**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION NO. 1714 OF 2023**

Royal Chains P Ltd .. Petitioner

Versus

The Deputy Commissioner of Income Tax Central 3(3) & Ors .. Respondents

***Ms. Dinkle Hariya****, with Ms. Sruti Kalyanikar i/b Ms. Rashmi Vyas, Advocates for the Petitioner.*

***Mr. P. C. Chhotaray****, with Ms. Sangita Choure, Advocates for the Respondents.*



**CORAM: B. P. COLABAWALLA & FARHAN P. DUBASH, JJ.**

**DATE: AUGUST 12, 2026**

**ORAL JUDGMENT (Per B. P. Colabawalla, J.)**

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking to challenge the Notice dated 30th March 2021 issued by the 1st Respondent (Jurisdictional Assessing

Officer) under Section 148 of the Income Tax Act, 1961 (for short ***"I. T. Act"***). The Assessment Year in question is A. Y. 2016-17.

3. The basic grounds on which the Notice is challenged are as under:-

a) The initiation of the reassessment proceedings is based on wrong facts/non-existent facts;

b) Initiation is not based on any tangible material;

c) It is based on borrowed satisfaction which is impermissible in law;

d) There is no live nexus between the alleged information and formation of the belief and there is a total non-application of mind;

(e) It is merely a change of opinion since there was already a scrutiny assessment conducted in the Assessee's case & an Assessment Order was passed under Section 143(3) of the I. T. Act.

f) There is no proper valid sanction within the meaning of Section 151 as the sanction has been granted in a mechanical manner and without any application of mind.

4. To understand the challenge, it would be necessary to refer to some basic facts. According to the Petitioner, it is a very well known and reputed concern in the business of manufacturing of gold chains since more

than about 20 years. It was incorporated as a partnership firm in the year 2004 and got converted into a company under Part IX of the erstwhile Companies Act, 1956. The Petitioner is having a huge turnover, including a substantial export turnover, running into hundreds of crores. According to the Petitioner, it enjoys substantial profitability having exponential growth in the last ten years.

5. The Petitioner is a regular income tax Assessee, which has been assessed as such, including by way of scrutiny assessments from time to time. Being in the high growth export industry, the Petitioner was in the need of funds towards its working capital, so as to expand its operations.

6. In one of the trade shows that was attended by the Assessee, it connected with one M/s. Viren Jewellers LLC, a non-resident LLC situated in Dubai, UAE which was in the business for over two decades and having a turnover of more than Rs.10,000 Crores. It is the case of the Petitioner that Viren Jewellers LLC showed interest in investing, by way of equity participation, under the Foreign Direct Investment (FDI) route, in the Petitioner-Company. Based on the analysis of its financial as well as its business rating report, the Petitioner decided to invite M/s.Viren Jewellers LLC to purchase equity in the Petitioner-Company. To carry this forward, a

Term Sheet was executed between both the parties on 1st April 2015 incorporating the broad terms of the investment. Initially, M/s.Viren Jewellers LLC invested in the Petitioner-Company by purchasing its shares of face value of Rs. 10/- at a premium of Rs.5/- per equity share and which investment came to approximately Rs.6.57 Crores. Thereafter, M/s. Viren Jewellers LLC wanted a larger participation in the Petitioner-Company with the power to make major decisions. Accordingly, based on the valuation done by qualified Chartered Accountants, M/s.Viren Jewellers LLC invested a further amount of Rs. 9 Crores at a premium of Rs.59/- per share, thereby hiking its stake in the Petitioner-Company up to 28.82%. It is the case of the Petitioner-Company that this investment, and which came into the country through the FDI route, was received under close scrutiny and after approval of all regulatory agencies, like the Reserve Bank of India as well as after meeting all the relevant statutory mandates under the FEMA Act, 1999 and the Registrar of Companies. Post the capital infusion there was substantial increase in the Petitioner's turnover.

7. For the Assessment Year in question, namely, A. Y. 2016-17, the assessment of the Petitioner-Company was taken up for scrutiny. In the limited scrutiny proceedings, a specific query was raised to verify and examine the issue of share premium received by the Petitioner-Company,

including to verify the applicability of Section 56 (2) (viib) of the I. T. Act. In the course of the assessment proceedings, the Petitioner-Company filed very exhaustive details, explanations and evidence in support of the receipt of the share capital. This included, amongst others, all documents in relation to valuation as well as the mandatory compliances of the Reserve Bank of India, Registrar of Companies, etc.

8. Pending the assessment, a survey under Section 133A of the I. T. Act was carried out at the business premises of the Petitioner-Company on 7th September 2018. During this survey, once again, the issue of share capital was explained in detail, including by way of a statement on oath, recorded of a Director of the Petitioner-Company which was accepted by the 1st Respondent himself.

9. According to the Petitioner-Company, no new or additional information or material, much less any incriminating material was found during the survey. As such, it was only after full verification and examination that the Assessment Order under Section 143 (3) of the I. T. Act was passed by the Assessing Officer on 28th November 2018 accepting the genuineness of the shares allotted to M/s.Viren Jewellers LLC.

10. It appears that thereafter, on 30th March 2021, a Notice under Section 148 of the I. T. Act was issued to the Petitioner-Company. In reply to this Notice, the Petitioner sought the reasons for reopening the assessment vide letter dated 5th April 2021 and also filed its Return of Income on 13th April 2021. Those reasons were supplied to the Petitioner on 29th October 2021. Thereafter, the Petitioner filed its objections to those reasons on 15th November 2021 and which objections were rejected by the Assessing Officer vide his order dated 17th January 2022. It is thereafter that the present Petition is filed, seeking to challenge the action of the Revenue to reopen the assessment of the Petitioner-Company for A. Y. 2016-17. In this Petition, ad-interim relief was granted on 22nd March 2022 directing the Respondent not to proceed ahead with the impugned Notice dated 30th March 2021 and which relief has continued till date.

11. In this factual backdrop, the learned counsel appearing on behalf of the Petitioner submitted that the reasons supplied to the Petitioner-Company for reopening the assessment is squarely based on the statement of one Mr. Sanjay Bhavishi recorded [under Section 131] on 7th September 2018, 8th September 2018 and 9th September 2018, wherein the said Mr. Sanjay Bhavishi has stated that Mr. Manoj Jain is a person who is known in the

trade to be indulging in non-genuine business practices including collection of cash and transfer of money to and from India by means of non-genuine/bogus export/ import business/trading in jewellery. She submitted that the reasons record that the statement of Mr. Manoj Jain reveals that M/s.Viren Jewellers LLC, and with which Mr. Manoj Jain is concerned, has provided accommodation entry to the Petitioner-Company. The learned counsel submitted that this statement, and which forms the basis of the belief that income of the Petitioner-Company has escaped assessment, has not even been supplied to the Petitioner-Company. She further submitted that the only reason for reopening the assessment is the so called dubious background of Mr. Manoj Jain coupled with the fact that there is no proper economic rationale for the premium charged from the fundamentals of the company and discrepancies in the financials. According to the Assessing Officer, all this made him to supposedly believe that during the relevant year, the amount of share capital infused in the Petitioner-Company amounting to Rs.15,55,79,207/- was non-genuine. She submitted that without furnishing the said statement, and which the Revenue contends is new tangible material for reopening the assessment, the entire reassessment proceedings are bad on the ground of violation of the principles of natural justice alone. She submitted that if the statement was in fact provided to the Petitioner, they could have demonstrated that the transaction which the

Revenue alleges as non-genuine, was in fact, a genuine transaction under which infusion of capital took place in the Petitioner-Company. She further submitted that merely because the Assessing Officer was of the view that the premium charged for infusion of capital was at a higher rate does not *ipso facto,* without anything more, lead to any conclusion that income had escaped assessment. She submitted that what premium is to be charged on the shares issued by the Petitioner-Company is entirely at the discretion of the Petitioner-Company and the Income Tax Department cannot dictate to an Assessee as to what rate it should charge a premium for issuing its equity shares to its shareholders. This is apart from the fact that the share premium was calculated and determined after hiring experts in the field, namely, Chartered Accountants, especially considering that M/s.Viren Jewellers LLC wanted a bigger stake in the company and a larger say in its affairs.

12. The learned counsel further submitted that the entire reasons for reopening the assessment proceeds on a completely wrong premise that the Petitioner-Company has been formed only two years back, when in fact the business was being earlier carried on as a partnership firm from the year 2004 and was converted into a company on 5th September 2013. For all these reasons, the learned counsel submitted that the reasons supplied for reopening the assessment have no direct or live nexus to the Assessing

Officer forming any belief that income had escaped assessment. She submitted that the *Sine qua non* for reopening any assessment is the fact that the Assessing Officer first has to have a "reason to believe" that income has escaped assessment for him to initiate proceedings under Sections 147 and 148 of the I. T. Act. If there is no "reason to believe", the Assessing Officer does not get jurisdiction to issue any notice to reopen the assessment. She submitted that there is a difference between "reason to believe" and "reason to suspect". The "reason to suspect" does not give the Assessing Officer the right to reopen the assessment. The learned counsel, accordingly, submitted that the above Notice be quashed and set aside.

13. On the other hand, Mr. Chhotaray, the learned counsel appearing on behalf of the Revenue, submitted that there is no merit in the arguments canvassed on behalf of the Petitioner-Company. He submitted that in the facts of the present case, after the Assessment Order was passed in the scrutiny proceedings under Section 143(3), the Assessing Officer was forwarded the Survey Report on 18th April 2019. This was a survey that was carried out under Section 133A of the I. T. Act. During the course of the survey, it was found that 43,82,923 equity shares of the face value of Rs.10/- per share were issued to M/s.Viren Jewellers LLC at a premium of Rs.5/- per share. Thereafter, 12,86,039 equity shares of face value of Rs.10/- per share

were allotted to M/s.Viren Jewellers LLC at a premium of Rs.59/- per share. He submitted that the reasons itself record that there was no justification for the premium to be increased from Rs.5/- per share to Rs.59/- per share within a short span of 4 months and especially taking into consideration that the Petitioner-Company was incorporated on 5th September 2013. Mr. Chhotaray took us through the reasons recorded and submitted that apart from this fact, there were statements of Mr. Bhavishi recorded under Section 131 of the I.T. Act which clearly established that Mr. Manoj Jain of M/s. Viren Jewellers LLC was one who was engaged in non-genuine business practices, including collection of cash and transaction of money to and from India by means of non-genuine/bogus export/import business and trading in gold jewellery. It is on this basis that the Assessing Officer in the reasons recorded that Mr. Bhavishi's statements reveal that M/s.Viren Jewellers LLC, Dubai had provided accommodation entries to the Petitioner-Company. It is in view of the dubious background of Mr. Manoj Jain [of M/s.Viren Jewellers LLC, Dubai], coupled with the fact that there was no proper economic rationale for the premium charged from the fundamentals of the company, that the Assessing Officer came to the conclusion that he had "reason to believe" that income of the Assessee had escaped assessment. This was based on new tangible material that was made available to the Assessing Officer by not only the survey report but also the statements of Mr. Sanjay Bavishi recorded on 7th September 2018, 8th September 2018 and 9th September 2018 respectively.

14. Over and above this, Mr. Chhotaray submitted that this is not the only reason why the assessment was reopened. He brought to our attention the reasons, and submitted that in view of the provisions of Section 2(24) (x) read with Section 36(1)(va) of the I.T. Act, an amount of Rs.21,636/- was required to be added back in the computation of the total income as the payments/deposits in the PF and ESIC funds were not made by the due dates mentioned in those Statutes. Thus, the income had been under assessed by an amount of Rs.21,636/-. He submitted that it is not even the case of the Petitioner that this aspect was considered in the original limited scrutiny proceedings under Section 143 (3) of the I. T. Act. This being the case, this was yet another reason why the assessment of the Petitioner was reopened by taking recourse to the provisions of Sections 147 and 148 of the I. T. Act. Mr. Chhotaray submitted that when one peruses the reasons along with the new tangible material available, there was clearly a live nexus and/or a connection between the said material and “the reason to believe” that income had escaped assessment. It is, therefore, totally incorrect on the part of the Petitioner-Company to contend that the reasons forwarded to the Petitioner have no direct connection with the belief formed by the Assessing Officer that

income had escaped assessment. Mr. Chhotaray submitted that all that the Court has to look at is whether the Assessing Officer had "the reason to believe" that income had escaped assessment. He submitted that the sufficiency of those reasons is not something that the Court is empowered to look into. That is something that would be adjudicated when the reassessment proceedings are taken forward and a fresh Assessment Order is passed, if any. He, therefore, submitted that there was no merit in the above Writ Petition and the same ought to be dismissed.

15. We have heard the learned counsel for the parties at great length. We have also perused the papers and proceedings in the above Writ Petition. The reasons for reopening the assessment were supplied to the Petitioner-Company by a letter dated 29th October 2021 (page 137 of the paper book). For the sake of convenience, the said reasons are reproduced hereunder:-

> *"The reason for reopening of assessment is as follows:*
>
> *The assessee company is engaged in the business of Manufacturing & trading of Jewellery. The assessee had filed return of income for the year under consideration on 15.10.2016 declaring total income of Rs.5,04,43,130/-. The return was processed by CPC. The case was selected for LIMITED scrutiny and assessment u/s. 143(3) was completed on 28.11.2018 determining total income of Rs. 5,04,43,130/-.*
>
> *2. A survey action u/s. 133A was carried out on the assessee by DDIT (Inv.)-1(1), Mumbai on 07.09.2018 at the business premises of the assessee. The survey report was*

*forwarded to the then jurisdictional Assessing Officer on 18.04.2019. During the course of survey, it was found that on 06.08.2015, 43,82,923 equity shares of nominal amount of Rs.10/- per share and premium of Rs. 5/- were allotted to M/s. Viren Jewellers LLC, Office # 302, Gold House Bldg., Gold Souk, Dubai 3611. Thereafter, on 09.12.2015, 12,86,039 equity shares of nominal amount of Rs. 10/- per share and premium of Rs. 59/- were again allotted to M/s. Viren Jewellers LLC.*

*As per the ledger of Viren Jewellers LLC in the books of the assessee, the assessee has received money towards share allotment as below:*

| *Date* | *Particulars* | *Vch Type* | *Debit* | *Credit* |
|---|---|---|---|---|
| *18-05-2015* | *Dr SBI CC A/C No. 30226785580* | *Receipt* | | *1,90,50,319* |
| | *Dr SBI CC A/C No. 30226785580* | *Receipt* | | *2,85,79,375* |
| *17-06-2015* | *Dr ING VYSYA BANK Ltd. A/C No. 505044011981* | *Receipt* | | *1,81,14,162* |
| *21-09-2015* | *Dr ING VYSYA BANK Ltd. A/C No. 505044011981* | *Receipt* | | *4,22,36,148* |
| *23-09-2015* | *Dr ING VYSYA BANK Ltd. A/C No. 505044011981* | *Receipt* | | *4,56,08,150* |
| *30-09-2015* | *Dr ING VYSYA BANK Ltd. A/C No.* | *Receipt* | | *8,92,436* |

| | | | | |
|---|---|---|---|---|
| | *505044011981* | | | |
| *28-03-2016* | *Dr SBI CC A/C No. 30226785580* | | | *10,98,617* |
| | *Cr Closing Balance* | | *15,55,79,207* | |

*Accordingly, total amount of Rs. 15,55,79,207/- was received during the year. It is seen that within 4 months, the premium per share was increased from Rs. 5/- to Rs. 59/-. The assessee company was incorporated on 05.09.2013 and within two years of its incorporation, it had issued equity shares for high premium to a foreign entity.*

*It is noteworthy to observe that in short span of four months to work out fair value of equity shares as per Discounted Cash Flow (DCF) method EPS growth rate projection was revised from 17% to 33% (100% increase); Div. growth rate projection was revised from 10% to 30% (200% increase) and based on DCF method fair value of equity shares was increased from Rs. 15.26 to Rs. 69 (350% increase). The increase in the parameters is not justified by any underlying economic rationale. Moreover, considering actual financials of the assessee, the EPS growth of 33% is not consistent with the actual growth rate of EPS of 17%.*

*In view of the above facts related to allotment of equity share of the assessee company to Dubai based entity, enquiries were made during the course of survey action to ascertain the rationale for investments into equity shares. During the course of survey action, Mr. Suresh F. Jain was examined and his statement was recorded on oath u/s.131 on 09.09.2018. As per the statement recorded, it was stated that the company has requirement of funds to expand the business and that was the reason to allot equity shares. As per the resolution passed at meeting of the board of directors of the assessee before offering equity shares at premium during F.Y. 2015-16, the purpose of the same was* *mentioned to raise funds for working capital need of the company. However, the reason was not found to be substantiated from the financials. There are discrepancies in reporting financials as well. Short Term Loans and Advances was shown at Rs. 11,93,49,814 - (Note No. 12) and Non-Current Investments at Nil as per Balance Sheet as on 31.03.2017. However, as per balance sheet as on 31.03.2018, Short Term Loans and Advances was shown at Rs.2,93,49,814/- and Non-Current Investments was shown at Rs. 9,00,00,000 as on 31.03. 2017.*

*More importantly, statement of one Mr. Sanjay Khushaldas Bavishi was recorded on oath u/s. 131 on 07.09.2018 to 09.09.2018 wherein he has stated that Mr. Manoj Jain is a person who is known in the trade to be indulging in non-genuine business practices including collection of cash and transfer of money to and from India by means of non-genuine / bogus export / import business / trading in jewellery.* ***The statement reveals that Mr. Manoj Jain of M/s Viren Jewellers LLC, Dubai has provided accommodation entry to the assessee.***

*In view of the dubious background of Mr. Manoj Jain of M/s. Viren Jewellers LLC, Dubai coupled with the underlying facts that there is no proper economic rationale for the premium charged from the fundamentals of the company and discrepancies in financials, it emerges that the transaction of share capital/premium/application money received during the year amounting to. Rs. 15,55,79,207/- is non-genuine. Thus, new facts have come to notice which were not available at the time of original assessment.*

*3. Further, it is noticed that as per Form No. 3CD, the contributions received from employees for various as referred to in section 36(1)(va), the following amounts were not deposited within the due date as below:*

| *Fund Name* | *Month* | *Due Date* | *Payment Date* | *Amount (in Rs.)* |
|---|---|---|---|---|



Aswale

| | | | | |
|---|---|---|---|---|
| *PF* | *November* | *21/12/2015* | *22/12/2015* | *20,360* |
| *ESIC* | *November* | *21/12/2015* | *22/12/2015* | *1,276* |
| *Total* | | | | *21,636* |

*In view of the provisions of section 2(24)(x) r.w.s.36(1)(va), an amount of Rs. 21,636/- is required to be added back in the computation of total income as the payment is made after the due date. However, the assessee has not added this amount in the computation, of income. Thus, the income has been underassessed by an amount of Rs. 21,636/-.*

*4. <u>In view of the above facts and circumstances of the case, I am satisfied that the income to the extent of Rs. 15,56,00,843/- has escaped assessment. Therefore, I have reason to believe that the income to the tune of Rs. 15,56,00,843/- has escaped assessment for A.Y.2016-17 within the meaning of clause (b) of explanation 2 Section 147.</u> Therefore, the case is required to be reopened u/s. 147 issuing notice u/s.148 r.w.s.147 of the Income Tax Act, 1961.*

*5. In this case, a return of income was filed and the assessment was done u/s. 143(3) of the Act. Since, 4 years from the end of the relevant year has not expired in this case, the only requirement to initiate proceeding u/s 147 of the Act is reason to believe which has been recorded above.*

*It is pertinent to mention here that in this case an assessment was made as stipulated u/s. 2(40) of the Act. However, as discussed in the reason to believe income chargeable to tax has been underassessed by an amount of Rs. 15,56,00,843/-.*

*In view of the above facts, the provisions of clause (c) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is*

> *deemed to be a case where income chargeable to tax has escaped assessment.*
>
> *6. This case is within 4 years from the end of the assessment year under consideration. Therefore, necessary sanction to issue notice u/s. 148 has been obtained separately from the* ***Addl. Commissioner of Income Tax (Central Range-3), Mumbai*** *as per the provisions of section 151 of the Act.*
>
> *If you wish to file objection, if any, against the reopening of assessment, you are requested to file it by 15/11/2021 positively. It may kindly be noted that if you have failed to file the objection, if any, by 15/11/2021, it will be presumed that you have no objection against the reason recorded (before reopening of assessment). It may be noted that further proceedings u/s. 147 r.w.s. 143(3) of the Income-tax Act, 1961 will be undertaken without offering any further opportunity."*
>
> *(emphasis supplied)*

16. As can be seen from these reasons, there were two grounds for re-opening the assessment. The first ground was that the Share Capital/ premium/ application money received by the Petitioner-Company from M/s Viren Jewellers LLC amounting to Rs. 15.55 Crores was non- genuine and had to be brought to tax. The second ground for re-opening was that payment to the PF and ESIC funds was not made by the Petitioner-Company by the due dates mentioned in the Statutes governing those funds. Hence, Rs. 21,636/- had to be added back to the income of the Petitioner-Company.

17. As far as the first ground is concerned, the Assessing Officer records that there was a survey carried out under Section 133A and thereafter the Survey Report was forwarded to the Assessing Officer on 18th April 2019. The survey was *inter alia* with reference to the equity shares allotted at a premium by the Petitioner-Company to one M/s.Viren Jewellers LLC.

18. The reasons also, as stated above, not only record the statement of Mr. Suresh Jain, a Director of the Petitioner-Company [under Section 131], but also the statement of one Mr. Sanjay Bhavishi. Mr. Suresh Jain in fact stated that the company was in requirement of funds to expand its business and that was the reason to allot the equity shares at a premium. In fact, the Resolution of the Board of Directors of the Petitioner-Company was also passed and the purpose of the same was mentioned to raise funds for working capital needed by the company.

19. Since the reasons recorded heavily rely upon the statement of Mr. Sanjay Bhavishi, we had on the previous occasion, requested Mr. Chhotaray to submit to us the said statement of Mr. Sanjay Bhavishi recorded under Section 131 of the I. T. Act. Accordingly, those statements have been tendered to us. We have carefully perused those statements. The statements of Mr. Sanjay Bhavishi were recorded on 7th September 2018, 8th September

2018, 9th September 2018 and 3rd October 2018. We have minutely gone through the said statements. What can be discerned from these statements is that Mr. Manoj Jain of M/s. Viren Jewellers LLC, to the best of the knowledge of Mr. Sanjay Bhavishi, engaged in the business of illegal cash transactions/trades of gold and diamonds. In these entire statements, Mr. Sanjay Bhavishi does not even make a reference to the Petitioner-Company, either directly or indirectly, or regarding the transaction in question, namely, the investment made by M/s.Viren Jewellers LLC in the Petitioner-Company. We, therefore, on perusing the statements recorded of Mr. Sanjay Bhavishi, are unable to understand how is there a live nexus and/or connection between the statements of Mr. Sanjay Bhavishi (being the alleged new tangible material) and the belief formed by the Assessing Officer that income of the Petitioner-Company had escaped assessment.

20. It is now too well settled that the reasons for the formation of the belief that income had escaped assessment must have a rational connection with or a relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or a live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been an escapement of income of the Petitioner-Company from assessment, in the particular year. It is no doubt true that the

Court cannot go into the sufficiency or adequacy of the reasons or material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment. However, at the same time, vague and indefinite or distant, remote, and farfetched material would not warrant the formation of the belief that income has escaped assessment.

21. The powers of the Income Tax Officer to reopen assessment though very wide are not plenary. The words of the Statute are “reason to believe” and not “reason to suspect”. The reopening of the assessment after a lapse of many years is a serious matter, and therefore, the provisions of the I. T. Act in this respect depart from the normal rule that there should be, subject to right of Appeal and Revision, finality about the orders made in judicial and quasi judicial proceedings. It is, therefore, essential that before such action is taken, the requirements of the law are satisfied. The live link or close nexus which should be there between the material and the belief which the Income Tax Officer has to form regarding the escapement of income is a *sine qua non* for reopening the assessment. A link which is too tenuous to provide legally sound basis for reopening has to be rejected.

22. If one needs any decision on this aspect, the Hon'ble Supreme Court in the case of ***the Income Tax Officer, I ward, District VI, Calcutta & Ors v/s Lakhmani Mewal Das [(1976) SCC Online SC 137]*** has very succinctly set out the aforesaid proposition. The relevant portion of this decision (SCC Online Report) reads thus:-

> *"11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.*
>
> *12. The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt,*

*contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned Judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the income of the assessee respondent had escaped assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs."*

*(emphasis supplied)*

23. This decision has thereafter been followed not only by our Court but also by the Calcutta High Court. The Calcutta High Court in the case of ***S. P. Agarwalla Alias Sukhdeo v/s Income Tax Officer [1981] 5 Taxman 299 (Calcutta)***, has once again reiterated the aforesaid propositions.

*"Now, we come to the more important point, namely, whether the said confessional statement of Prahlad Roy Almal can be said to be a relevant material justifying the ITO to issue the impugned notice under s. 148. The confessional statement was not filed by the respondents in the trial court. Mr. Sengupta, learned counsel appearing on behalf of the respondents, has, however, produced before us a copy of the said confessional statement. It appears that the statement made by the said Prahlad Roy Almal was recorded in the form of questions and answers. The statement is dated November 24, 1965. According to the said Prahlad Roy Almal, his father was a registered broker in gunny, hessians,, etc., and he died on May 16, 1965. His father also had a bank account in the United Bank of India till two or three months before the date of the statement. The bank account was operated by Prahlad Roy Almal even, after his father's death. It is not clear from his statement how it was possible for him to operate the bank account standing in the name of his father. It was, however, alleged by him that he had been carrying on name-lending business since 1958-59. He did not maintain any books of account for such business. When he was asked to state the names and addresses of some of the alleged borrowers who were still showing credits in his name in their books of account, he only referred to the names of two companies and could not mention the name of any other alleged borrowers on the ground that it was not possible for him to say so, without looking into the files containing the confirmatory letters, which had been seized by the I.T. Dept. on November 17, 1965. It also appears from his statement that he had a good credit in the market inasmuch as he could get an aggregate amount of loan of Rs. 81,000 from one Srinivas Bullewa in 1953- 54. Further, he had contracted other loans from the market but he could not give the names of the parties from whom he had taken such loans. Relying on the said confessional statement, the ITO, respondent No. 1, issued the impugned notice under s. 148. The question that naturally arises is whether this confessional statement is a material for the formation of a reasonable belief by the ITO that the income of the appellant had escaped assessment on account of his*

*omission or failure to disclose truly and fully all relevant facts. The principle of law in this regard is now well settled. In the case of ITO v. Lakhmani Menial Das [1976] 103 ITR 437, the Supreme Court observed as follows (p. 448):*

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

*In Lakhmani Mewal Das's case [1976] 103 ITR 437 (SC), referred to above, one of the alleged name-lenders was one Mohansingh Kanayalal. He also made a confessional statement on the basis of which the assessment was reopened. The Supreme Court, while upholding the majority view of the High Court striking down the notice reopening the assessment, observed as follows (p. 447):*

> *"We may now deal with the first ground mentioned in the report of the Income-tax Officer to the Commissioner of Income-tax.*

> *This ground relates to Mohansingh Kanayalal against whose name there was an entry about the payment of Rs. 74, annas 3, as entered in the books of the assessee, having made a confession that he was doing only name-lending. There is nothing to show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 1, 1957, to March 31, 1958, which is the subject-matter of the assessment sought to be reopened. The report was made on February 13, 1967. In the absence of the date of the alleged confession it would not be unreasonable to assume that the confession was made a few weeks or months before the report. To infer from that confession that it relates to the period from April 1, 1957, to March 31, 1958, and that it pertains to the loan shown to have been advanced to the assessee, in our opinion, would be rather farfetched."*

*The confession, that was made by the said Mohansingh Kanayalal in Lakhmani Mewal Das's case [1976] 103 ITR 437 (SC), was to the effect that he was doing only name-lending business. Mr. Sengupta has sought to distinguish the confessional statement made by the said Mohansingh Kanayalal in the Supreme Court case and that made by the said Prahlad Roy Almal in the instant case. It is submitted by him that the confession of Mohansingh Kanayalal that he was doing "only name-lending" means that all his transactions were not bogus or name-lending transactions. In other words, it is his contention that the word "only" does not mean "all"; on the other hand, he submits, Prahlad Roy Almal has confessed that all the loan transactions were bogus. We are unable to accept this distinction as sought to be made by the learned counsel. We do not find any* *difference in meaning between the word "only" used in the statement of Mohansingh Kanayalal, and the word "all" occurring in the statement of Prahlad Roy Almal. In both the cases, in our opinion, the confession was that all the loan transactions were not genuine and they carried on name-lending business. Thus, the facts in the case of Lakhmani Mewal Das [1976] 103 ITR 437 (SC) and in the instant case are more or less similar so far as the confessional statement in either case are concerned. Prahlad Roy Almal did not at all refer to the name of the assessee who is the appellant before us. There is, therefore, no direct nexus or live link between the confessional statement of Prahlad Roy Almal and the formation of the belief of the ITO that the income of the appellant has escaped assessment. In the absence of a direct nexus or live link, such confessional statement will not constitute a relevant material justifying the reopening of the assessment. In this connection, it should not be lost sight of that one ITO had, after considering the evidence that was produced by the assessee before him, believed his case of incurring of loan of the said sum of Rs. 63,000. Unless, therefore, there is some material pointing to the assessee in regard to the alleged transaction, the ITO will not be justified to reopen the assessment by a notice under s. 148. The belief that is referred to in section 147 of the Income-tax Act, 1961, must be supported by some evidence or material justifying the formation of such belief."*

24. Even this Court, in the case of ***Sesa Sterlite Ltd V/s Assistant Commissioner of Income Tax, Circle 1(1), Panagi [2019] 107 taxmann.com 388 (Bom)*** has laid down the same principle. The relevant portion of the decision in ***Sesa Sterlite (supra)*** reads thus:-

*"20. The judgments in cases of Phool Chand Bajrang Lal v. ITO [1993] 69 Taxman 627/203 ITR 456 (SC), I.P. Patel & Co. v. Dy. CIT [2012] 27 taxmann.com 200/346 ITR 207 (Guj.), ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC), Rattan Gupta v. Union of India [1998]*

*234 ITR 220 (Delhi), AGR Investment Ltd. v. Addl. CIT [2011] 9 taxmann.com 62/197 Taxman 177/333 ITR 146 (Delhi), Raymond Wollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC) and Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 (SC), cited by learned Counsel for the revenue, bear on the aspect of sufficiency or otherwise of the material used for formation of belief. These judgments make it clear that what can be submitted to judicial scrutiny is whether or not there was material on the basis of which belief could have been formed about escapement of income from assessment, and not whether the material was actually adequate or sufficient for formation of such belief. There is no quarrel with this proposition here. Here, we are precisely concerned with whether or not such belief could have been formed on the basis of such material as was available with the Assessing Officer. In every State action or order submitted to judicial scrutiny, the matter is assessed from the point of view of Wednesbury unreasonableness. The focus of the scrutiny is, firstly, on whether the authority has kept itself within the four corners of law and, secondly, and even if it has so kept itself, whether it has nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. A reopening notice issued under Section 148 of the Income Tax Act is no exception to this rule. The Courts have made it clear time and again that belief under Section 147 of the Act is not a matter of a mere opinion of the Assessing Officer. It must be demonstrably shown that the material used by Assessing Officer is reasonably capable of formation of his belief that income has escaped assessment. As the Supreme Court observed in Lakhmani Mewal Das (supra), belief does not mean a purely subjective satisfaction on the part of the Income Tax Officer. It must be held in good faith; it cannot be merely a pretence. It is open to the Court to examine whether the reason has a rational connection with or relevant bearing on the formation of the belief; it must not be extraneous or irrelevant for the purpose. In the present case, as we have noted above, the reason has no such bearing or rational connection with the formation of the belief. It is purely speculative on the part of the Assessing Officer to form a belief of escapement of income from taxation simply on the basis of lesser export prices* *charged by the Assessee. There is no material or even suggestion that any income corresponding to the so-called under-invoicing of exports was in fact received by any party or by the Assessee through any backdoor method. In the premises, there is no legitimate reason to believe which can sustain the impugned notice issued by the Assessing Officer.”*

*(emphasis supplied)*

25. This principle was then again reiterated in the case of the ***Principal Commissioner of Income-tax-5 v/s Shodiman Investments (P) Ltd [2018] 93 taxmann.com 153 (Bom).*** In fact, in this judgment, this Court distinguished and explained the judgment of the Hon'ble Supreme Court in the case of ***Rajesh Jhaveri Stock Brokers (P) Ltd*** and which was relied upon by Mr. Chhotaray during the course of his arguments. The relevant portion of this decision reads thus:-

*“10. Besides, the submissions made on behalf of the Revenue that in view of the decision of the Apex Court in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s, case (supra), the Assessing Officer is entitled to re-open the Assessment for whatever reasons and the same cannot be subjected to jurisdictional review, is preposterous. First of all, taking out a word or sentence from the entire judgment, divorced from the context and relying upon it, is not permissible (see CIT v. Sun Engg. Works (P.) Ltd. [1992] 64 Taxman 442/198 ITR 297 (SC)). It may be useful to reproduce the context in which the sentence in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s case (supra) being relied upon by the Revenue to support its case, was made. The context, is as under:—*

*"The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the*



Aswale

> *provisions as they stood prior to such substitutions. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed to confer jurisdiction under section 147(a) two conditions were required to be satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under Section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices."*

*Therefore, the sentence being relied upon was made in the context of the change in law that under the amended provision 'reason to believe' that in case of escaped assessment, is sufficient to re-open the assessment. This unlike the earlier provision of Section 147(a) of the Act which required two conditions i.e. failure to disclose fully and truly all facts necessary for assessment and reason to believe that income has escaped assessment. Thus, the observations being relied upon must be read in the context in which it was rendered. On so reading the submission, will not survive.*

*11. Further, a reading of the entire decision, it is clear that the reasonable belief on the basis of tangible material could be, prima facie, formed to conclude that income chargeable to tax has escaped assessment. Mr. Mohanty, learned Counsel is ignoring the fact that the words 'whatever reasons' is qualified by the words 'having reasons to believe that income has escaped assessment'. The words whatever reasons only means any tangible material which would on application to the facts on record lead to reasonable belief that income chargeable to* *tax has escaped assessment. This material which forms the basis, is not restricted, but the material must lead to the formation of reason to believe that income chargeable to tax has escaped Assessment. Mere obtaining of material by itself does not result in reason to believe that income has escaped assessment. In fact, this would be evident from the fact that in para 16 of the decision in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s, case (supra), it is observed that the word 'reason' in the .... 'reason to believe' would mean cause or justification. Therefore, it can only be the basis of forming the belief However, the belief must be independently formed in the context of the material obtained that there is an escapement of income. Otherwise, no meaning is being given to the words 'to believe' as found in Section 147 of the Act. Therefore, the words 'whatever reasons' in Rajesh Jhaveri Stock Brokers (P.) Ltd.'s, case (supra), only means whatever the material, the reasons recorded must indicate the reasons to believe that income has escaped assessment. This is so as reasons as recorded alone give the Assessing Officer power to re-open an assessment, if it reveals/indicate, reasons to believe that income chargeable to tax has escaped assessment.*

*12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act*

> *of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.*
>
> *13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment. "*

26. As can be seen from all these decisions, it is now too well settled that the material relied upon by the Assessing Officer to form a belief that income has escaped assessment, has to have a direct connection and a live nexus to the belief. If there is no live nexus and/or connection and if it is too far-fetched or tenuous, the Assessing Officer could never have had reason to believe that income has escaped assessment on the basis of that very material.

27. As mentioned earlier, the main ground for reopening the assessment regarding the investment of M/s.Viren Jewellers LLC in the Petitioner-Company was the statement made by Mr. Sanjay Bhavishi recorded on oath under Section 131 of the I. T. Act. Those statements do not

even remotely suggest that the Petitioner-Company was in any way involved in any cash transactions and/or non-genuine business transactions and which was alleged against Mr. Manoj Jain of M/s.Viren Jewellers LLC. The connection that is sought to be made appears to be purely on conjecture. It appears that since the Assessing Officer was convinced that Mr. Manoj Jain was involved in bogus and illegal cash transactions, the current transaction also should be painted with the same brush. We are afraid that is not the law. The law is that the material has to have a direct nexus to the belief formed by the Assessing Officer that income has escaped assessment. Having a "reason to suspect" is not a ground on which the Assessing Officer can invoke his jurisdiction to reopen the assessment of an Assessee. In fact, even the Survey Report was placed before us for our perusal. It is interesting to note that the Survey Report, on the basis of the statements of the very same Mr. Sanjay Bhavishi, comes to the conclusion that considering the dubious background of Mr. Manoj Jain coupled with the fact that there was no need for additional funding, or the economic rationale on which the value of the shares of the Petitioner-Company was derived, establishes the fact that share capital received by the Petitioner-Company is in fact its unaccounted money routed back to it through the FDI route. Despite this finding, and which we found to be based on no material whatsoever, the Survey Report suggests to the

Assessing Officer to carry out further verification and enquiries in this matter. The relevant portion of the Survey Report is reproduced hereunder:-

> *"3.17 From the discussion made above, it is evident that the Mr. Manoj Jain of M/s Viren Jewellers LLC, UAE is a person who was known in the trade to be indulging in non-genuine business practices including collection of cash and transfer of money to and from India by means of non-genuine / bogus export/import business/trading in jewellery. Considering this dubious background of Mr. Manoj Jain coupled with the fact that neither the need for additional funding for working capital (as per statement) nor the basis on which the value of shares of RCPL was derived was based on sound economic rationale borne out of sound fundamental and technical analysis of the operations of the company clearly establish the fact that the share capital received by RCPL in its books of account from M/s Viren Jewellers LLC, UAE is in fact the unaccounted money of RCPL which has been channelized into its books through the FDI route. This unaccounted money received as FDI investment in form of share capital (including the premium on shares) should be brought to tax as per relevant provisions of Income-tax Act, 1961,*
>
> *3.18 A FT&TR reference has also been made in this regard. <u>The Assessing officer is suggested to carry out further verification and enquiries in this matter taking into account the facts and observation revealed through investigation carried out and discussed above.</u> The Assessing Officer is suggested to invoke the applicable provisions of the Income Tax Act, 1961 to tax Share Application money received (including premium) by M/s. Royal Chains Pvt. Ltd. from M/s. Viren Jewellers LLC, UAE."*

*(emphasis supplied)*

28. Even when we look at the Survey Report, we find that there is no live nexus and/or close connection to the belief formed by the Assessing Officer to come to the conclusion that income had escaped assessment. It is

wholly a different matter that neither the Survey Report nor the statements of Mr. Sanjay Bhavishi were supplied to the Petitioner-Company along with the reasons, and which material was sought to be relied upon in the reasons itself. We, therefore, find that reopening the assessment of the Petitioner-Company on the first ground is wholly unsustainable.

29. Before parting on this issue, it would be only fair to refer to the decisions relied upon by Mr. Chottaray. Mr. Chottaray relied upon the following decisions:-

*(i)* *Commissioner of Income -Tax, West Bengal II v/s Durga Prasad More [(1971) 82 ITR 540 (SC);*

*(ii)* *Income-Tax Officer v/s Selected Dalurband Coal Co Pvt Ltd [(1996) 217 ITR 597 (SC)]*

*(iii)* *Raymond Woollen Mills Ltd v/s Income-Tax Officer & Ors [(1999) 236 ITR 34 (SC)*

*(iv)* *Phool Chand Bajrang Lal & Anr v/s Income-Tax Officer & Anr [(1993)203 ITR 456 (SC)*

*(v)* *Assistant Commissioner of Income-Tax v/s Rajesh Jhaveri Stock Brokers P. Ltd [(2007) 291 ITR 500 (SC)*

30. After perusing these decisions, we find that the same are wholly inapplicable to the facts of the present case. In fact, we find that all these decisions, except the decision in the case of ***Commissioner of Income-Tax, West Bengal II v/s Durga Prasad More (1971) 82 ITR 540 (SC)***

have in fact been distinguished by this Court in its decision in ***Sesa Sterlite (supra)***, the relevant portion of which we have reproduced earlier.

31. As far as ***Durga Prasad More (supra)*** is concerned, the said decision is wholly inapplicable for the simple reason that the same was not even considering the provisions of Sections 147 and 148 of the I. T. Act. We agree with Mr. Chottaray, and as held by the Hon'ble Supreme Court in ***Durga Prasad More (supra),*** that the tax authorities are not required to put on blinkers while looking at the documents produced before it. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. However, we fail to understand how this proposition would in any way help the Revenue when there is no live nexus and/or close connection with the material relied upon by the Assessing Officer to come to the belief that the income had escaped assessment. In fact this judgment states that science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal, and therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probabilities.

32. Even if we were to apply the aforesaid test (of human probabilities), we find that the case of the Revenue cannot be sustained. It is

the case of the Revenue that really speaking, M/s.Viren Jewellers LLC has received cash from the Petitioner-Company which has then to be reinvested by subscribing to the shares of the Petitioner-Company. It is on this basis that the Assessing Officer is stated to have had "reason to believe" that income had escaped assessment. This argument, according to the Revenue is fortified by the fact that there was a sharp increase in the share premium within a span of four months from Rs.5/- per share to Rs.59/- per share. However, this argument overlooks the fact that effectively, the Petitioner-Company has used its own cash and made M/s.Viren Jewellers LLC, a substantial share holder of its own company, namely, to the extent of 28.82%. It is not the case of the Revenue that Mr. Manoj Jain or M/s. Viren Jewellers LLC are in any way connected with the Petitioner-Company other than the investment made in it. If one was to apply the test of human probabilities, then, it would be absurd to suggest that the Petitioner-Company has used its own cash to make an investment in its own company by a complete stranger, and who would then have substantial control and say in the Petitioner-Company. Therefore, even applying the test of human probabilities, we do not find that the case of the Revenue can be sustained.

33. The second ground for reopening the assessment of the Petitioner-Company was that contributions received from employees for

various funds was not deposited with those funds within the due date under those respective Statutes, and therefore, the same ought to be added. The amount involved is Rs.21,636/-. The Notice issued under Section 148 of the I. T. Act in the present case is dated 30th March 2021. This reason for reopening, therefore, obviously has to be prior to this date. The law as it stood prior to 30th March 2021 was that the contributions to those funds had to be made by the due date of filing the Return of Income under Section 139 of the I. T. Act. It is not in dispute that in the present case, the amounts were deposited by the due date of filing the Return. Therefore, on the date when the Notice was issued, the Assessing Officer could never have had "reason to believe" that the aforesaid income had escaped assessment as it was contrary to the law laid down by this Court in ***Commissioner of Income Tax v/s Ghatge Patil Transports Ltd [2014] 368 ITR 749 (Bom)***.

34. It is true that the aforesaid decision of this Court was overruled by the Hon'ble Supreme Court in its judgment in ***Checkmate Services (P) Ltd v/s Commissioner of Income Tax-1 [2022] 143 taxmann.com 178 (SC).*** However, that decision was rendered by the Hon'ble Supreme Court on 12th October 2022. Hence, the Assessing Officer, on 30th March 2021, could never have had "reason to believe" that income of Rs.21,636/- had escaped assessment because the monies were not deposited as stipulated

by the due dates in those respective Statutes. That was not the law when the Notice under Section 148 was issued. The law laid down by this Court in *Ghatge Patil Transports Ltd (supra)* was that the contribution to the funds referred to in the reasons had to be made by the due date of filing the Return under Section 139 of the I. T. Act. Hence, on the date of issuance of the Notice under Section 148, the Assessing Officer could not have had any "reason to believe" that income had escaped assessment on this count. Therefore, we are of the view that even the second reason for reopening the assessment of the Petitioner-Company cannot be sustained as the same was contrary to the decision of this Court in ***Ghatge Patil Transports Ltd (supra),*** which held the field when the notice under Section 148 was issued to the Petitioner-Company.

35. For all the aforesaid reasons, and in view of the discussion earlier, the above Writ Petition succeeds and is allowed in terms of prayer clause (a) which reads thus:-

> *"a) that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of "Certiorari', calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the notice dated 30.03.2021 issued by the First Respondent under section 148 of the Income tax Act, 1961, being* **Ex.- 'I'** *hereto;*



*Aswale*

36. Rule is accordingly made absolute and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

37. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[FARHAN P. DUBASH, J.]** **[B. P. COLABAWALLA, J.]**



*Aswale*