GAHC010052162022

2026:GAU-AS:7681

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1929/2022

BISWAJIT DEB
S/O- LATE BIRENDRA MOHAN DEB, R/O- 44 ADABARI, GUWAHATI-781012, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REP BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF FINANCE , DEPARTMENT OF REVENUE, ROOM NO-46, NORTH BLOCK, NEW DELHI-110001

2:THE PRINCIPAL COMMISSIONER
OF INCOME TAX
GUWAHATI-I
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI - 5
KAMRUP (METRO)
ASSAM

3:THE DEPUTY COMMISSIONER
OF INCOME TAX (DCIT)/ THE ASSISTANT COMMISSIONER OF INCOME TAX (ACIT)
CIR-I
GUWAHATI.
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI - 5
KAMRUP (METRO)
ASSAM

4:NATIONAL FACELESS ASSESSMENT CENTRE DELHI
INCOME TAX DEPARTMENT
ARA CENTRE
E-2
GROUND FLOOR
JHANDEWALA EXTENSION
NEW DELHI-11000

Advocate for the Petitioner : DR. A SARAF, MR P K BORA,MR S J SAIKIA,MR. N N DUTTA,MR. Z ISLAM,MR P BARUAH

Advocate for the Respondent : ASSTT.S.G.I., MR. S CHETIA (r-2,3)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (CAV)

Date : 29-05-2026

Heard Dr. A.K. Saraf, learned Sr. counsel assisted by Mr. P.K. Bora, learned counsel for the writ petitioner. Also heard Mr. S. Chetia, learned Sr. standing counsel, IT Department, appearing for the respondents.

2. The petitioner by way of instituting the present writ petition has prayed for as under :-

> "*In the premises aforesaid, it is therefore respectfully prayed that Your Lordship's may graciously be pleased to admit this petition, call for the records of the case and issue a Rule calling upon the Respondents to show cause as to why a Writ in the nature of Certiorari and/or any other writ, order or direction of like nature should not be issued quashing and setting aside the impugned Notice dated 31.03.2021 issued under section 148 of the Income Tax Act, 1961 and all such subsequent notices issued in pursuance to the impugned Notice dated 31.03.2021 and why a writ in the nature of Mandamus should not be issued directing the respondents not to proceed further and/or take any action in pursuance to*

impugned Notice dated 31.03.2021 and after hearing cause and causes as may be shown and after hearing the parties be pleased to make the Rule absolute and/or pass such further or other Order(s) as Your Lordship's may deem fit and proper."

3. As projected in the writ petition, the petitioner for the assessment year 2014-15, had submitted its return of income electronically on 14-01-2015 by declaring, therein, a total income of Rs. 10,00,990/- (Rupees Ten Lakhs Nine Hundred Ninety). The petitioner in his said return had also disclosed an amount of Rs. 35,69,484.63 (Rupees Thirty Five Lakhs Sixty Nine Thousand Four Hundred Eighty Four & Sixty Three Paise) as long term capital gain, which was exempted under the provisions of Income Tax Act, 1961. The assessment of the petitioner was deemed to be completed under Section 143(1) of the Income Tax Act, 1961. It is to be noted that the said return filed by the petitioner was also not taken up for scrutiny.

4. In the above background, a notice dated 31-03-2021 issued by the DICT/ AICT/ Circle- 1, Guwahati intimating the petitioner that it is proposed to assess/ re-assess the income of the petitioner for the assessment year 2014-15 on the ground that there was reasons to believe that the income chargeable to tax for the said assessment year had escaped assessment within the meaning of Section 147 of the IT Act, 1961. It was also highlighted in the said notice that the same was being issued after obtaining necessary approval from the Principal Commissioner of Income Tax, Guwahati-1.

5. The petitioner on receipt of the said notice again submitted his return for the assessment year 2014-15, showing the same income as shown in the original return. Thereafter, the petitioner was served with a notice dated 15-11-2021, issued by the DICT/ AICT/ CIR-1, Guwahati, invoking the provision of Section 143(2) read with Section 147 of

the IT Act, 1961, requiring the petitioner to submit or cause to submit any evidence on which the petitioner may rely in support of its return of income submitted in pursuance to the notice under Section 148 of the IT Act, 1961 to him. The petitioner, thereafter, vide a communication dated 02-02-2022, which was sent electronically to the Assessing Officer, National Faceless Assessment Centre, Delhi, requested for being provided with a copy of reasons so recorded to facilitate filing of objection by him, if any. The petitioner also prayed for extension of time for submission of his response to the notice issued to him under Section 142(1) of the IT Act, 1961. The said communication of the petitioner was responded by the respondents vide a communication dated 09-02-2022 and therein, it was disclosed that the case of the petitioner was reopened on the basis of information received from the Directorate of Income Tax (Investigation), Delhi, which was contended to have been already provided to the petitioner in the notice dated 07-01-2022 issued to him. The reasons, however, were again enclosed to the said communication dated 09-02-2022. The petitioner on perusal of the reasons as furnished to him, found that the said reasons so assigned had no connection with the transactions which were held to have been escaped assessment from tax and accordingly, requested the authorities to drop assessment/ re-assessment process initiated with regard to the returns filed for the Assessment Year 2014-15.

6. The respondent authorities, thereafter, vide a communication dated 23-02-2022, informed the petitioner that wrong reasons were uploaded inadvertently, vide the communication dated 09-02-2022 and that the reasons uploaded did not pertain to him. However, the actual reasons recorded for re-opening of the case of the petitioner was

now attached along with the said communication dated 23-02-2022. The petitioner on perusal of the reasons now furnished to him found that the approval, under Section 151 of the IT Act, 1961, for issuance of a notice under Section 148 to the petitioner for the assessment year 2014-15, was granted by the Principal Commissioner of Income Tax, Guwahati. The petitioner on perusing the reasons as assigned for the re-opening of the assessment for the assessment year 2014-15, submitted his detailed objection in the matter vide a communication dated 28-02-2022. The respondent authorities, thereafter, proceeded further with the assessment proceeding.

Being aggrieved the petitioner had approached this Court by way of instituting the present writ petition praying for interference with the notice dated 31-03-2021 and all other subsequent notices issued in this connection.

7. Dr. A.K. Saraf, learned Sr. counsel for the petitioner, by reiterating the facts as noticed, here-in-above, has submitted that the petitioner in his return for the assessment year 2014-15, had disclosed a Long Term Capital Gain totaling Rs. 35,69,484.63 (Rupees Thirty Five Lakhs Sixty Nine Thousand Four Hundred Eighty Four & Sixty Three Paise). He submits that the petitioner on receipt of the reasons so assigned for the purpose of issuance of notice to him for re-assessment of the returns submitted by him for the assessment year 2014-15, had submitted a detailed objection to the same vide his communication dated 28-02-2022. It is submitted that the objections raised by the petitioner went to the very root of the matter and the same had demonstrated that the Assessing Officer did not have any material before him to draw a reasonable belief of income having been escaped assessment under the provisions of Section 147 of the IT

Act, 1961. Dr. Saraf by referring to the paragraph 5 of the reasons recorded by the Assessing Officer has submitted that a perusal of the same would go to reveal that the reassessment has been directed to be conducted basing on a suspicion, inasmuch as, it is recorded, therein, that due to paucity of time such transaction could not be identified for each beneficiary. Dr. Saraf submits that said finding recorded by the Assessing Officer would go to reveal that there was no material before the Assessing Officer to form a believe that income chargeable to tax had escaped assessment. He submits that the said finding would go to indicate that the notice was being so issued so as to carryout a detailed verification in the matter. Dr. Saraf further submits that the transactions which are being noticed in the reasons assigned by the Assessing Officer, were transactions permitted under law and that the petitioner had never engaged in short selling from M/s Look Health Services Ltd. Dr. Saraf further submitted that the petitioner had never purchased any share from the said concern nor had sold any share through the same. Dr. Saraf further submits that the petitioner had purchased the shares from one Vinit Enterprise and had sold the same to ISJ Securities Pvt. Ltd. Dr. Saraf submits that in support of the such contention of the petitioner, the petitioner along with his objection had attached the contract notes and other relevant documents. Accordingly, Dr. Saraf submits that on a reading of the reasons assigned by the Assessing Officer, it would be evident that although the projection was made a bogus accommodation of Long Term Capital Gains, however, the nature of transactions involved were not known to the Assessing Officer at the time of recording reasons, i.e. as to whether the petitioner had booked Long Term Capital Gain or Short Term Capital Gain.

8. Dr. Saraf submits that the Assessing Officer has to have reasons to believe that the income chargeable to tax had escaped assessment and the same must be based on tangible materials and cogent facts and a notice under Section 148 of the Act of 1961 is not permissible to be so issued merely on suspicion or apprehension. Dr. Saraf, in the above background submits that the purport of notice under Section 148 of the Act of 1961 is not for initiating a roving enquiry with regard to the business transactions of the assesse and the same has to be so issued only when conditions requisite for issuance of the same are so satisfied.

9. Dr. Saraf submits that the belief entertained by the assessing officer should not be arbitrary or irrational but must be reasonable. In other words, it must be based on reasons which are relevant and material. If there is no rational and intelligible nexus between the reasons and the belief, the inevitable conclusion is that the assessing officer does not have reasons to believe that any part of income of the assessee had escaped assessment. The reason to believe cannot be biased nor can it be an outcome of a change of opinion. He also submits that the term "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-Tax Officer and the reason must be held in good faith and it cannot be merely a pretense and it is open to the Court to examine whether the reasons for formation of the belief have a rational connection with or relevant bearing on the formation of his belief. It is a well settled law that the existence of reasons for the belief of the assessing authority is a justiciable issue and it is for the Court to be satisfied whether in fact the assessing officer had reason to believe that the income has escaped assessment. If there is no rational and intelligible nexus between the

reasons and the belief, it would be the inescapable conclusion that the assessing officer did not have reason to believe that any part of the income of the assessee has escaped assessment. Since the Long Term Capital Gain was duly reflected in the return of income, it cannot be said by any stretch of imagination that there was any failure on the part of the petitioner to disclose fully and truly the material facts necessary for the purpose of assessment.

10. In the above background, Dr. Saraf submits that initiating proceedings under Section 147 and issuance of the notice under Section 148 of the Act, the Assessing Officer must have materials to show that any particular transaction was not genuine or fictitious and the assessing officer must arrive at a prima facie conclusion that the said transaction was not genuine and was fictitious. In the absence of such *prima facie* conclusion, it could not be concluded that the income of the petitioner has escaped assessment. He further submits that from reasons recorded itself, it is clear that the Assessing Officer has not made inquiry with regard to the transaction entered into by the petitioner and simply issued notice under Section 148 of the Income Tax Act, 1961, on the basis of general assumption that such type of transactions were not genuine. Such type of finding in the reasons recorded cannot be said to be lawful reasons on the basis of which the assessing officer could have arrived at finding that any income of the petitioner had escaped assessment and thereby the impugned notice dated 31-03-2021 issued under Section 148 of the Income Tax Act, 1961 and all subsequent notices issued in pursuance thereof are illegal and without jurisdiction and thereby the same are liable to be set aside and quashed. He accordingly, submits that the petitioner having disclosed all material facts in

relation to the transaction in question resulting in the Long Term Capital Gain in the return filed by him, it cannot be said that the petitioner failed to disclose the all material facts necessary for the purpose of assessment and there cannot be any reason to believe that the transactions involved were not genuine transaction, inasmuch as, the sale of shares in question were made through the stock market by paying the securitization taxes and thereby the very initiation of proceedings under Section 147 of the Act by issuance of notice under Section 148 of the Act is absolutely illegal, without jurisdiction and not tenable in law. He submits that the assessing officer assume jurisdiction to re-open assessment proceedings, only on the fulfillment of the mandatory pre-conditions for assuming such jurisdiction as laid down in the Act of 1961 and thereby the impugned notice issued under Section 148 of the Act for the assessment year 2014-15 is not only arbitrary but is also without jurisdiction and the same is in complete violation to the provisions of the Income Tax Act, 1961 and thereby the impugned notice dated 31-03-2021 as well as all other notices issued in pursuance, thereof, are liable to be set aside and/or quashed.

11. Dr. Saraf in support of the above submission have relied upon the following decisions:-

(a) Eveready Industries India Ltd. Vs. Joint CIT (2000) 243 ITR 540, 552

(b) Joint CIT V. George Williamson (Assam) Ltd. Vs. Eveready Industries (India) Ltd., (2002) 258 ITR 126

(c) Joint CIT Vs. George Williamson (Assam) Ltd SLP (Civil) No. 11810 of 2003

(d) Income-tax Officer Vs. Lakhamani Mewal Das, (1976) 103 ITR 437

(e) Income-tax Officer Vs. Madnani Engineering Works Ltd., (1979) 118

ITR 1

(f) Ganga Saran & Sons P. Ltd. Vs. Income-tax Officer, (1981) 130 ITR 1

(g) Chhugamal Rajpal Vs. S.P Chaliha & Ors, (1971) 79 ITR 603

(h) Calcutta Discount Co. Ltd. Vs. ITO [1961] 41 ITR 191 (SC)

(i) Vodafone India Ltd. Vs. CIT, (2024) 464 ITR 385

12. Per contra, Mr. S. Chetia, learned Sr. standing counsel, IT Department appearing for the respondents, after drawing the attention of this Court to the various provisions in the Income Tax Act, 1961, attracted to the issue arising in the present proceeding, has submitted that the challenge of the petitioner to the notice dated 31-03-2021, is basely premised on three grounds. He submits that it is so premised that on the ground that the reason to believe formed by the Respondent No. 3 was mechanical and without application of mind, being not based on any material as well as no enquiry was conducted prior to issuance of such notice *viz a viz* materials based on which such reason to belief was formed. Notice was issued by the Deputy/ Assistant Commissioner of Income Tax instead of Income Tax Officer, who was not the proper officer to issue such notice, and sanction granted by the Commissioner of Income Tax was not a valid sanction being granted in a mechanical way without application of mind. The assessment of return of income of the petitioner for the assessment year 2014-15 not being a regular assessment under Section 143(3) of the Act, it has to be held that the same was a deemed assessment under Section 143(1) of the Act of 1961. He submits that the Assessing Officer had received information, which was made available in the Insight portal of the departmental database, reflecting, therein, that the petitioner was the beneficiary of bogus LTGS/ STCL pertaining to the financial year 2013-14 to 2018-19 and during the

assessment year 2014-15, the petitioner had received an amount of Rs. 34,80,200/- (Rupees Thirty Four Lakhs Eighty Thousand Two Hundred) from M/s Look Health Services, which was never offered to tax in his return of income, the same was held to be unaccounted income of the petitioner. He submits that from the said materials coming on record, it is to be held that the Assessing Authority had reason to believe that the petitioner had failed to disclose fully and truly all materials in his return of income and it was established that income of Rs. 34,80,200/- (Rupees Thirty Four Lakhs Eighty Thousand Two Hundred) has escaped assessment within the meaning of Section 147 Explanation 2(b) of Income Tax Act, 1961, for the assessment year 2014-15.

13. Mr. Chetia by referring to the reasons recorded by the Assessing Authority has submitted that the same clearly reflects that he had reasons to believe that income had escaped assessment, with regard to the petitioner for the assessment year in question. Mr. Chetia further submits that in the return of income submitted by the petitioner, the petitioner had shown four heads of sources of taxable income. Under the heading "income from capital gain" the petitioner had disclosed that an amount of Rs. 5,546/- (Rupees Five Thousand Five Hundred Forty Six) as income from Short Terms Capital Gain. The petitioner had also disclosed income claimed to be exempted under four heads and under the heading LTCG under Section 10(36) an amount of Rs. 35,69,485/-, was so disclosed. Mr. Chetia pointed out that out of the eight disclosures of income made by the petitioner in his return (both taxable and exempted), the Assessing Authority had reasons to believe that an amount of Rs. 34,80,200/- (Rupees Thirty Four Lakhs Eighty Thousand Two Hundred), i.e. part of the total disclosure made by the petitioner under the heading

LTCG of Rs. 35,69,485/-, had escaped assessment in view of the materials available before him. He further submits that the Assessing Officer had not sought to re-open the other heads of income disclosed by the petitioner, inasmuch as, there was no material to direct for re-assessment with regard to the other heads of income disclosed by the petitioner. Mr. Chetia submits that the information received by the Assessing Officer from the insight portal of the department being specifically for an amount of Rs. 34,80,200/- out of the amount of Rs. 35,69,485/- disclosed by the petitioner under the heading LTCG, the income disclosed by the petitioner in the other headings were not held to be liable for reassessment.

14. Accordingly, in the above premises, Mr. Chetia submits that the Assessing Officer having drawn his belief basing on materials coming on record, the challenge presented to the notice dated 31-03-2021, impugned in the present writ petition would not mandate acceptance from this Court. He further submits that the decisions relied upon by the learned Sr. counsel for the petitioner, would have got no application in the case of the petitioner, inasmuch as, those decisions pertains to cases where assessment were completed under the provisions of Section 143(3) of the Act of 1961. In support of the above submissions, Mr. Chetia has placed reliance on the following decisions:-

(a) Asstt. Commissioner of IT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2008) 14 SCC 208

(b) Raymond Woolen Mills Ltd. Vs. ITO (2008) 14 SCC 218

15. With regard to the contention of the petitioner that the notice was issued by the Deputy/ Assistant Commissioner of Income Tax, instead of Commissioner of Income Tax,

it is submitted that there is no decision of the Board restricting the Deputy/ Assistant Commissioner of the Income Tax to reopen any case of above Rs. 15 Lakhs. It is submitted that as per internal policy of the department, the Income Tax Officers are not allotted cases where taxable income of the assesses are more than Rs. 15 Lakhs and it is always open for the Assistant Commissioner/ Additional Commissioner to examine cases above 15 Lakhs under his jurisdiction as the Assistant Commissioner/ Additional Commissioner are placed higher in the hierarchy of the department above the Income Tax Officer. Mr. Chetia further submits that the income which has been held to have escaped assessment was much more than Rs. 15 Lakhs. Accordingly, he submits that the notice dated 31-03-2021 issued by the Deputy/ Assistant Commissioner of Income Tax would not mandate any interference by this Court.

16. Mr. Chetia further submits that the contention raised by the learned Sr. counsel for the petitioner that the sanction granted by the Commissioner of Income Tax was not a valid sanction and the same was granted in a mechanical manner without application of mind on the same day when the reasons were so placed before him by the Assessing Officer, to be perverse. He submits that the Principal Commissioner of Income Tax, Guwahati, after going through the detailed finding and observations recorded by the Assessing Officer as well as the information so relied upon, which was precise, definite and specific of an amount of Rs. 34,80,200/- having escaped assessment out of the amount Rs. 35,69,485/- disclosed by the petitioner under the heading 'LTCG' in his return of income, had proceeded to draw his satisfaction in this matter. He submits that the sanction as granted by the Principal Commissioner of Income Tax, Guwahati, under the

provision of Section 151 of the Act of 1961 was one so granted after being satisfied on the basis of the materials coming on record that a notice under Section 148 was mandated to be issued to the petitioner. He submits that mere issuance of said sanction on the same day would not invalidate the same and/ or it would not be permissible to draw a conclusion that the such sanction was so issued without application of mind.

17. In the aforesaid premises, Mr. Chetia submits that the proceeding instituted under Section 147 of the Act of 1961, against the petitioner through issuance of notice dated 31-03-2021, being in compliance with all statutory provisions of law and being so done by a authority having jurisdiction to issue such notice, this Court would be pleased not to interfere with such action of the Assessing Officer in initiating proceeding under Section 147 of the Act of 1961 and the writ petition is liable to be dismissed.

18. I have heard the learned counsel for the parties and have also perused the materials available on record.

19. The background facts leading to issuance of the notice dated 31-03-2021 is not disputed and accordingly, the same is not reiterated, herein. The satisfaction drawn by the Assessing Officer for arriving at a conclusion that the income tax that escaped assessment in the return of income filed by the petitioner for the assessment year 2014-15 as furnished to the petitioner vide the communication dated 23-02-2022 is being examined by this Court. The said reasoning being relevant is extracted here-in-below:-

> "*1. Shri Biswajit Deb, an assessee of this Circle has filed its return of income electronically on 14/01/2015 vide acknowledgement No. 464292081140115 declaring total income at Rs. 10,00,990/-*
>
> *2. As per information available in Insight portal of departmental database it*

is found that Shri Biswajit Deb was the beneficiary of bogus LTCG/STCL pertaining to (FY 2013-14/to FY 2018-19) During the financial year 2013-14 relevant to the assessment year 2014-15 he has received an amount of Rs. 34,80,200/- from M's Looks Health Services Ltd....

3. Directorate of Income-tax (Investigation), Delhi carried out an investigation on "TAX EVASION THROUGH BOGUS Long Term Capital Gains/Short Term Capital Loss (LTCG/STCL) BY WAY OF MANIPULATED TRADING". During the scrip analysis, it is observed that at many places, short selling has been done by various clients, meaning thereby that number of shares sold by the parties is greater than the over quantity bought by them over the exchange platform which points out to the fact that various clients have undertaken off-market transactions as well. The first leg of the transaction. Ie, acquisition of shares mostly is off-line. This is done to save on STT using the loophole in Section 10(38) of the IT Act which palaces restriction of trading by payment of STT on sale of shares and not on purchase.

4. Further, the above scheme of rigging the price of shares and generating bogus gain/loss is done in the connivance of the operator who will get the fake back dated contract notes issued to the beneficiary (from one of the cartel brokers) for acquisition of the shares of a penny stock. The contract notes will bear the date of at least 12 months back (so to avoid the capital gain tax on the LTCG). Actual shares are transferred to beneficiary's demat account by off-market transaction hence it will not reflect in sto market trade data. By that time, the operator & his cartel would have already inflated the price of this share using circular trading.

5. The beneficiary sells these shares in a very short span and LTCG was booked accordingly. As the shares are acquired though off-market transaction, it will not reflect in the trade data of the scrip acquired from stock exchange. Hence, in such case of such beneficiaries, buy, quantity for the period will be either much lower than sell quantity or it will be zero. Due to paucity of time, such transactions couldn't be identified for each beneficiary

6. As the value of these shares transacted offline is not in line with the market value of these shares as value of shares can easily be manipulated which results in over or under valuation of shares in the books of the beneficiary with the clear intent of taking bogus accommodation entry of Long-Term Capital Gain/Short Term Capital Loss by trading in the scrip.

7. Moreover, it is seen that the contract note/bills for the purchase of these shares are fabricated, the shares were purchased through the stock market by entry-operator controlled entity Immediately before the ultimate sale by the assessee-beneficiary, transferred to the account of the assessee-beneficiary within a few days of purchase by way of off market transfers, using accounts controlled and managed by entry providers, from where it was sold within a few days. In this manner, the assessee's own unaccounted money is camouflaged as exempt Long Term Capital Gain and no tax was paid by it. Unaccounted money, in cash, is *utilized for this arranged purchase of shares, from market. These shares are transferred through one or a series of layers to the demat account of the beneficiary assessee. The beneficiary assessee sells the shares on market, paying STT and received sales consideration through banking channel. The entry providers arranged/furnished bogus, antedated contract notes, showing the purchases long time back on a fictitious date (at the then prevailing rates). The sales consideration is reduced by concocted cost of acquisition and the gain claimed as exempt. In case of loss, such loss is set off against the taxable profits. Thus, unaccounted money is brought into the books by fictitious and sham transactions and evading due taxes.*

8. In this regard, the list of entities which have generated huge profits and loss in the scrip has been perused. On perusal of the list the name of M/s Looks Health Services Ltd. [Scrip code 534422] was found. It is found that the client of the entity has traded in large quantity (6,11,200 shares) on the both the legs (Buy & Sell). However the number of orders he has placed to do so are very less in number. It is further notice during Investigation that purchase is made in 5 days and in a very short time it is squared off whereas there is no Instance of the square off on the same day. This is a deliberate trade pattern to generate short term loss in place speculative loss. All these facts indicated that fabricated trading was made yielding fake loss.

9. Moreover, the beneficiary might be receiving the shares through layers of transactions. The shares are claimed to have been purchased long time back, payment for this stated to be in cash or if it is cheque, then cheque might have been issued just before the sale of the shares. The date on contract note may be fake. It is also found that the shares are found to be purchased through stock market, and the possession of the shares in the hands of the beneficiaries is less than 12 months, then the claim of LTCG stand wrong. Where the sales consideration approximately (being within a few days of the actual purchase from the stock market) represents unaccounted money of the beneficiary assessee. It may also be noted that the pattern of shares having been acquired through off-market transfer immediately before selling the same through stock market is seen in several hundred other cases, linked to the entry operators. This cannot be anything else but accommodation entry.

10. In this regard, a list of entities which have generated huge profits and loss in the scrip has also been looked into. On perusal of the list the name of M/s Looks Health Services Ltd. (Scrip code 534422] was found.

11. On further investigation it is found that Shri Biswajit Deb coming under the jurisdiction of this circle happens to be one of such entity who has engaged in short selling [Sell trades quantity is higher than Buy trades quantity] through M/s Looks Health Services Ltd. with the sole motive of taking bogus accommodation entry of Long-Term Capital Gain/Short Term Capital Loss by trading in the scrip to the tune of Rs. 34,80,200/-. However, this being the unaccounted Income of the *assesses has never been offered to tax*

12. In the light of the aforesaid discussion I have reason to believe that the assessee failed to disclose fully and truly all materials in its Return of Income audit is established that income of Rs.34,80,200/-has escaped within the meaning of section 147 explanation 2(b) of the Income Tax Act, 1961for the FY 2013-14 relevant to the AY 2014-15 in this case which is in excess of Rs. 1,00,000/-.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 is being obtained from the Principal Commissioner of Income Tax, Guwahati as per the provisions of Section 151 of the Act."

20. It is found that the same being placed before the Principal Commissioner of Income Tax, Guwahati-1, the said authority had drawn satisfaction that the case was fit for reopening under Section 147 of the Act of 1961 and accordingly, approval was accorded under Section 151 of the Act for issuance of notice under Section 148 of the Act to the petitioner, herein.

21. A perusal of the reasons assigned by the Assessing Officer while drawing satisfaction to the effect that income had escaped assessment within the meaning of Section 147 Explanation 2(b) of the IT Act 1961 for the assessment year 2014-15, in respect of the petitioner, it is found that in paragraph 3, thereof, it was disclosed that the Director of Income Tax (Investigation) had carried out an investigation on "Tax Evasion through bogus Long Term Capital Gains/ Short Term Capital Loss by way of manipulated trading". Thereafter, the manner in which such trading activities are carried out was discussed in paragraph 3 and 4 of the said reasons. In paragraph 5 while further discussing the manner in which the beneficiaries sold the shares involved within a very short span and booked Long Term Capital Gain, had proceeded to record that due to paucity of time such transactions could not be identified for each beneficiary. Thereafter, it

was recorded in paragraph 8 that the list of entities which had generated huge profit and loss in this script was perused and in the said list the name of M/s Look Health Services Ltd. was found with script code 534422. Further, it was recorded that the beneficiaries involved might have been receiving the shares through layers of transactions and the contract notes may be fake. It was recorded that on further investigation, the petitioner was found to be one of such entities who was engaged in short selling through M/s Looks Health Services Ltd., with the sole motive of taking bogus accommodation entries of Long Term Capital Gain/ Short Terms Capital Gain by trading in scripts to the tune of Rs. 34,80,200/-. Accordingly, the belief that the petitioner failed to disclose fully and truly all materials in his return of income and that an income of Rs. 34,80,200/- had escaped assessment within the meaning of Section 147 Explanation 2(b) of the Act of 1961 pertaining to the assessment year 2014-15, was drawn.

22. The essential requirement for initiating re-assessment proceedings under Section 147 read with Section 148 is that the assessing officer must have reasons to believe that any income chargeable to tax has escaped assessment for any assessment year. Another requirement which is necessary for assuming jurisdiction under Section 147 is that the assessing officer shall record his reasons for issuing notice as mandated by Section 148(2). This requirement necessarily postulates that before the assessing officer is satisfied under Section 147 read with Section 148, he must put in writing as to why in his opinion or why he holds the belief that income has escaped assessment. The notice under Section 148 has to be issued only when the conditions mentioned in Section 147 are satisfied. Not only must there exist reasons for formation of the belief that income has

escaped assessment but there must also be a rational connection or relevant bearing with the materials considered and the formation of the belief. This rational connection postulates that there must be direct nexus or live link between the material coming to the notice of the Officer and the formation of his belief that there was escapement of the income from assessment. From the reasons recorded by the assessing officer for issuing notice under section 148 of the Income Tax Act, 1961, it is clear that the assessing officer had not applied his mind while issuing the said notice and had issued the same mechanically which would be clear from the paragraph 5 of the reasons recorded, wherein, it is mentioned that due to paucity of time the transactions could not identified for each beneficiary. From the aforesaid, it is clear that the notice under Section 148 of the Income Tax Act, 1961, was issued in a mechanical manner without examining the case of the petitioner and the same cannot be said to be the "reasons to believe" to empower the authority to exercise under Section 148 of the Income Tax Act, 1961. The respondent authorities also committed a manifest error of law in observing that the Long Term Capital Gain of the petitioner was not offered to the tax without examining the return of income submitted by the petitioner, wherein, the said receipt was duly disclosed. From the reasons recorded by the Assessing Officer for reopening of the assessment of the petitioner, it would be clear that the impugned proceedings are nothing but a fishing and roving enquiry in respect of the business affairs of the petitioner.

23. The expression "reason to believe" is not the same thing as 'suspicion' or 'doubt' and mere seen also cannot be equated to believe. "Reason to believe" is a higher level of state of mind. A person can be presumed to have a reason to believe if he has sufficient

cause to believe the same. In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would by a probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not be necessarily capable of absolute conviction or interference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or influence about the nature of the thing. The requirement "reason to believe" have to be deduced from various circumstances involved. The standard reason to believe for the assessing officer is that of a prudent person on a reasonable ground comes to a cogent conclusion, there has to be a conscious application of mind to the relevant facts and materials available and existing at the relevant point of time while making the deduction. The reason to believe is not to be the subjective satisfaction of the assessing officer but it has to be an objective view of the materials in possession with the matter and must be based on them. Reason to believe means a believe which a person interprets on facts before him.

24. It is only on the basis of specific, reliable and relevant information in his possession the belief is to be drawn by the assessing officer. Since the believe is to be that of the assessing officer, which is to be based on materials in his possession, there must also be rational connection and link between the belief drawn and the materials in the possession of the assessing officer. When the assessing officer entertains a requisite believe and for that believe reasons are recorded in writing by him, the same cannot be substituted by the court. The court, to a limited extend can look into the reasons to believe, recorded by the assessing officer and appreciate as to whether on the basis of the materials available

in possession of the assessing officer, it was possible for the assessing officer to form the requisite believe and also, whether materials have a rational connection or a live link for the formation of the requisite believe. It is also settled position of law that court cannot go into the sufficiency or adequacy of the materials and substitute its own opinion for that of the assessing officer on the point as to whether such action should be taken or not.

25. From the reasons recorded by the Assessing Authority on the basis of the information received from the Insight portal of the departmental data base, it is found that he had a suspicion that the transaction entered into by the petitioner offline was not in the line with the market value of these shares, as it was presumed that the value of shares can easily be manipulated which results in over or under valuation of shares in the books of the petitioner. It has further been clearly stated that due to paucity of time transactions could not be identified for each beneficiary, meaning thereby, the transactions entered into by the Petitioner, were not verified before the issuance of the notice under section 148 of the Income Tax Act, 1961.

26. In view of the reasons assigned by the Assessing Authority it is evident that he had not come to even a *prima facie* conclusion that the transactions involved were not genuine transactions and thereby there was no reason or *prima facie* ground before him to issue notice under Section 148 of the Income Tax Act, 1961. In this connection reliance is placed on the decision of the Hon'ble Supreme Court in ***Chhugamal Rajpal Vs. S.P Chaliha & Ors.*** reported in ***(1971) 79 ITR 603***, wherein, the assessee had produced before the Income-tax Officer at the time of assessment for the Assessment Year 1960-61, a statement showing various creditors from whom the assessee had borrowed Hundis

during the accounting year in question and after enquiry the assessee's total income was assessed at Rs. 69,886/-. Subsequently, on the basis of information received from the Commissioner of Income Tax, Bihar and Orissa, the Income Tax Officer issued a notice under Section 148 of the Act to the assessee and the assessee challenged the validity of the said notice on various grounds and the Hon'ble Supreme Court held as follows:

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

27. The provision "reason to believe" is not same as to reason to suspect. The Hon'ble Supreme Court in the case of ***Calcutta Discount Co. Ltd. (Supra)*** had held that the question whether the Assessing Officer had reason to believe is not a question of limitation only but is a question of jurisdiction, a vital thing which can always be investigated by the Court in an application under Article 226 of the Constitution. The Apex

Court further held that the expression "reason to believe" predicates that the Assessing Officer holds the belief induced by the existence of reasons on which the belief is founded. Such a belief must not be a mere suspicion, it must be founded upon information.

28. In the present case from the reasons recorded by the Assessing Officer it will clearly appear that notice under Section 148 was issued merely on suspicion, inasmuch as, it was stated that the financials of the script were bad and the Company was not having any sound financial basis justifying the investment and that the price of the said script was rigged. This was merely on the basis of the Insight portal report of departmental data base but no prima facie finding was recorded that the transaction entered into by the Petitioner was not genuine and/or was fictitious, more particularly when the Assessing Officer himself stated that due to paucity of time the investigation could not be made as regards the individual beneficiaries. As such it is clear that the notice under Section 148 was only issued under suspicion which cannot be said to be in conformity with Section 147 and Section 148 of the Act as held by the Apex Court in its discussions noticed, hereinabove.

29. The recording of reason by the Assessing Officer in paragraph 5 of being unable to carry out investigation for identifying the transactions for each of the beneficiaries involved, due to paucity of time, would go to reveal that the notices were being issued only to carry out such verification. The mere recitation of the mandatory words as it available in the provision of Section 147/ 148 of the IT Act, that he believes that income chargeable to tax has escaped assessment, in the considered view of this Court would not

cure the fundamental defect. This Court in view of the settled position of law, holds that in the present case, reason germane for drawing reason to believe with regard to income having escaped assessment under Section 147 of the Act of 1961 is clearly absent. This Court also holds that such reopening of assessment would not be permitted for a fishing or roving enquiry.

30. Having drawn the said conclusions, this Court would also examine the contentions raised by the learned Sr. counsel for the petitioner with regard to the approval granted by the Principal Commissioner under Section 151 of the Act of 1961 for issuance of notice under the provision under Section 148 of the Act. It is settled position of law that the power vested in the authorities under Section 151 to grant or not to grant approval to the Assessing Officer to reopen the assessment is coupled with a duty to apply its mind in the matter. The authority was duty bound to apply his mind to the proposal put up for approval in the light of the material relied upon by the Assessing Officer. That power cannot be exercised casually on a routine perfunctory manner. The important safeguards provided in Sections 147 and 151 were treated lightly by the officer. While recommending and granting approval it was obligatory on the part of the officer to verify whether there was any genuine material to suggest escapement of income. It was obligatory on all the authorities and the Principal Chief Commissioner of Income Tax in particular to consider whether or not power to reopen is being invoked properly.

31. The Hon'ble Supreme Court in the case of ***Chhugamal Rajpal (Supra)*** had drawn the following conclusions:-

> "*Further the report submitted by him under Section 151(2) does not mention*

> *any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little Importance. They have substituted the form for the substance."*

32. In the present case the Principal Commissioner has not applied his mind at all while granting the sanction and has granted the sanction mechanically without any application of mind, inasmuch as, if the Principal Commissioner would have examined the records and really applied his mind to the same, he could have easily found that the Long Term Capital Gain was duly reflected in the return of income of the petitioner for the Assessment Year in question and thereby the allegation of the Assessing Officer that the said Long Term Capital Gains was not offered to tax by the Assesse is absolutely baseless and the Principal Commissioner could not have granted sanction under Section 151 of the Act, if he would have really applied his mind and examined the records and thereby the sanction granted by the Commissioner in the instant case is a purely mechanical one without assigning any reasons and the same has been granted in a routine manner and thereby frustrating the very object of grant of sanction under Section 151 of the Act of 1961.

33. In view of the above discussions, this Court is of the considered view that the impugned notice dated 31-03-2021, would mandate interference and the same

accordingly stands set aside. All further actions initiated in pursuance to the said impugned notice dated 31-03-2021 also stand interfered with.

34. Writ petition stands disposed of.

JUDGE

Comparing Assistant