUSTICE S.C. SHARMA & HON'BLE SHRI JUSTICE VIRENDER SINGH

Writ Petition No.28177/2018

M/s Etiam Emedia Limited

v/s

Income Tax Officer-2(2) & Another

Shri P.M. Choudhary, learned senior counsel along with Shri Anand Prabhawalkar, learned counsel for the petitioner.

Ms. Veena Mandlik, learned counsel for the respondents.

O R D E R
(Passed on this 19th day of December, 2018)

Per : S.C. Sharma, Justice:

The petitioner before this Court, which is a company registered under the Companies Act, 1956, has filed this present petition being aggrieved by the notice dated 31.03.2018 and order dated 22.11.2018 passed by the Income Tax Officer – 2(2), Indore.

2. The petitioner's contention is that the petitioner/company is a limited company and was earlier known as 'M/s Quality Automation Limited', it was incorporated in the year 1995. In the year 2000, the name of the company was changed as 'M/s Etiam Emedia Limited' and the petitioner/company is a regular assessee in respect of the Income Tax and is filing the return right from its incorporation. The present petition relates to assessment year 2011-12 and the petitioner/company is challenging the reassessment proceedings initiated by respondent No.1.

3. It has been stated that the petitioner/company has filed its return of income for the assessment year 2011-12 on 30.03.2012 declaring the income as nil. It has been stated that from the balance-

sheet reflecting position as on 31.03.2011 in respect of the previous year 2010-11, reflects that the share capital of the petitioner/company was carried forward from its previous year without any change or without any fresh share capital being issued or subscribed.

4. It has further been stated that nothing was heard by the petitioner/company after filing of the return for the assessment year 2011-12 and even the prescribed limitation under Section 143 (2) of the Income Tax Act, 1961 for issuance of notice, expired, meaning thereby, there was a deemed acceptance of the return.

5. It has further been contended that the respondent No.1/Income Tax Officer – 2(2) issued a notice under Section 148 of the Income Tax Act, 1961 on 31.03.2018 stating that the Assessing Officer has reason to believe that the assessee's income chargeable for the assessment year 2011-12 and has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961, and therefore, it is proposed to assess such income for the relevant assessment year. The petitioner was required to deliver a return for the said assessment year within 30 days' of the notice.

6. The petitioner/company has further stated that the recorded reason to believe as also the previous sanction from the Principal Commissioner, Income Tax were not communicated to the petitioner, nor appended to the notice. The petitioner has further stated that in response to the notice, the petitioner/company submitted a reply on 23.04.2018 and requested the Income Tax Officer to treat the original return filed by the petitioner/company on 30.03.2012 in compliance of the notice issued under Section 148 of the Income Tax Act, 1961.

7. The petitioner/company, thereafter, on 25.05.2018, wrote a

letter to respondent No.1 stating that compliance has been done by the petitioner in response to the notice under Section 148 of the Income Tax Act, 1961 and the reasons recorded for initiation of proceedings be communicated to the petitioner.

8. The petitioner/company has further stated that in spite of the request to supply the reason for reopening of the assessment, the notice was issued under Section 142 (1) of the Income Tax Act, 1961 and the petitioner/company again wrote a letter on 11.07.2018 to supply the reasons and to keep the proceedings in abeyance. The petitioner has further stated that respondent No.1 finally supplied the reasons recorded by him for issuance of notice under Section 148 of the Income Tax Act, 1961 along with his notice dated 13.07.2018. The petitioner's contention is that the reason, so supplied, reflected that the proceedings have been initiated against the petitioner on the basis of some pre and post search investigation consequent upon a search conducted by the Income Tax Department at the premises of 'M/s Shreeji Polymers (India) Limited' and on the basis of a vague allegation that the petitioner company is a dummy concern of Shri Anand Bangur, who allegedly uses dummy companies for routing his unaccounted money through the group companies. It also reflected that the petitioner/company has bogus share application money to the extent of Rs.2,63,75,500/-, which has escaped assessment for the assessment year 2011-12 in the hands of the petitioner, and therefore, reopening of the assessment in respect of escaped income was being done for the assessment year 2011-12.

9. Learned senior counsel for the petitioner has argued before this Court that the reasons recorded for reopening of the assessment are patently vague and there is no substance in the reasons recorded

in the matter. Learned counsel has also argued that the petitioner/company has not received any amount towards share application money in the year, which is under consideration and whatever share capital appears in the petitioner's balance-sheet, is being carried forward right from the year of its incorporation without any fresh or new influx of the capital in the assessment year 2011-12.

10. The petitioner after receiving the reasons vide letter dated 29.09.2018, filed a detailed objection, and thereafter, preferred the present writ petition being aggrieved by the notice dated 31.03.2018 and the order rejecting the objection dated 22.11.2018.

11. Various grounds have been raised by the petitioner and it has been contended that the impugned notice issued by the respondent No.1 u/s 148 of the Income Tax Act, 1961 for initiation of proceedings for reopening petitioner's assessment for AY 2011-12 u/s 147 of the Income Tax is illegal, bad in law and without jurisdiction for want of satisfaction of conditions of section 147 of the Act, which are condition precedent for assumption of jurisdiction under that section.

12. It has further been contended that the impugned order dated 22.11.2018 passed by respondent No.1 rejecting petitioner's objection filed against the impugned reopening of assessment, is bad in law, as it suffers from error apparent on the face of record in so far as it fails to apply mind to the conditions of section 147 of the Income Tax Act without satisfaction of which, no proceedings can be validly initiated.

13. It has further been contended that the respondents failed to see that for reopening the assessment of an assessee u/s 147, the Assessing Officer must have reason to believe that any income

chargeable to tax, has escaped assessment of any assessment year, which can be assessed for the assessment year concerned in the hands of the assessee. The escapement of any income chargeable to tax is thus an essential condition for assumption of jurisdiction for assessing such escaped income and for valid initiation of proceedings for such assessments.

14. It has further been contended that the respondents failed to see that for valid assumption of jurisdiction for making assessment of the escaped income, the condition precedent is existence of reasons and formation of believe about escapement of income from tax and without which no action u/s 147 can be taken nor any notice u/s 148 can be issued.

15. It has further been stated that that the respondents also failed to see that the existence of reason for formation of the requisite belief is thus essential for invoking the provisions of section 147 and the belief required to be formed is about the fact that any income chargeable to tax has escaped assessment of any assessment year, which is required to be assessed in the concerned assessment year.

16. It has further been stated that the respondents also failed to see that the income sought to be assessed u/s 147 as escaped income must necessarily pertain to the assessment year for which the proceedings of assessment have been reopened and the belief required to be formed on the basis of reasons must relate to such income and its escapement from assessment in the relevant assessment year.

17. It has further been stated that the respondents failed to see that the reasons on the basis of which the petitioner's assessment for AY 2011-12 is sought to be reopened viz the alleged bogus share

capital/share application money to the extent of Rs.2,63,75,500/- being a non-existent reason, no belief about escapement of such income from assessment could be formed.

18. It has further been contended that the respondents failed to see that since share capital, which is alleged to be bogus capital and is sought to be assessed as assessed income for AY 2011-12, has not been received by the petitioner in the said year but is merely the balance carried forward right from the year of incorporation of the petitioner company and there was no such belief about escapement of such amount from tax in the relevant assessment year i.e. 2011-12.

19. It has further been contended that in absence of any fresh share capital/share application money having been received by petitioner in the relevant assessment year i.e. AY 2011-12, neither there could be any reasons nor there could be any formation of belief about escapement of any such income. In absence of the existence of valid reason and in absence of formation of requisite belief, the impugned proceedings for reopening petitioner's assessment are wholly without jurisdiction.

20. It has further been contended that the respondents failed to see that the word 'reason' connotes a statement of facts implied as an argument to justify a conclusion and hence the reasons required to be recorded in writing cannot be construed to mean any fact whatsoever to be recorded in writing. It must be understood as such statement of fact as would reasonably justify the conclusion. In the instant case in absence of any receipt of share capital which has escaped assessment for AY 2011-12 cannot be said to be a reason as contemplated u/s 147 which can form the basis of requisite belief under that section.

21. It has further been contended that the respondent also failed to see that the expression 'any assessment year' for which any income chargeable to tax has escaped assessment, in respect of which the proceedings u/s 147 read with section 148 are sought to be initiated is referable to the relevant assessment year in which the income is to be taxed and cannot mean any assessment whatsoever.

22. It has further been contended that the respondents also failed to see that it is not only the existence of reason on the basis of which the belief has to be formed but the reason on the basis of which the belief as contemplated u/s 147 is formed must have rational connection or relevant bearing on the formation of belief i.e. there must be a direct nexus or live link between the material coming into the notice of AO and the formation of belief about the escapement of income.

23. It has further been contended that the existence of material in the shape of reasons on the basis of which the requisite belief is to be formed for purpose of section 147 is also necessary. In the instant case there is neither any material nor any reason on the basis of which the belief about escapement of income from tax in the present assessment year could be formed.

24. It has further been contended that the alleged material in the nature of report of DDIT, Indore can hardly be said to be the material which could warrant the formation be belief about the escapement of share capital received in the year 1995 from tax in AY 2011-12. The material sought to be relied upon by AO on the basis of which the belief is said to have been formed is absolutely vague, indefinite, distant, remote and farfetched and no person of reasonable prudence can form the belief as contemplated u/s 147.

25. It has further been contended that in absence of reasons and

consequent belief as required by section 147, the conditions precedent for assumption of jurisdiction u/s 147 remained non-satisfied which render the entire proceedings as illegal, bad in law and without jurisdiction and no reassessment on the basis of such proceedings can be validly made against the petitioner.

26. It has further been contended that the impugned initiation of proceedings is bad in law and without jurisdiction as the same is barred by limitation prescribed u/s 149(1)(b) for issuance of notice u/s 148 of the Income Tax Act, which is essential for making assessment u/s 147.

27. It has further been contended that no notice of assessment u/s 148 in the present case could be issued beyond a period of six years from the end of relevant assessment year i.e. six years from end of AY 2011-12. Since in the instant case, the impugned notice dated 31.03.2018 has been actually served on 01.04.2018 i.e. after expiry of limitation on 31.03.2018, the impugned notice as also consequent proceedings are barred by limitation and accordingly without jurisdiction.

28. It has further been contended that even the reason that petitioner is a dummy company is also equally non-existent reason because the petitioner is a legal juristic entity created by law incorporated in the year 1995 and assessed by department since then.

30. In support of the aforesaid grounds, learned senior counsel for the petitioner has placed reliance on several judgments i.e. in the cases of ***GKN Driveshafts (India) Ltd. v/s Income Tax Officer*** *reported in* ***(2002) 125 Taxman 963 (SC)***, ***Calcutta Discount Co. Ltd. v/s Income Tax Officer & Another*** *reported in* ***(1961) ITR 191 (SC)***, ***Jeans Knit (P.) Ltd. v/s Deputy Commissioner of Income***

Tax, Banglore *reported in* ***(2017) 77 taxmann. Com 176 (SC)***, ***Garden Finance Ltd. v/s Assistant Commissioner of Income Tax*** *reported in* ***(2004) 268 ITR 48 (Gujarat)***, ***Commissioner of Income Tax v/s Foramer France**** *reported in* ***(2003) 264 ITR 566 (SC)***, ***JSRG Udyog Ltd. v/s Income Tax Officer*** *reported in* ***(2009) 313 ITR 321 (Delhi)***, ***Tiwari Kanhaiya Lal v/s Commissioner of Income Tax*** *reported in* ***(1985) 154 ITR 109 (Rajasthan)***, ***Ghanshyam K. Khabrani v/s Assistant Commissioner of Income Tax Circle-1*** *reported in* ***(2012) 346 ITR 443 (Bombay)***, ***Commissioner of Income Tax Delhi-IV v/s Gupta Abhushan (P.) Ltd*** *reported in* ***(2009) 312 ITR 166 (Delhi)***, ***SKY View Consultants (P.) Ltd. v/s Income Tax Officer, Ward 23(4)*** *reported in* ***(2017) 397 ITR 673 (Delhi)***, ***Income Tax Officer v/s Lakhamani Mewal Das*** *reported in* ***(1976) 103 ITR 437 (SC)***, ***Ganga Saran & Sons (P.) Ltd. v/s Income Tax Officer*** *reported in* ***(1981) 130 ITR 1 (SC)***, ***Amar Jewellers Ltd v/s Deputy Commissioner of Income Tax*** *reported in* ***(2018) 405 ITR 561 (Gujrat)***, ***Ardent Steel Ltd. v/s Assistant Commissioner of Income Tax (Central)-2, Raipur*** *reported in* ***(2018) 405 ITR 422 (Chhatishgarh)***, ***Commissioner of Income Tax, Delhi v/s Kelvinator of India Ltd.*** *reported in* ***(2010) 320 ITR 561 (SC)***, ***Smt. Uma Devi Jhawar v/s Income Tax Officer*** *reported in* ***(1996) 218 ITR 573 (Calcutta)***, ***Krown Agro Foods (P.) Ltd. v/s Assistant Commissioner of Income Tax, Circle 5(1), New Delhi*** *reported in* ***(2015) 375 ITR 460 (Delhi)***, ***Arjun Singh v/s Assistant Director of Income Tax*** *reported in* ***(2000) 246 ITR 363 (Madhya Pradesh)***, ***Commissioner of Income Tax v/s Bigabass Maheshwari Sewa Samiti*** *reported in* ***(2008) 220 CTR 369 (Rajasthan)*** and ***United Electrical Co. (P.) Ltd. v/s Commissioner Income Tax*** *reported in*

(2002) 258 ITR 317 (Delhi).

31. A detailed and exhaustive reply has been filed by the Income Tax Department and the respondents have admitted issuance of notice under Section 148 of the Income Tax Act, 1961, which was sent by the speed post on 31.03.2018. It has been stated that the proceedings were initiated under Section 147 of the Income Tax Act, 1961 after consideration of specific information that too with due application of mind on the basis of *prima facie* belief.

32. The respondents have also stated that the objection of the petitioner was disposed of by the Assessing Officer i.e. Income Tax Officer – 2(2) vide order dated 22.11.2018. The respondents have stated that the petitioner's contention is that the share capital continued to be carried forward, as it is from previous year, without any change or without any fresh share capital being issued or subscribed, is not acceptable on face value.

33. The respondents have further stated that the petitioner had not shown any business activity, and hence, had not filed audited accounts. It has further been stated that the petitioner has filed only its Income Tax Return, which only shows closing balance on the said item, and therefore, changes made and squared off during the year and change in the composition of the shareholder without justifying the closing figure, cannot be ascertained from the Income Tax Return for the relevant year.

34. The respondents have also stated that the balance-sheet and the profit & loss account, as annexed with the present petition, have not been delivered before the Income Tax Department by the petitioner, at least till the time of initiation of the proceedings under Section 147 of the Income Tax Act, 1961.

35. The respondents have also stated that the Assessing Officer

had reason to believe that the petitioner's income has escaped assessment within the meaning of Section 147 of the Act, and therefore, he has rightly issued the notice under Section 148 of the Income Tax Act, 1961 and there is no legal requirement to communicate the reason to believe. It is communicated in due course and the same was also done by the department. The respondents have also stated that the petitioner's contention regarding pre and post search investigation are baseless. The department conducted a very detailed and thorough investigation, evidence was gathered, large number of persons were examined, huge amount of hard and soft data were looked into and after investigating hundreds of man-hours, the department has arrived at a conclusion that opportunity to defend himself shall be available to the petitioner during the assessment proceedings, which are taking place.

36. The respondents have also stated that the petitioner has not shown any business activity for the relevant year and has not filed any audited account before the Income Tax Department, at least till the time of initiation of the proceedings under Section 147 of the Income Tax Act, 1961 and has filed only its Income Tax Return. The respondents have also stated that sufficiency or insufficiency of the material can not be looked into at the stage of notice under Section 148 of the Income Tax Act, 1961.

37. The respondents have placed reliance upon a judgment delivered in the case of ***AGR Investment Ltd. v/s Assistant Commissioner of Income Tax & Another*** *reported in* ***(2011) 333 ITR 146 (Delhi)***. Though, the respondents have given para-wise reply to the writ petition, however, learned counsel for the respondents has argued before this Court that even though, the

petitioner/company is legally incorporated company, it doesn't mean that it cannot be a dummy company. It has been stated that the company was incorporated in the year 1995 and after very detailed and thorough investigation carried out in 2017, it was *prima facie* established that the petitioner is a dummy company.

38. The respondents have stated that there are large number of dummy/bogus/shell/briefcase/paper entities including the petitioner/company in the group, which is being managed and controlled by Shri Anand Bangur for the purposes of routing unaccounted money and the department with great difficulties and after examining huge evidence, has arrived at a conclusion to initiate the proceedings against the petitioner and it is not a case where some unilateral action has been taken against the petitioner, it is a case where petitioner will receive every opportunity to defend himself and the entire mechanism has been provided under the Income Tax Act, 1961 and the respondents have prayed for dismissal of the writ petition.

39. Heard learned counsel for the parties at length and perused the record.

40. The petitioner before this Court is aggrieved by the notice dated 31.03.2018 and order dated 22.11.2018 passed by the respondents. Undisputedly, the respondents have issued notice to the petitioner on 31.03.2018 under Section 148 of the Income Tax Act, 1961 and the petitioner did submit a reply to the respondents. Thereafter, the petitioner demanded the reasons for reopening of the assessment in respect of assessment year 2011-12 and the respondents have supplied the reasons also. The petitioner has submitted objection in respect of reassessment on 29.09.2018, and finally, an order has been passed rejecting the objection of the

petitioner.

41. Sections 147 and 148 of the Income Tax Act, 1961 reads as under:-

> "**147. Income escaping assessment. -** If the 77[Assessing] Officer [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :
>
> Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year80, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure80 on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts80 necessary for his assessment, for that assessment year:
>
> [Provided [also] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]"
>
> *Explanation 1.*—Production84 before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily84 amount to disclosure within the meaning of the foregoing proviso.
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> *Explanation 2.*—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—
>
> (*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
>
> (*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the

income or has claimed excessive loss, deduction, allowance or relief in the return ;

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed ; or

(*i*) such income has been assessed at too low a rate ; or

(*iii*) such income has been made the subject of excessive relief under this Act ; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

[*Explanation 3*.—For the purpose of assessment or reassessment86 under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

148. **Issue of notice where income has escaped assessment** [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.]

[Provided that in a case -

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expirty of the time limit for making the assessment, reassessment for re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case -

(a) where a return has been furnished during the period commencing the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of

> twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.
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> Explanation – For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.
>
> (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

42. The action has been initiated by the department against the petitioner under the aforesaid statutory provision of law and by a detailed and speaking order, the objection raised by the petitioner has been rejected. The reasons recorded for issuance of notice under Section 148 has been supplied to the petitioner and it is also on record and the same reads as under:-

> "1. PLEASE REFER TO YOUR LETTER DATED 25.05.2018, THE REASONS FOR ISSUANCE OF NOTICE U/S 148 IS MENTIONED AS UNDER:
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> During the course of search proceedings in the Group cases of Shriji Polymers (India) Ltd. hereinafter referred as SPIL was conducted on 27.07.2017. During the course of search & seizure action, various business premises of the Group were covered u/s 133A of the Act, as per pre and post search investigation, it has been established that the various concerns of the Group are dummy in nature; they are bogus/briefcase/paper concern handled by the Shri Anand Bangur the promoter of SPIL.
>
> 2. During the post search investigation, Shri Anand Bangur was asked to submit the details of the investments made by these shell/paper/dummy companies for the period 2010-11 to 2016-17 but he ahs not cooperated with the department. Hence DDIT (inv)-II, Indore has fetched the details of investments made by these shell companies from the return of income filed by such companies and passed on the information to concerned AOs to take the necessary action in respect of share application/share premium, Investment, Loan & Advances introduced/made by these shell companies.
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> 3. On perusal of income tax return for A.Y. 2011-12 it is found that assessee company has shown share capital at Rs.26,378,500/-.
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> 4. The DDIT (Inv)-II, Indore reported that information

> scouted out from seized/impounded material in the case of SPIL Group of Ujjain described the facts in respect of M/s Patni Industries Limited as under:
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> 5. The company is having its registered address at 244, Apollo Tower, M.G. Road, Indore – 452001. As per ROC data, its directors are Shri Avinash Parashram Mupuskar, Shri Kailash Garg, Smt. Chhaya Parmar and Shri Vinod Agrawal.
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> 6. During the course of action, it was proposed to cover the office premises of M/s Etiam Emedia Ltd and a team was moved with authorization on the above address. The team reported that no office in the name M/s Etiam Emedia Ltd is running at the given address. It is pertinent to mention that the directors of the company M/s Etiam Emedia Ltd are Shri Kailash Gard, Shri Avinash Mapushka. In the statement recorded during the search action and post search investigation, Shri Kailash Garg and Smt. Chhaya Parmar have admitted that they work on the direction of the key person of the SPIL Group i.e. Shri Anand Bangur and Shri Amrish Parmar, who is the husband of Smt. Chhaya Parmar submitted that he did not aware regarding his involvement in any company. The detailed discussions on all three dummy directors have ben made supra. As per discussion/findings, it can be concluded that M/s Etiam Emedia Ltd is a dummy concern of Shri Anand Bangur. Shri Bangur uses this company for routing its unaccounted money into other group of companies. It is also observed that M/s Etiam Emedia Ltd has no worth or business activity, it surely acquired some assets but in this case, no substantial assets are available in the balance sheet, which is also one of the reasons to confirm the findings that the company is only a shell/paper company. In the light of the above facts it is established that M/s Etiam Emedia Ltd is a paper company which runs on paper and it engaged in the practice of providing accommodation entry.
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> 7. In view of above facts and statements recorded during the post search investigation of the director Shri Kailash Garg company M/s Etiam Emedia Ltd had bogus share application money of Rs.2,63,75,500/-. Therefore I am satisfied that share application money of Rs.2,63,75,500/- remains unexplained for taxation for the A.Y. 2011-12 in the hands of assessee company.
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> Looking to the facts and circumstances of the case I have reason to believe that income of Rs.2,63,75,500/- has escaped assessment within the meaning of Section 147 of the Income Tax Act. It is fit case to issue notice u/s 148."

43. Learned senior counsel for the petitioner has placed reliance on various judgments and this Court has carefully gone through the aforesaid judgments.

44. In the considered opinion of this Court, sufficiency of reasons

cannot be considered in a writ petition and the assessee has to participate in the reassessment proceeding and to specify that escapement of income has taken place. The Division Bench of Delhi High Court in the case of *AGR Investment Ltd. (supra)*, has dealt with all important judgments on the subject. Paragraphs-9 to 21 of the aforesaid judgment reads as under:-

> "9. The High Court of Gujarat in Praful Chunilal Patel v. Assistant Commission of Income Tax, [1999] 236 ITR 832 has opined that in terms of the provision contained in Section 147, the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment. The word „reason" in the phrase „reason to believe" would mean cause or justification. If the assessing officer has a cause or justification to think or suppose that income has escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words „reason to believe" cannot mean that the assessing officer should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and if he likes from any information that he receives. If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he had reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief, though justified for the purpose of initiation of the proceedings under Section 147, may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such income has escaped assessment, the assessing officer is not required to base his belief on any final adjudication of the matter.
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> 10. In Ganga Saran & Sons P. Ltd. v. ITO & Ors., [1981] 130 ITR 1 (SC), it has been held thus:
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> > "It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the ITO can assume jurisdiction to issue notice under S. 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and, secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the ITO would be without jurisdiction. The important

> words under S.147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under S.147(a). It there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

11. In Birla VXL Ltd. v. Assistant Commissioner of Income Tax, [1996] 217 ITR 1 (Guj.), a Division Bench of the Gujarat High Court has opined thus:

> "Explanation 2 to Section 147 of the Act, as appended to newly substituted section 147 makes certain provisions, where in certain circumstances, the income is deemed to have escaped assessment giving jurisdiction to the Assessing Officer to act under the said provision. Another requirement which is necessary for assuming jurisdiction is that the Assessing Officer shall record his reasons for issuing notice. This requirement necessarily postulates that before the Assessing Officer is satisfied to act under the aforesaid provisions, he must put in writing as to why in his opinion or why he holds belief that income has escaped assessment. "Why" for holding such belief must be reflected from the record of reasons made by the Assessing Officer. In a case where Assessing Officer holds the opinion that because of excessive loss or depreciation allowance income has escaped assessment, the reasons recorded by the Assessing Officer must disclose that by what process of reasoning he holds such a belief that excessive loss or depreciation allowance has been computed in the original assessment. Merely saying that excessive loss or depreciation allowance

> has been computed without disclosing reasons which led the assessing authority to hold such belief, in our opinion, does not confer jurisdiction on the Assessing Officer to take action under sections 147 and 148 of the Act. We are also of the opinion that, howsoever wide the scope of taking action under section 148 of the Act be, it does not confer jurisdiction on a change of opinion on the interpretation of a particular provision from that earlier adopted by the assessing authority. For coming to the conclusion whether there has been excessive loss or depreciation allowance or there has been underassessment at a lower rate or for applying the other provisions of Explanation 2, there must be material that have nexus to hold opinion contrary to what has been expressed earlier. The scope of section 147 of the Act is not for reviewing its earlier order suo motu irrespective of there being any material to come to a different conclusion apart from just having second thoughts about the inferences drawn earlier. [Emphasis added]

12. In Sheo Narain Jaiswal & Ors. v. Income Tax Officer & Ors., [1989] 176 ITR 352 (Patna), it was held that reassessment proceedings can be initiated under Section 147(a) of the Act if the Income-tax Officer has reason to believe that there has been escapement of income and that the said income escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that period or year. Both the conditions are conditions precedent for the assumption of jurisdiction under Section 148 of the Act.

13. In Phool Chand Bajrang Lal & Anr. v. Income Tax Officer & Anr., [1993] 203 ITR 456 (SC), the Apex Court has held thus:

> "From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not

> previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief..." [Emphasis supplied]

In Anant Kumar Saharia v. Commissioner of Income Tax & Ors., [1998] 232 ITR 533 (Gauhati), it was held as follows:

> "The belief is that of the Assessing Officer and the reliability or credibility or for that matter the weight that was attached to the materials naturally depends on the judgment of the Assessing Officer. This court in exercise of power under Article 226 of the Constitution of India cannot go into the sufficiency or adequacy of the materials. After all the Assessing Officer alone is entrusted to administer the impugned Act and if there is prima facie material at the disposal of the Assessing Officer that the income chargeable to income-tax escaped assessment this court in exercise of power under Article 226 of the Constitution of India should refrain from exercising the power. In the instant case, the case of the petitioner was fairly considered and thereafter the above decision is taken."
>
> [Underlining is ours]

In Bombay Pharma Products v. Income Tax Officer, [1999] 237 ITR 614 (MP), it was held as follows:

> It is also established that the notice issued under Section 148 of the Act should follow the reasons recorded by the Income-tax Officer for reopening of the assessment and such reasons must have a

> material bearing on the question of escapement of income by the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Whether such reasons are sufficient or not, is not a matter to be decided by the court. But the existence of the belief is subject to scrutiny if the assessee shows circumstances that there was no material before the Income-tax Officer to believe that the income had escaped assessment."[Emphasis added]

In H.A. Nanji & Co. v. Income Tax Officer, [1979] 120 ITR 593 (Calcutta), it has been held that at the time of issue of notice of reassessment, it is not incumbent on the ITO to come to a finding that income has escaped assessment by reason of the omission or failure of the assessee to disclose fully and truly all material facts necessary for assessment. It has been further held that the belief which the ITO entertains at that stage is a tentative belief on the basis of the materials before him which have to be examined and scrutinised on such evidence as may be available in the proceedings for reassessment. The Division Bench held that there must be some grounds for the reasonable belief that there has been a non-disclosure or omission to file a true or correct return by the assessee resulting in escapement of assessment or in under-assessment. Such belief must be in good faith, and should not be a mere pretence or change of opinion on inferential facts or facts extraneous or irrelevant to the issue and the material on which the belief is based must have a rational connection or live link or relevant bearing on the formation of the belief.

17. In N.D. Bhatt, Inspecting Assistant Commissioner, Income Tax & Another. v. I.B.M. World Trade Corporation, [1995] 216 ITR 811(Bombay), it has been held thus:

> "It is also well-settled that the reasons for reopening are required to be recorded by the assessing authority before issuing any notice under section 148 by virtue of the provisions of section 148(2) at the relevant time. Only the reason so recorded can be looked at for sustaining or setting aside a notice issued under section 148."

18. In Hindustan Lever Ltd. v. R.B. Wadkar, [2004] 268 ITR 332 (Bom), a Division Bench has opined thus:-

> ".... the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind

> through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment." [underlining is ours]

In Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd, [2007] 291 ITR 500 (SC), it has been ruled thus:-

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

> that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction." [Emphasis supplied]

In this context, we may refer with profit to a Division Bench decision of this Court in SFIL Stock Broking Ltd. (supra), wherein the Bench was dealing with the validity of the proceedings under Section 147 of the Act. The Bench reproduced the initial issuance of notice and thereafter referred to the reasons for issue of notice under Section 148 which was provided to the assessee. Thereafter, the Bench referred to the decisions in CIT v. Atul Jain, 299 ITR 383 (Del), Rajesh Jhaveri Stock Brokers Pvt. Ltd (supra), Jay Bharat Maruti Ltd. v. CIT, 223 CTR 269 (Del) and CIT v. Batra Bhatta Company, 174 Taxman 444 (Del) and eventually held thus: -

> "9. In the present case, we find that the first sentence of the so-called reasons recorded by the Assessing Officer is mere information received from the Deputy Director of Income Tax (Investigation). The second sentence is a direction given by the very same Deputy Director of Income Tax (Investigation) to issue a notice under Section 148 and the third sentence again comprises of a direction given by the Additional Commissioner of Income Tax to initiate proceedings under Section 148 in respect of cases pertaining to the relevant ward. These three sentence are followed by the following sentence, which is the concluding portion of the so-called reasons:-
>
> "Thus, I have sufficient information in my possession to issue notice u/s 148 in the case of M/s SFIL Stock Broking Ltd. on the basis of reasons recorded as above."
>
> 10. From the above, it is clear that the Assessing Officer referred to the information and the two directions as „reasons' on the basis of which he was proceeding to issue notice under Section 148. We are afraid that these cannot be the reasons for proceeding under Section 147/148 of the said Act.

> The first part is only an information and the second and the third parts of the beginning paragraph of the so-called reasons are mere directions. From the so-called reasons, it is not at all discernible as to whether the Assessing Officer had applied his mind to the information and independently arrived at a belief that, on the basis of the material which he had before him, income had escaped assessment. Consequently, we find that the Tribunal has arrived at the correct conclusion on facts. The law is well settled. There is no substantial question of law which arises for our consideration."
>
> [Emphasis is ours]

21. At this juncture, it is profitable to refer to the authority in GNK Driveshafts (India) Ltd. v. Income Tax Officer and Others, (2003) 179 C54 (SC) 11 wherein their Lordships of the Apex Court have held thus:-

> "5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

In Sarthak Securities Co. Pvt. Ltd. v. ITO, Writ Petition No.6087/2010, decided on 18th October, 2010, a Division Bench of this Court, after reproducing Section 147 of the Act and relying on certain decisions in the field, expressed the view as follows:

> "23. `The obtaining factual matrix has to be tested on the anvil of the aforesaid pronouncement of law. In the case at hand, as is evincible, the assessing officer was aware of the existence of four companies with whom the assessee had entered into transaction. Both the orders clearly exposit that the assessing officer was made aware of the situation by the investigation wing and there is no mention that

> these companies are fictitious companies. Neither the reasons in the initial notice nor the communication providing reasons remotely indicate independent application of mind. True it is, at that stage, it is not necessary to have the established fact of escapement of income but what is necessary is that there is relevant material on which a reasonable person could have formed the requisite belief. To elaborate, the conclusive proof is not germane at this stage but the formation of belief must be on the base or foundation or platform of prudence which a reasonable person is required to apply. As is manifest from the perusal of the supply of reasons and the order of rejection of objections, the names of the companies were available with the authority. Their existence is not disputed. What is mentioned is that these companies were used as conduits. In that view of the matter, the principle laid down in Lovely Exports (P) Ltd. (supra) gets squarely attracted. The same has not been referred to while passing the order of rejection. The assessee in his objections had clearly stated that the companies had bank accounts and payments were made to the assessee company through banking channel. The identity of the companies was not disputed. Under these circumstances, it would not be appropriate to require the assessee to go through the entire gamut of proceedings. It is totally unwarranted."

The present factual canvas has to be scrutinized on the touchstone of the aforesaid enunciation of law. It is worth noting that the learned counsel for the petitioner has submitted with immense vehemence that the petitioner had entered into correspondence to have the documents but the assessing officer treated them as objections and made a communication. However, on a scrutiny of the order, it is perceivable that the authority has passed the order dealing with the objections in a very careful and studied manner. He has taken note of the fact that transactions involving Rs.27 lakhs mentioned in the table in Annexure P-2 constitute fresh information in respect of the assessee as a beneficiary of bogus accommodation entries provided to it and represents the undisclosed income. The assessing officer has referred to the subsequent information and adverted to the concept of true and full disclosure of facts. It is also noticeable that there was specific information received from the office of the DIT (INV-V) as regards the transactions entered into by the assessee company with number of concerns which had made accommodation entries and they were not genuine transactions. As we perceive, it is neither a change of opinion nor does it convey a particular interpretation of a specific provision which was done in a particular manner

> in the original assessment and sought to be done in a different manner in the proceeding under Section 147 of the Act. The reason to believe has been appropriately understood by the assessing officer and there is material on the basis of which the notice was issued. As has been held in Phool Chand Bajrang Lal (supra), Bombay Pharma Products (supra) and Anant Kumar Saharia (supra), the Court, in exercise of jurisdiction under Article 226 of the Constitution of India pertaining to sufficiency of reasons for formation of the belief, cannot interfere. The same is not to be judged at that stage. In SFIL Stock Broking Ltd. (supra), the bench has interfered as it was not discernible whether the assessing officer had applied his mind to the information and independently arrived at a belief on the basis of material which he had before him that the income had escaped assessment. In our considered opinion, the decision rendered therein is not applicable to the factual matrix in the case at hand. In the case of Sarthak Securities Co. Pvt. Ltd. (supra), the Division Bench had noted that certain companies were used as conduits but the assessee had, at the stage of original assessment, furnished the names of the companies with which it had entered into transactions and the assessing officer was made aware of the situation and further the reason recorded does not indicate application of mind. That apart, the existence of the companies was not disputed and the companies had bank accounts and payments were made to the assessee company through the banking channel. Regard being had to the aforesaid fact situation, this Court had interfered. Thus, the said decision is also distinguishable on the factual score.
>
> In the case at hand, as we find, the petitioner is desirous of an adjudication by the writ court with regard to the merits of the controversy. In fact, the petitioner requires this Court to adjudge the sufficiency of the material and to make a roving enquiry that the initiation of proceedings under Sections 147 and 148 of the Act is not tenable. The same does not come within the ambit and sweep of exercise of power under Article 226 of the Constitution of India. It is open to the assessee to participate in the re- assessment proceedings and put forth its stand and stance in detail to satisfy the assessing officer that there was no escapement of taxable income. We may hasten to clarify that any observation made in this order shall not work to the detriment of the plea put forth by the assessee during the re- assessment proceedings."

45. In the present case, the reasons recorded in the matter were certainly communicated to the petitioner. The objections of the petitioner have been properly dealt and it is not a case of mere suspicion, it is a case, wherein the competent authority was having

reason to believe to reopen the assessment. There was a specific information available with the authorities. The reasons to believe had been properly understood by the authorities and there was material on the basis of which, notice was issued.

46. In exercise of the jurisdiction under Article 226 of the Constitution of India, the sufficiency or insufficiency for the formation of the reason to believe cannot be considered, as held by the Delhi High Court. It is certainly open to the assessee to participate in the reassessment proceedings and to put forth its stand in detail to satisfy the Assessing Officer that no escapement of income has taken place.

At this stage, this Court does not find any reason to interfere with the notice as well as with the order passed by the respondents. No case for interference is made out in the matter.

Accordingly, the present writ petition stands dismissed.

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

Ravi