GAHC010194452016

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

Case No. : WP(C)/5437/2016

GIRISH KUMAR AGARWALLA
C/O. D.R. BRIJMOHAN, A.T. ROAD, JORHAT-785001, P.S. JORHAT, DIST. JORHAT ASSAM.

VERSUS

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-JORHAT and 5 ORS
A.T. ROAD, TARAJAN, NEAR TARAJAN POOL, JORHAT-785001 ASSAM.

2:ADDL./JOINT COMMISSIONER

INCOME TAX
RANGE-JORHAT
RAJ and CO. BUILDING
J P R ROAD
JORHAT-785001
ASSAM.

3:PRINCIPAL COMMISSIONER/COMMISSIONER

INCOME TAX
JORHAT
JORHAT
AAYAKAR BHAWAN
THANA ROAD
JORHAT-785001
DIST. JORHAT
ASSAM.

4:PRINCIPAL CHIEF COMMISSIONER

INCOME TAX CCA
NER
GUWAHATI
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX NER
FIRST FLOOR
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GHY.-781005
DIST. KAMRUP
ASSAM.

5:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON
UNDER THE MINISTRY OF FINANCE
DEPTT. OF REVENUE
GOVT. OF INDIA
NORTH BLOCK
NEW DELHI-110001.

6:UNION OF INDIA

REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVT. OF INDIA
NEW DELHI

Linked Case : WP(C)/5536/2016

SHRIMATI SHILPA CHANDAK
MANGAL DEEP RUPAHI ALI JORHAT-785001
P.S. JORHAT
DIST. JORHAT
ASSAM.

VERSUS

INCOME TAX OFFICER
and 5 ORS
WARD NO. 3
JORHAT
RAJ and CO. BUILDING
J P R ROAD
JORHAT- 785001

ASSAM.

2:ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX

RANGE-JORHAT
RAJ and CO. BUILDING
J P R ROAD
JORHAT- 785001
ASSAM.
3:PRINCIPAL COMMISSIONER/
COMMISSIONER OF INCOME TAX
JORAHAT
JORAHAT
AAYAKAR BHAWAN
THANA ROAD
JORHAT- 785001
DIST JORHAT
ASSAM.
4:PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX CCA
NER
GUWAHATI
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX NER
FIRST FLOOR
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI - 781005
DIST. KAMRUP
ASSAM.
5:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON
UNDER THE MINISTRY OF FINANCE
DEPARTMENT OF REVENUE GOVT. OF INDIA
NORTH BLOCK
NEW DELHI- 110001.
6:UNION OF INDIA

REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVT. OF INDIA
NEW DELHI.

Linked Case : WP(C)/5530/2016

SHRIMATI SAVITA DEVI AGARWALLA
CARE OF D.R. BRIJMOHAN A.T. ROAD

JORHAT- 785001 P.S. JORHAT DIST. JORHAT
ASSAM. DIST.

VERSUS

THE ASSISTANT COMMISSIONER OF INCOME TAX and 5 ORS
CIRCLE- JORHAT A.T. ROAD
TARAJAN NEAR TARAJAN POOL
JORHAT-785001
ASSAM.

2:ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX

RANGE-JORHAT
RAJA and CO.BUILDING JP R ROAD
JORHAT- 785001
ASSAM.
3:PRINCIPAL COMMISSIONER/
COMMISSIONER OF INCOME TAX
JORAHATI
JORAHAT AAYAKAR BHAWAN
THANA ROAD
JORHAT- 785001
DIST. JORHAT
ASSAM.
4:PRINCIPAL CHIEF COMMISSIONER
OF INCOME TAX CCA
NER
GUWAHATI
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX NER
FIRST FLOOR
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI - 781005
DIST. KAMRUP
ASSAM.
5:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON
UNDER THE MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVT. OF INDIA
NORTH BLOCK
NEW DELHI- 110001.
6:UNION OF INDIA

REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVT. OF INDIA
NEW DELHI.

Linked Case : WP(C)/5535/2016

SHRIMATI LAXMI CHANDAK
MANGAL DEEP RUPAHI ALI JORHAT- 785001
P.S. JORHAT DIST. JORHAT
ASSAM.

VERSUS

INCOME TAX OFFICER
WARD - 3
JORHAT and 5 ORS
RAJ and CO. BUILDING J P R ROAD
JORHAT- 785001
ASSAM.

2:ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX

RANGE-JORHAT RAJ and CO. BUILDING
J P R ROAD
JORHAT- 785001
ASSAM.
3:PRINCIPAL COMMISSIONER/COMMISSIONER OF INCOME TAX

JORAHAT
JORAHAT AAYAKAR BHAWAN
THANA ROAD
JOHRAT- 785001
DIST. JORHAT
ASSAM.
4:PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX CCA
NER
GUWAHATI
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX NER
FIRST FLOOR
AAYAKAR BHAWAN
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI- 781005
DIST. KAMRUP
ASSAM.
5:CENTRAL BOARD OF DIRECT TAXES

REP. BY ITS CHAIRPERSON
UNDER THE MINISTRY OF FINANCE DEPARTMETN OF REVENUE
GOVT. OF INDIA
NORTH LBOCK
NEW DELHI -110001.
6:UNION OF INDIA

REP. BY THE SECRETARY TO THE MINISTRY OF FINANCE
GOVT. OF INDIA
NEW DELHI.

For the Petitioner(s) : Mr. R. Goenka, Advocate

For the Respondent(s) : Mr. S. C. Keyal, Standing counsel

Date of Hearing : 18.11.2023

Date of Judgment : 20.12.2023

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (CAV)

1. All the four writ petitions challenging the initiation of respective reassessment proceedings are taken up for disposal by this common judgment and order.

2. For the purpose of deciding the writ petitions, this Court finds it relevant to take note of the brief facts in respect to the four writ petitions.

WP(C)/5437/2016

3. The Petitioner herein is an assessee under the Income Tax Act, 1961

(for short "the Act of 1961") having Permanent Account Number. The Petitioner filed his return of income for the Assessment Year 2011-12 relevant to the Financial Year 2010-11 in Form No. ITR-4 on 21.09.2011 vide acknowledgement No. 287799831210911 disclosing total income chargeable to tax at Rs.14,30,000/-. In the return of the income so filed by the Petitioner, it is the case of the Petitioner that the Long Term Capital Gains which were exempted under Section 10(38) of the Act of 1961 were duly reflected. The Petitioner had stated in the writ petition that in the said return, the Petitioner duly incorporated the details of the Long Term Capital Gains earned by him from the sale of the shares at Rs.57,58,923/- on the basis that the sale price was Rs.60,41,458/- and the purchase price was Rs.2,82,535/-. In the month of March, 2013, as stated in the writ petition, a detailed scrutiny assessment was made in respect to the income of the Petitioner for the Assessment Year 2011-12 under the provisions of Sub-Section (3) of Section 143 of the Act of 1961.

4. On 30.03.2016, the Respondent No.1 i.e. the Assistant Commissioner of Income Tax, Circle Jorhat issued a notice to the Petitioner under Section 148 of the Act of 1961 stating inter alia that he had reasons to believe that the income of the Petitioner chargeable to tax for the Assessment Year 2011-12 had escaped assessment within the meaning of Section 147 of the Act of 1961 and therefore proposed to assess/reassess the income for the said Assessment Year. The Petitioner was asked to deliver to him within 30 days from the date of service of the notice, a return in the prescribed form of the Petitioner's income for the said Assessment Year. The Petitioner submitted a reply to the Respondent No.1 vide a letter dated 11.04.2016 on 21.04.2016 stating inter alia that the return which was filed by the Petitioner on

21.09.2011 for the Assessment Year 2011-12 be treated as the return submitted in response to the notice under Section 148 of the Act of 1961. Thereupon, the Petitioner issued a communication dated 10.06.2016 to the Respondent No.1 to provide the Petitioner the reasons for issuance of the notice under Section 148 of the Act of 1961.

5. Pursuant to the communication dated 10.06.2016 issued by the Petitioner, the Respondent No.1 issued a certified copy of the reasons for issuance of the notice under Section 148 dated 30.03.2016 for the Assessment Year 2011-12. The certified copy of the said reasons for issuance of the notice under Section 148 was enclosed as Annexure-9 to the writ petition. This Court finds it relevant to reproduce the contents of the said Annexure-9 as the same has relevance to the issues involved herein.

"***REASON FOR ISSUING NOTICE U/S 148***

Girish Kumar Agarwalla

PAN – ABYPA2937M *A.Y. – 2011-12*

The assessee sold shares (penny stock as identified by SEBI and investigation wing, Kolkata) during the FY 2010-11 details given as under:

Amount transaction date	*script*	*amount*	*Brokers name with code-502*
20.09.2010	*Odyssey corporation Ltd.*	*963900*	*National/multi commodity*
29.03.2011	*Splash media works Ltd.*	*229838*	*National/multi commodity*

23.03.2011	*Splash media works Ltd.*	*308284*	*National/multi commodity*
22.03.2011	*Splash media works Ltd.*	*214465*	*National/multi commodity*
23.03.2011	*Splash media works Ltd.*	*706000*	*National/multi commodity*
23.03.2011	*Splash media works Ltd.*	*529500*	*National/multi commodity*
28.03.2011	*Splash media works Ltd.*	*791200*	*National/multi commodity*

But as per return filed for A.Y. 2011-12 relating to F.Y. 2010-11, no income/loss in respect to sale of shares has been disclosed. On the basis of information received from the ITD – penny stock, I have reason to believe that income has been escaped from assessment. Consequently, the case for A.Y. 2011-12 is re-opened u/s 147 by issuing notice u/s 148 of the I.T. Act."

6. Pursuant thereto, on 11.07.2016, the Respondent No.1 issued a notice to the Petitioner under Section 143(2) of the Act of 1961. In the said notice, the Respondent No.1 stated that there were certain points in connection with the return of income submitted by the Petitioner on 10.06.2016 for the Assessment Year 2011-12 in respect to which he would like some further information. In the said communication, the Petitioner was also requested to attend his Office on 25.07.2016 at 11:30 AM either in person or by a representative duly authorized in that behalf or produce or cause there to be produced at the said time, any documents, accounts and other evidence on which the Petitioner may rely in support of the return filed by the Petitioner. The Petitioner thereupon submitted a written submission objecting the notice

under Section 148 of the Act of 1961. Thereupon, on 18.07.2016, the Respondent No.1 issued an order whereby the objections which were filed on 05.07.2016 by the Petitioner were rejected for the reasons disclosed therein.

7. Subsequent to the receipt of the order on 18.07.2016, the Petitioner issued another communication to the Respondent No.1 on 21.07.2016 stating inter alia that he would not be able to be present as he was not physically fit and sought for extending the hearing after one and half months. On 12.08.2016, the representative of the Petitioner issued a communication to the Respondent No.1 stating inter alia that the Petitioner had misplaced the copy of the Assessment Order under Section 143(3) and the copy of the questionnaire asking for details under Section 142(1) during the course of hearing in the original scrutiny assessment. The representative therefore requested to provide certified copies at the earliest. It is also pertinent to mention that on 11.08.2016, the Respondent No.1 had issued a notice to the Petitioner under Section 142(1) of the Act of 1961 directing the Petitioner to produce before him in connection with the Assessment Year 2011-12 on 23.08.2016, the accounts and/or documents specified therein and furnish in writing and verified in the prescribed manner information called for as per the enclosure and on the points or matters specified.

8. The Petitioner on 18.08.2016 approached the Respondent No.1 through his representative with a Petition dated 17.08.2016 praying for adjournment of hearing which was fixed on 23.08.2016. However, as the Respondent No.1 was not available, the case was adjourned for hearing on 08.09.2016. Thereupon, it appears from the records that on 08.09.2016, the

Petitioner filed the instant writ petition challenging the reasons which were recorded on 30.03.2016 for issuance of the notice under Section 148; the notice under Section 148 dated 30.03.2016; the notice under Sub-Section (2) of Section 143 dated 11.07.2016; the notice under Sub-Section (1) of Section 142 dated 11.08.2016.

9. This Court vide an order dated 14.09.2016 had issued notice and in the interim, the proposed reassessment for the Assessment Year 2011-12 was directed to be kept in abeyance until the returnable date. The records of the writ petition further shows that on 03.04.2017, the interim order which was passed earlier was directed to continue until further orders and vide an order dated 05.05.2017 Rule was issued.

10. On 01.12.2016, an Affidavit-in-Opposition was filed by the Respondent No.3. In the said affidavit, it was mentioned that as per the data available from the Income Tax Department as well as from official records, no assessment under Section 143(3) of the Act of 1961 in respect to the assessment year in question was made by the Respondent Authority. It was mentioned that there was a direction of the Central Board of Direct Taxes to examine whether any assessee had made any transaction of the so called penny stock and it was confirmed from the data available from the investigation wing that the Petitioner had made transaction in respect to such stocks. It was further mentioned that the jurisdiction to be exercised by this Court is only to see whether the commencement of the reassessment proceedings was made on the basis of prima facie materials or not. Sufficiency or Insufficiency, Correctness or otherwise of the materials is not a thing that is required to be considered at the stage of recording of reasons is

the specific stand taken by the Respondents. It was mentioned that the correctness of the reasons can only be verified and examined in the order under Section 147 of the Act of 1961 i.e. in the next stage. It was also mentioned at paragraph No.17 of the affidavit-in-opposition that the Petitioner's case for the Assessment Year 2011-12 was not scrutinized and as such, there was no question of formation of opinion and consequently change of opinion. It was stated that when information is received from any competent authority stating that the income had escaped from assessment, it is open for the Department to reassess the case for the sake of revenue to examine whether the disclosure of all information was made fully and truly or not. It was further mentioned that if the Assessing Officer had formed any opinion on the transaction of the stocks as sold by assessee at the time of assessment, the Department would not have any authority to reopen it again as per the Act of 1961. At paragraph No.23 of the affidavit-in-opposition, it was mentioned that on the basis of information given by the Kolkata Investigation Wing, thousands of crores of disclosures were done by the tax payers in the IDS 2016 and therefore the information cannot be termed as baseless as alleged by the Petitioner. This Court finds it relevant to note that pursuant to the said affidavit-in-opposition, no reply was filed.

WP(C)/5530/2016

11. The Petitioner herein is an assessee under the Act of 1961 having a Permanent Account Number. The Petitioner physically submitted the return of Income for the Assessment Year 2010-11 relevant to the financial year 2009-10 in the prescribed Form No. ITR-2 as duly signed and verified by her on 06.09.2010. It was alleged that in the said return, the income from the

Short Term Capital Gains and Long Term Capital Gains and material facts were duly reflected in the Computation of Total Income for the Assessment Year 2010-11. Subsequent thereto, the Petitioner filed the return of income for the Assessment Year 2011-12 relevant to the financial year 2010-11 electronically in form No.ITR-2 on 29.07.2011 vide acknowledgement No.256722290290711 disclosing total chargeable income to tax at Rs.12,65,520/-. It was stated by the Petitioner in the writ petition that in the return of the income, she duly reflected the details of the Long Term Capital Gains which were exempted under Section 10(38) of the Act of 1961 in the appropriate place as provided in the return. It was mentioned that the Petitioner duly incorporated the details of Long Term Capital Gains earned by her from sale of shares at Rs.57,51,915/- where the sale price was Rs.60,61,154 and the purchase price was Rs.2,89,239/-. It was alleged that the Respondent No.1 had on 25.03.2013 passed a scrutiny assessment order in respect to the income of the Petitioner for the Assessment Year 2011-12 under the provisions of Sub-Section (3) of Section 143 of the Act of 1961. It was stated that in such assessment, the return of the income filed for the Assessment Year 2011-12 on 29.07.2011 was accepted by the said authority after going through the documents like tax computation sheet, personal balance sheet, statement of income, bank statement etc. as were required by the said authority during the course of the said assessment proceedings.

12. On 30.03.2016, the Respondent No.1 issued a notice to the Petitioner under Section 148 of the Act of 1961 stating inter alia that he had reasons to believe that the income of the Petitioner chargeable to tax for Assessment Year 2011-12 had escaped assessment within the meaning of Section 147 of the Act of 1961 and he therefore proposed to assess/reassess the income for

the said Assessment Year. The Petitioner was directed to deliver to Respondent No.1 within 30 days from the service of notice, a return in the prescribed form of the Petitioner's income for the said Assessment Year. The Petitioner submitted a communication dated 11.04.2016 to the Respondent No.1 on 21.04.2016 that she had already submitted her income tax return for the assessment year 2011-12 on 29.07.2011 and the said return be treated as return submitted in response to the notice under Section 148 of the Act of 1961. Subsequent thereto, the Petitioner vide a communication dated 10.06.2016 requested the Respondent Authority to provide her the reasons for the issuance of notice under Section 148. Pursuant to the said letter, a certified copy of the reasons for issuance of notice under Section 148 dated 30.03.2016 was furnished to the Petitioner. The said certified copy has been enclosed as Annexure-10 to the writ petition and as the same has relevance to the issues involved, the same is quoted hereinbelow:

"***REASON FOR ISSUING NOTICE U/S 148***

Savita Devi Agarwalla

PAN – ABYPA2936L *A.Y. – 2011-12*

The assessee sold shares (penny stock as identified by SEBI and investigation wing, Kolkata) during the FY 2010-11 details given as under:

transaction date	*script*	*amount*	*Brokers name with code-502*
20.09.2010	*Odyssey corporation Ltd.*	*994500*	*National/multi commodity*
22.03.2011	*Splash media works Ltd.*	*690650*	*National/multi commodity*

23.03.2011	*Splash media works Ltd.*	*525723*	*National/multi commodity*
28.03.2011	*Splash media works Ltd.*	*516000*	*National/multi commodity*
22.03.2011	*Splash media works Ltd.*	*465600*	*National/multi commodity*
22.03.2011	*Splash media works Ltd.*	*529500*	*National/multi commodity*

But as per return filed for A.Y. 2011-12 relating to F.Y. 2010-11, no income/loss in respect to sale of shares has been disclosed. On the basis of information received from the ITD – penny stock, I have reason to believe that income has been escaped from assessment. Consequently, the case for A.Y. 2011-12 is re-opened u/s 147 by issuing notice u/s 148 of the I.T. Act."

13. On 11.07.2016, the Respondent No.1 issued a notice to the Petitioner under Section 143(2) of the Act of 1961 whereby it was stated that there were certain points in connection with the return of income submitted by the Petitioner on 10.06.2016 for the assessment year 2011-12 on which the said authority would like some further information. The Petitioner was requested to attend his Office on 25.07.2016 either in person or by an authorized representative or produce or cause there to be produced at the said time any documents, accounts or other evidence on which the Petitioner may rely in support of the return filed by her. The Petitioner without waiting for the date which was fixed on 25.07.2016 submitted a written submission dated 05.07.2016 on 11.07.2016. On 18.07.2016, the Respondent No.1 vide a communication informed the Petitioner that the objections dated 05.07.2016 furnished to the Respondent No.1 on 11.07.2016 were rejected.

14. The record further reveals that the Petitioner on 21.07.2016 sought for adjournment of the proceedings which was fixed on 25.07.2016 as her husband was physically unfit and the hearing be adjourned for one and half months. From the said communication, it reveals that the Petitioner in WP(C) No.5437/2016 is the husband of the Petitioner of the instant case. Thereupon on 11.08.2016, a notice was issued under Section 142(1) of the Act of 1961 requiring the Petitioner to produce before the Respondent No.1 in connection with the Assessment Year 2011-12 on 23.08.2016, the accounts or the documents specified and furnish in writing and verified in the prescribed manner, information called for as per the enclosure and on the points or matters specified therein. The said proceedings was not taken up on 23.08.2016 on account of an adjournment sought for by the Petitioner and the hearing was fixed on 08.09.2016. This Court finds it relevant to take note of that on 14.09.2016, the instant writ petition was filed challenging the reasons which were recorded dated 30.03.2016; the notice under Section 148 dated 30.03.2016; the notice under Sub-Section (2) of Section 143 dated 11.07.2016 and the notice under Sub-Section (1) of Section 142 dated 11.08.2016.

15. This Court vide an order dated 19.09.2016, issued notice and in the interim stayed the proposed reassessment for the Assessment Year 2011-12 until the returnable date. Thereupon, it further appears that vide an order dated 03.04.2017, the interim order passed earlier was directed to continue until further orders. The record also reveals that on 11.07.2018, the instant writ petition was tagged along with WP(C) No.5437/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016.

16. It is pertinent to mention that on 01.12.2016, an affidavit-in-opposition was filed by the Respondent No.3. The contents of the said affidavit-in-opposition is similar to the contents of the affidavit-in-opposition filed by the Respondent No.3 in WP(C) No.5437/2016. However, it is relevant to observe that in the affidavit-in-opposition filed in the instant case, there was no denial to the fact that the Petitioner's assessment was made under Section 143(3) of the Act of 1961 which was otherwise denied in WP(C) No.5437/2016. The Petitioner however had not chosen to file any reply against the said affidavit-in-opposition.

WP(C)/5535/2016

17. The Petitioner herein is an assessee under the Income Tax Act, 1961 having a Permanent Account Number. The return of income for the Assessment Year 2013-14 relevant to the Financial Year 2011-12 was filed by the Petitioner under Sub-Section (4) of Section 139 in Form No. ITR-4 on 07.02.2014 disclosing a total income chargeable to tax at Rs.3,83,790/-. The Petitioner alleged that in the said return of income, it was clearly reflected the details of the Long Term Capital Gains exempted under Section 10(38) of the Act of 1961 inasmuch as in the said return, the Petitioner claims to have duly incorporated that she earned Long Term Capital Gains from sale of shares to the extent of Rs.16,97,115/- where the gross sale price was Rs.17,55,250/- and the net sale price was Rs.17,47,115/- and the purchase price was Rs.50,000/-. On 07.06.2014, the Central Possessing Centre of the Income Tax Department passed non-scrutiny assessment order under Sub-Section (1) of Section 143 in respect to the aforesaid return filed on 07.02.2014 and the Petitioner was duly communicated. In the said order, the

income as assessed in the return was accepted and an amount of Rs.6,150/- was found refundable.

18. The record further shows that on 26.05.2016, the Respondent No.1 issued a notice to the Petitioner under Section 148 of the Act of 1961 stating inter alia that she has reason to believe that the income of the Petitioner chargeable to Tax for the Assessment Year 2013-14 had escaped assessment within the meaning of Section 147 of the Act and she therefore proposed to assess/reassess the income for the said Assessment Year. She further required the Petitioner to deliver to her within 30 days from the service of the notice, a return in the prescribed form of the Petitioner's income for the said Assessment Year. It was further stated in the said notice that necessary satisfaction of the Commissioner of Income Tax, Jorhat was taken. To the said notice, the Petitioner submitted her return on 28.06.2016 whereby had filed an identical return to her original return filed on 07.02.2014. Thereupon, the Petitioner vide a communication dated 04.07.2016 intimated that her original return be considered as a return filed under Section 148 of the Act of 1961 and to meet the technical aspects, she had submitted a return for the assessment year 2013-14 on 28.06.2016, a copy of which she had enclosed with the letter dated 04.07.2016. The Petitioner also requested the Respondent Authority to provide her the reasons for issuance of notice under Section 148 of the Act of 1961. On 11.07.2016, the Respondent No.1 issued a letter with the subject "Request to communicate reasons recorded for reassessment under Section 148" with reference to the letter dated 04.07.2016. The said communication has been enclosed as Annexure-11 to the writ petition and taking into account the relevance, the same is reproduced hereinunder:

"To *Dt. 11-07-2016*

Smti Laxmi Chandak
Mangaldeep
Rupahi Ali, Jorhat

Sub: Request to communicate reasons recorded for re-assessment u/s 147

Ref: Your letter dated 04.07.2016

With reference to the above, I would please to intimate the reasons enumerated below for re-assessment u/s 147 of the I.T. Act, 1961 of your case for the ***A.Y.2013-14***

As per information extracted from the ITD application the assessee had made bogus long term capital gain/short term capital loss by way of transaction made through "penny stocks" amounting to Rs.17,55,360/- during the F.Y. 2012-13. The investigation conducted by the Investigation Directorate of Income-tax Deptt. Also reveals that trading in said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion.

(Moushumee Lahkar)
Income-tax Officer
Ward-3, Jorhat"

19. Thereupon, on 12.07.2016, the Respondent No.1 issued a notice to the Petitioner under Section 143(2) of the Act of 1961 stating inter alia that there were certain points in connection with return of income submitted by the Petitioner on 28.06.2016 for the Assessment Year 2013-14 on which she would like some further information. The petitioner was requested to attend her office on 27.07.2016 either in person or by a representative duly authorized in that behalf or produce or cause there to be produced at the

said time any documents, accounts and other evidence on which the Petitioner may rely in support of her return. On the same date, another notice was issued under Section 142(1) of the Act of 1961 requiring the Petitioner to produce the accounts and/or documents before the Respondent No.1 in connection with the Assessment Year 2013-14 on 27.07.2016. The Petitioner thereupon submitted a written submission dated 26.07.2016 on 27.07.2016 objecting to the initiation of the reassessment proceeding as illegal. Thereupon, on 04.08.2016, the Respondent No.1 issued a communication intimating the Petitioner that her written objection dated 26.07.2016 furnished to the Authority on 27.07.2016 was rejected. The records reveal that the instant writ petition was filed on 14.09.2016 challenging the reasons for issuing notice under Section 148 as referred to in the letter dated 11.07.2016; the notice under Section 148 dated 26.05.2016; the notice under Sub-Section (2) of Section 143 dated 12.07.2016 as well as the notice under Sub-Section (1) of Section 142 dated 12.07.2016.

20 This Court vide an order dated 19.09.2016 issued notice and in the interim directed that the proposed reassessment for the Assessment Year 2013-14 be kept in abeyance until the returnable date. It further appears that vide an order dated 14.12.2017, the instant writ petition along with WP(C) No.5437/2016 and WP(C) No.5536/2016 were clubbed together.

21. It reveals from the records that pursuant to the filing of the writ petition, an affidavit was filed on 01.12.2016 by the Respondent No.3. In the said affidavit-in-opposition, it was stated that if information is received from any competent authority stating that the income had escaped from the assessment, it was open for the department to reassess the said case for the

sake of revenue to examine whether the disclosure of all information was fully and truly done or not. It was stated that information were available from the Kolkata Investigation Wing that the stocks which were sold by the Petitioner were penny stocks. Further to that, on the basis of the information by the Kolkata Investigation Wing, thousands of crores of disclosures were made by the tax payers in the IDS 2016 and therefore the information on the basis of which the reassessment proceedings were initiated cannot be termed as not based on reasons to believe but were based on tangible information. No affidavit-in-reply was filed to the said affidavit-in-opposition.

WP(C)/5536/2016

22. The Petitioner herein is an assessee under the Income Tax Act, 1961 having Permanent Account Number. The Petitioner submitted her return of income for the Assessment Year 2013-14 relevant to the Financial Year 2011-12 belatedly but voluntarily through electronic transmission under Sub-Section (4) of Section 139 in Form No.ITR-4 on 07.02.2014 disclosing a total income chargeable to tax at Rs.4,55,760/-. In the said return of income, as stated by the Petitioner, the Long Term Capital Gains exempted under Section 10(38) of the Act of 1961 were reflected in the appropriate place. In the said return, the Petitioner stated that she incorporated the details of Long Term Capital Gains earned by her for the sale of shares at Rs.17,97,975/- where the sale price was Rs.18,47,975/- and the purchase price was Rs.50,000/-. On 01.08.2014, the Central Processing Centre of the Income Tax Department passed a summary on non-scrutiny assessment order under Sub-Section (1) of Section 143 in respect to the said return dated 07.02.2014 and in the said order, it was intimated that the income was

assessed/accepted as per return and an amount of Rs.1,910/- was found refundable.

23. On 26.05.2016, the Respondent No.1 issued a notice to the Petitioner under Section 148 of the Act of 1961 stating inter alia that she had reasons to believe that the income of the Petitioner chargeable to tax for the Assessment Year 2013-14 had escaped assessment within the meaning of Section 147 of the Act of 1961 and therefore she proposed to assess/reassess the income for the said Assessment Year. The Petitioner was asked to deliver within 30 days from the service of notice, a return in the prescribed form of the Petitioner's income for the said Assessment Year. It was further mentioned that she had obtained necessary satisfaction of the Commissioner of Income Tax, Jorhat/the Central Board of Direct Taxes. The Petitioner thereupon on 28.06.2016 again filed her return of income in Form No.ITR-4 which was identical to the original return filed on 07.02.2014. On 04.07.2016, the Petitioner intimated the Respondent No.1 vide a communication that the original return filed by her might be considered as a return filed under Section 148 of the Act of 1961 and in order to meet the technical aspects, she submitted a return for the Assessment Year 2013-14 on 28.06.2016. The Petitioner also requested the said authority to provide her the reasons for the issuance of notice under Section 148.

24. On 11.07.2016, the Respondent No.1 issued a letter with the subject "Request to communicate reasons recorded for reassessment u/s 147" with reference to the letter dated 04.07.2016 issued by the Petitioner. The said communication is a part of Annexure-11 and as the same has relevance for the purpose of deciding the instant writ petition, this Court finds it pertinent

to reproduce the same hereinbelow:

"*To* *Dt. 11-07-2016*

Smti Laxmi Chandak

Mangaldeep

Rupahi Ali, Jorhat

Sub: Request to communicate reasons recorded for re-assessment u/s 147

Ref: Your letter dated 04.07.2016

With reference to the above, I would please to intimate the reasons enumerated below for re-assessment u/s 147 of the I.T. Act, 1961 of your case for the ***A.Y.2013-14***

As per information extracted from the ITD application the assessee had made bogus long term capital gain/short term capital loss by way of transaction made through "penny stocks" amounting to Rs.17,55,360/- during the F.Y. 2012-13. The investigation conducted by the Investigation Directorate of Income-tax Deptt. Also reveals that trading in said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion.

(Moushumee Lahkar)

Income-tax Officer

Ward-3, Jorhat"

25. Subsequent thereto, on 12.07.2016, the Respondent No.1 issued a notice to the Petitioner under Section 143(2) of the Act of 1961 stating inter alia that there were certain points in connection with the return of income submitted by the Petitioner on 28.06.2016 for the Assessment Year 2013-14 on which she would like some further information. The Petitioner was asked

to attend her office on 27.07.2016 either in person or by an authorized representative and to produce or cause there to be produced at the said time any documents, accounts and other evidence on which the Petitioner may rely in support of the return filed by her. On the same day i.e. on 12.07.2016, the Respondent No.1 issued a notice to the Petitioner under Section 142(1) of the Act of 1961 requiring the Petitioner to produce before her in connection with the Assessment Year 2013-14 on 27.07.2016, the accounts or the documents specified therein. It was also stipulated that that all details would be required to be signed by the Principal Officer/Authorized person and that non-compliance etc. would entail penal action and/or adverse inference, rejection of books of accounts and assessment order under Section 144 of the Act of 1961. The Petitioner thereupon submitted a written submission dated 26.07.2016 on 27.07.2016 which was however rejected by the Respondent No.1 vide a communication dated 04.08.2016. From the records, it is seen that on 14.09.2016, the instant writ petition was filed challenging the recording of reasons for issuance of notice under Section 148 of the Act of 1961 as referred to in the letter dated 11.07.2016; the notice under Section 148 dated 26.05.2016; the notice under Sub-Section (2) of Section 143 dated 12.07.2016, the notice under Sub-Section (1) of Section 142 dated 12.07.2016.

26. On 19.09.2016, this Court issued notice and in the interim, the proposed reassessment for the Assessment Year 2013-14 was kept in abeyance until the returnable date. Thereupon, it reveals that the instant writ petition was tagged along with WP(C) No.5535/2016 and WP(C) No.5437/2016 as would be apparent from the order dated 14.12.2017. The record further reveals that on 01.12.2016, an affidavit-in-opposition was filed

by the Respondent No.3, the contents of which were pari materia to the contents of the affidavit-in-opposition filed in WP(C) No.5535/2016 and for the sake of brevity this Court is not repeating the contents thereof.

27. In the backdrop of the above pleadings, let this Court take into consideration the submissions made by the learned counsels for the parties.

28. Mr. R. Goenka, the learned counsel appearing on behalf of the Petitioners had drawn the attention of this Court to the returns so filed by the Petitioners wherein the statements of long Term Capital Gain which were exempted under Section 10(38) of the Act of 1961. In the case of the writ petitioner in WP(C) No.5437/2016, it was the submission of the learned counsel for the said Petitioner that in respect to the Long Term Capital Gain, the purchase cost was shown at Rs.2,82,535/- and the net sale price was Rs.60,41,458/- and thereby the capital gain which was shown at Rs.57,58,923/-. Referring to the reasons for initiation of the proceedings under Section 148 of the Act of 1961, the learned counsel submitted that the reasons assigned were that as per the return filed by the said Petitioner for the Assessment Year 2011-12, relating to the Financial Year 2010-11, there was no income/loss in respect to the sale of shares which have been disclosed. He therefore submitted that when the very aspect of the matter was duly shown in the return, there was no reason for the Assessing Officer to believe that the income had escaped assessment.

In respect to WP(C) No.5530/2016, the learned counsel again drew the attention of this Court to the return as well as the computation of income enclosed therewith wherein it was mentioned that Rs.2,89,239/- as the purchase cost and the net sale price was Rs.60,41,154/- and the capital gain

was Rs.57,51,915/-. Further referring to the assessment order made under Section 143(3) of the Act of 1961, he submitted that during the said scrutiny assessment, all the documents as sought for in the detail questionnaire were furnished and thereupon the total income was assessed at Rs.12,65,518/-. Again referring to the reasons which were furnished to the said Petitioner, the learned counsel submitted that in the said reasons, it was mentioned that there was no income/loss in respect to the sales of shares were disclosed which on the face of it would show that the said reasons were non-existent for the formation of the belief.

In respect to the Petitioner in WP(C) No.5535/2016, the learned counsel again drew the attention of this Court to the return so filed along with the computation of income enclosed therewith wherein the purchase cost was shown at Rs.50,000/- and the net sale price was shown at Rs.17,47,115/- and the capital gain was shown at Rs.16,97,115/-. The learned counsel further referring to the reasons which were furnished on 11.07.2016 submitted that the reasons assigned therein were that from the information extracted from the ITD Application, the assessee had made bogus Long Term Capital Gain/Short Term Capital Loss by way of transaction made through penny stocks amounting to Rs.17,55,360/- during the Financial Year 2012-13 and upon investigation conducted by the Directorate of the Income Tax Department it revealed that the trading in the said penny stocks were manipulated affairs to generate entries of bogus Long Term Capital Gain/Short Term Capital Loss facilitating tax evasion. He submitted that there can be no basis for formation of the said belief for which the initiation of proceedings under Section 148 of the Act of 1961 was totally uncalled for. He submitted that there is a requirement that the reasons for the formation

of the belief has to have a live link with the escapement of income which was fully absent in the instant case.

In respect to WP(C) No.5536/2016, the learned counsel had drawn the attention of this Court to the return so filed and the computation of income for the Assessment Year 2013-14 and submitted that the purchase cost was duly shown at Rs.50,000/- and the net sale price was shown at Rs.18,47,975/- and on the basis thereof, the capital gain was shown at Rs.17,97,975/-. He submitted that on the basis of those information duly submitted, the assessment was duly carried out. The learned counsel further referring to the reasons which were furnished on 11.07.2016 submitted that the reasons assigned therein were that from the information extracted from the ITD Application, the assessee had made Bogus Long Term Capital Gain/Short Term Capital Loss by way of transaction made through penny stocks amounting to Rs.17,55,360/- during the Financial Year 2012-13 and upon investigation conducted by the Directorate of the Income Tax Department, it revealed that the trading in the said penny stocks were manipulated affairs to generate entries of bogus long term capital gain/short term capital loss facilitating tax evasion. He submitted that there can be no basis for formation of the said reasons for which the initiation of proceedings under Section 148 of the Act of 1961 was totally uncalled for.

29. In the backdrop of the above, the learned counsel appearing on behalf of the Petitioners referred to two judgments of this Court i.e. ***Assam Company Ltd. Vs. Union of India and Others*** *reported in* ***(2005) 275 ITR 609,*** paragraphs 41 to 45 and ***Guwahati Metropolitan Development Authority Vs. Commissioner of Income Tax*** *reported in* ***(2017) 390 ITR 137***, Paragraph 13.

30. The second line of submissions made by the learned counsel appearing on behalf of the Petitioners is that there was a non-compliance to Section 151 of the Act of 1961 inasmuch as from the notices which were issued under Section 148 of the Act of 1961, it was mentioned that the said notices were issued after obtaining the necessary satisfaction of the Commissioner of Income Tax. He submitted that in respect to writ petitions i.e. WP(C) No.5437/2016 and WP(C) No.5530/2016, the Assessment Year in question was 2011-12 and as such, as per Section 151 of the Act of 1961, the end of the relevant Assessment Year would be 31.03.2012. He submitted that as the notice was issued on 30.06.2016 in both the writ petitions, the necessary satisfaction or the approval of the specified authority would be in terms with Section 151(2) that would be the Joint Commissioner. However in the said two cases the satisfaction was obtained from the Commissioner of Income Tax as stated in the said notices, the issuance of notices under Section 148 of the Act of 1961 were without jurisdiction. In the same manner, the learned counsel further submitted that in respect to the Petitioners in WP(C) No.5435/2016 and WP(C) No.5536/2016, the Assessment Year in question was 2013-14 and therefore, the end of the said assessment year would be 31.03.2014. The learned counsel appearing on behalf of the Petitioners submitted that in both the cases, notices were issued on 26.05.2016 and in those notices, it has been mentioned that the necessary satisfaction were obtained from the Commissioner of Income Tax, Jorhat. The learned counsel therefore submitted that as in all the writ petitions, the satisfaction/approval was not taken from the specified authority i.e. the Joint Commissioner of Income Tax but from the Commissioner of Income Tax, the issuance of the said notices under Section

148 of the Act of 1961 were without authority and accordingly, the entire reassessment proceedings should be nullified on the said basis. In that regard, the learned counsel referred to a judgment in the case of ***Ghanshyam K. Khabrani Vs. Assistant Commissioner of Income Tax, Circle-1*** *reported in* ***(2012) 346 ITR 443***, the judgment of the Co-ordinate Bench of this Court in the case of ***Dhansri Roller Flour Mills Vs. Union of India*** *reported in* ***(2023) 151 Taxmann 494 (Gauhati)*** and the judgment of the Delhi High Court in the case of ***Commissioner of Income Tax Vs. SPL'S Siddhartha Ltd. reported in (2012) 345 ITR 223 (Delhi).***

31. At this stage, this Court finds it relevant to mention that this Court vide an order dated 12.09.2023, taking into account the submissions so made by the learned counsel for the Petitioner as well as the learned Standing counsel appearing on behalf of the Income Tax Department in respect to the issue pertaining to non-compliance of Section 151 of the Act of 1961, directed the Standing counsel appearing on behalf of the Income Tax Department to produce the records pertaining to the reassessment proceedings so initiated against the Petitioners in the instant batch of writ petitions. This Court accordingly, fixed the matter on 05.10.2023. On 05.10.2023 as well as on 16.11.2023, the Income Tax Department did not produce the records and this Court in its order dated 16.11.2023 duly observed that the Income Tax Department was given a final opportunity to produce the records in respect to the reassessment proceedings which have been challenged in the 4 (four) writ petitions on 18.11.2023. It was also observed that in the event, the Income Tax Department failed to produce the records, this Court shall dispose of the instant batch of writ petitions on the basis of the materials available on record. When the matter was again

listed on 18.11.2023, the records pertaining to reassessment proceedings of the writ petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 were produced. The learned Standing counsel for the Income Tax Department submitted that the records pertaining to the proceedings of the writ petitioner in WP(C) No.5437/2016 could not be traced out in spite of various endeavors.

32. During the course of the hearing on 18.11.2023, the records pertaining to the writ petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 were duly perused. In the records pertaining to WP(C) No.5530/2016, it was mentioned that on 30.03.2016, an online request was submitted for approval of the JCIT Range and on 30.03.2016, it was approved and the notice under Section 148 of the Act of 1961 was generated as per form and the notice was duly served on 31.03.2016.

33. In respect to the records pertaining to the writ petitioner in WP(C) No.5535/2016, the satisfaction note on the basis of which the Assessing Officer had issued the notice under Section 148 of the Act of 1961 is reproduced as under:

SATISFACTION NOTE

Name of the assessee & Address	*Laxmi Chandak, Rupahi Ali, Jorhat*
Status	*Indl.*
Asstt. Year	*2013-14*
PAN	*AFOPC8095C*

Reasons for reopening:

The return of income filed by the assessee on 07.02.2014 showing total income of Rs. 3,83,790/-. The return was processed u/s 143(1) on 07.06.2014. It is seen that the assessee, under the business and profession has shown an income of Rs. 80,000/-, under the head Profit and gains from speculative business 1,29,928 and Income from House Property Rs. 28,000/-, Income from Short term capital gain Rs. 545/- and Income from other sources Rs. 2,47,133/. The assessee declaring exempt income in schedule El an income of Rs.16,97,115/- from Long Term Capital Gain, Interest Income Rs.5633/- and Dividend income Rs. 250/- among other income.

As per information extracted from the ITD application the assessee had made bogus long term capital gain/short term capital loss by way of transaction made through "penny Stocks" amounting to Rs. 17,55,360/-during the F.Y. 2012-13. The investigation conducted by the Investigation Directorate of Income-Tax Deptt. also reveals that trading in said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion.

The source of the fund for the purchase of shares as mentioned above for which capital gain is raised was from her sources not declared in the return of income. I find that the assessee has undeclared income in the return furnished which has escaped assessment.

I have therefore reasons to believe that the income of the assessee from Long Term Capital Gain, not shown as income and the source for the purchase of the above mentioned scripts for the assessment year 2013-14 not shown in the return of income has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961.

Approval is therefore sought from the learned Joint Commissioner of Income-tax, Range-Jorhat under section 151(2) for taking up the case u/s 147 and serving notice u/s 148 of the Income-tax Act, 1961, if deemed fit."

34. This Court finds it relevant to take note of that in the records, there is also a satisfaction note of the Joint Commissioner of Income Tax Range, Jorhat dated 20.05.2016. The said is reproduced hereinunder:

"***SATISFACTION NOTE***

Name of the assessee & Address	*Laxmi Chandak, Rupahi Ali, Jorhat*
Status	*Indl.*
Asstt. Year	*2013-14*
PAN	*AFOPC8095C*

Having gone through the case records and the reasons recorded by the A.O. as above, the undersigned is satisfied that it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961. Accordingly, approval for the same is hereby granted u/s 151 of the Act."

35. In respect to the writ petitioner in WP(C) No.5536/2016, the records upon being perused also reveal that the reasons for issuance of the notice under Section 148 of the Act of 1961 was contained in the form of a satisfaction note which is reproduced hereinunder:

SATISFACTION NOTE

Name of the assessee & Address	*Shilpa Chandak, Rupahi Ali, Jorhat*
Status	*Indl.*
Asstt. Year	*2013-14*
PAN	*AEJPC4450P*

Reasons for reopening:

The return of income filed by the assessee on 07.02.2014 showing total income of Rs.4,55,760/-. The return was processed u/s 143(1) on 01.08.2014. It is seen that the assessee, under the heard profit and gains speculative business and spedified business has shown an income of Rs.1,76,281/- Income from Profit and gains from speculative business Rs.1,27,928/-. Income from Short term capital gain Rs.297/- and Income from other sources Rs. 2,51,000/. The assessee declaring exempt income in schedule El an income of Rs.17,97,975/- from Long Term Capital Gain, Interest Income Rs.18,956/- and Dividend income Rs. 1677/-.

As per information extracted from the ITD application the assessee had made bogus long term capital gain/short term capital loss by way of transaction made through "penny Stocks" amounting to Rs. 17,56,820/-during the F.Y. 2012-13. The investigation conducted by the Investigation Directorate of Income-Tax Deptt. also reveals that trading in said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion.

The source of the fund for the purchase of shares as mentioned above for which capital gain is raised was from her sources not declared in the return of income. I find that the assessee has undeclared income in the return furnished which has escaped assessment.

I have therefore reasons to believe that the income of the assessee from Long Term Capital Gain, not shown as income and the source for the purchase of the above mentioned scripts for the assessment year 2013-14 not shown in the return of income has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961.

Approval is therefore sought from the learned Joint Commissioner of Income-tax, Range-Jorhat under section 151(2) for taking up the case u/s 147 and serving notice u/s 148 of the Income-tax Act, 1961, if deemed fit."

36. It also reveals that there was also a satisfaction of the Joint Commissioner of Income Tax, Range Jorhat and accordingly approval was granted in terms with Section 151 of the Act of 1961. The said approval is reproduced hereinunder:

"***SATISFACTION NOTE***

Name of the assessee & Address	*Shilpa Chandak, Rupahi Ali, Jorhat*
Status	*Indl.*
Asstt. Year	*2013-14*
PAN	*AEJPC4450P*

Having gone through the case records and the reasons recorded by the A.O. as above, the undersigned is satisfied that it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961. Accordingly, approval for the same is hereby granted u/s 151 of the Act."

37. In the backdrop of the above, the learned counsel for the Petitioners submitted that as the reasons in the entirety were not furnished, the Petitioner had been prejudiced for which the entire reassessment proceedings which have been assailed in WP(C) No.5535/2016 and WP(C) No.5536/2016 is required to be interfered with. In that regard, the learned counsel has drawn the attention of this Court to the judgment of the Supreme Court in the case of ***GKN Driveshafts (India) Ltd. Vs. Income Tax Officer*** *reported in* ***(2003) 259 ITR 19 (SC).***

38. Per contra, Mr. S. C. Keyal, the learned Standing counsel appearing on behalf of the Income Tax Department submitted that the jurisdiction of this

Court in respect to a challenge to a reassessment proceedings under Article 226 of the Constitution is limited inasmuch this Court cannot look into the sufficiency of the reasons, as the same has been held to be non-justiciable by the Supreme Court in various judicial pronouncements. The learned Standing counsel however submitted that there is no bar to the Petitioners to contend before this Court that there existed no reasons for the formation of the belief for the purpose of exercise of power under Section 147 of the Act of 1961 or in other words the existence of reasons can be challenged by the assessee. In that regard, the learned Standing counsel referred to the judgment of the Supreme Court in the case of ***S. Narayanappa Vs. CIT*** *reported in* ***(1967) 63 ITR 2019***. The learned Standing counsel further submitted that the Central Board of Direct Taxes had placed certain information to the jurisdictional Assessing Officers pertaining to the Investigation Wing of Kolkata and SEBI regarding bogus capital gains through transactions of unlisted shares being penny stocks. Consequently, the verification of the ITD software were done which revealed that the Petitioners herein had made bogus long Term Capital Gain/Short Term Capital Loss by way of transactions made through penny stocks during the assessment year in question. He further submitted that the investigation conducted by the Investigation Directorate of the Income Tax Department also revealed that the trading in the said penny stocks were also manipulated affairs to generate entries of bogus Long Term Capital Gain/Short Term Capital Loss facilitating tax evasion. The learned Standing counsel submitted that the source of funds for the purchase of shares for which the capital gains were claimed from the respective Petitioners' own sources were not declared in the return of the income and therefore, the

same became the basis for the formation of the belief that the return of income had escaped assessment. He further submitted that the reasons so furnished by the Income Tax Authorities in respect to all the Petitioners were bonafide reasons and based upon relevant and specific informations. He further submitted that the materials on the basis of which requisite belief was formed by the Assessing Officers had a rational connection or a live link. Drawing the attention of this Court to the return so filed, the learned Standing counsel submitted that in most cases, the purchase price of the shares in question were not shown.

39. On the question of non-compliance to Section 151 of the Act of 1961, the learned Standing counsel for the Income Tax Department submitted that it is not known as to how the Petitioners can be allowed to raise the said issue inasmuch as the same is not a part of their pleadings. The said issue as per the learned Standing counsel are being raised for the first time during the course of hearing and under such circumstances, this Court should not permit the Petitioner to raise the said issue as regards the non-compliance to Section 151 of the Act of 1961. The learned Standing counsel submitted that when an issue is raised which touches on the jurisdiction and authority, there has to be foundational facts and grounds pleaded. Without prejudice to the said, the learned Standing counsel further submitted that as per his instructions in all the cases, the approval were duly taken from the Joint Commissioner of Income Tax, Range. He submitted that the records in respect to the petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 would clearly show that the approval was duly taken from the Joint Commissioner of Income Tax, Range prior to the issuance of the said notice under Section 148 of the Act of 1961. He further submitted

that as per his instructions though the records of the Petitioner in WP(C) No.5437/2016 are not traceable, then also due permission was taken from the Joint Commissioner of Income Tax prior to the issuance of notice under Section 148 of the Act of 1961.

40. The learned Standing counsel for the Income Tax Department further submitted that the reasons so furnished to the Petitioners in WP(C) No.5535/2016 and WP(C) No.5536/2016 were the exact reasons which formed the basis of the satisfaction note. He submitted that the Constitution Bench of the Supreme Court in the case of ***K. S. Rashid and Son and Another Vs. Income Tax Officer and Another*** *reported in* ***AIR 1964 SC 1190*** had observed in the context of Section 34 of the Income Tax Act 1922 that the condition precedent for initiation of proceedings for reassessment is for recording of reasons and not for furnishing the same. Be that as it may, the learned Standing counsel submitted that the specific reasons as contained in the satisfaction note were duly furnished. Even otherwise, it was submitted by the learned Standing counsel that the question of the initiation of proceedings for reassessment under Section 147 of the Act of 1961 cannot be put to challenge on the ground that the entire satisfaction note was not furnished.

41. From the pleadings and the respective contentions, various issues have arisen in the writ petitions relating to the non-fulfilment of the condition precedent for initiation of the reassessment proceedings as well as the violation of the provisions of Section 151 of the Act of 1961. Further to that, in two writ petitions, the initiation of the reassessment proceedings have been challenged on the ground that the entire reasons have not been

furnished for which the reassessment proceedings should be nullified. Taking into account the said issues involved, this Court broadly enumerates the following points of law to be determined.

(A) What are the essential requirements for initiation of a reassessment proceedings under Section 147 of the Act of 1961 and to what extent the Court under Article 226 can interfere?

(B) Whether the provisions of Section 151 of the Act of 1961 are mandatory in nature and non-compliance with the mandate would nullify the reassessment proceedings?

(C) Whether the non-communication of reasons would render the reassessment proceedings bad and to what extent interference can be made by this Court under Article 226 of the Constitution?

42. For the purpose of deciding the Issue No.(A), this Court finds it relevant to take note of Section 147 of the Act of 1961 which authorizes and permits the Assessing Officer to assess or reassess the income chargeable to tax if he has reasons to believe that income for any assessment year had escaped assessment. This phrase "reason to believe" have been the subject matter of debate before the Supreme Court and various High Courts. In the case of ***S. Narayanappa (supra),*** the Supreme Court in the context of a proceedings under Section 34 of the Income Tax Act, 1922 explained that the phrase "reasons to believe" would mean that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there has been any non-disclosure as regards any fact, which could have a material bearing on the question of under assessment and the existence of such

reasonable ground(s) would be sufficient to give jurisdiction to the Income Tax Officer to issue notice under Section 34 of the Income Tax Act, 1922. It was further opined that whether the grounds would be adequate or not is not a matter for the Court to investigate or in other words, the sufficiency of the grounds which induce the Income Tax Officer to act is not a justiciable issue. However, it was also opined that it was open to the assessee to contend that the Income Tax Officer did not hold the belief that there has been such non-disclosure or in other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. It was categorically opined that the expression 'reason to believe' appearing in Section 34 of the Income Tax Act, 1922 did not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be in good faith and cannot be merely pretence. Paragraph 2 of the said judgment is quoted hereinbelow:

> "*2. On behalf of the appellant Mr Gopalakrishnan contended in the first place that the reasons which induced the Income Tax Officer to initiate the proceedings under Section 34 were justiciable. It was submitted that those reasons should have been communicated by the Income Tax Officer to the assessee before the assessment was made. In this connection, the further argument of the appellant was that those reasons "must be sufficient for a prudent man to come to the conclusion that the income had escaped assessment". In our opinion, there is no substance in any one of these arguments. It is true that two conditions must be satisfied in order to confer jurisdiction on the Income Tax Officer to issue the notice under Section 34 in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year. The first condition is that the Income Tax Officer must have reason to believe that the income, profits or gains chargeable to income tax had been underassessed. The second condition is that he must have reason to believe that such*

"underassessment" had occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer acquires jurisdiction to issue a notice under the section. But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of underassessment that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice under Section 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax Officer did not hold thebelief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again the expression "reason to believe" in Section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The belief must be held in good faith : it cannot be merely a pretence. To put it differently it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings under Section 34 of the Act is open to challenge in a court of law. (See Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I, Calcutta)."

43. In the backdrop of the above propositions so settled by the Supreme Court insofar as Section 34 of the Income Tax Act, 1922, this Court now finds it relevant to take note of another judgment of the Supreme Court in the case of ***Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock***

Brokers Pvt. Ltd. *reported in* ***(2008) 14 SCC 208*** wherein the Supreme Court considered the import of the phrase 'reasons to believe' as provided in Section 247(a) of the Act of 1961. While interpreting the said phrase, the Supreme Court considered both Section 147 and Section 247(a) of the Act of 1961 and observed that Section 147 authorizes and permits the Assessing Officer to assess or reassess income chargeable to tax if he had reasons to believe that income for any assessment year had escaped assessment. The word 'reasons' in the phrase 'reason to believe' was opined by the Supreme Court to mean cause or justification. It was further opined that if the Assessing Officer had cause or justification to know or suppose that the income had escaped assessment, it can be said to have reasons to believe that income has escaped assessment. It was also observed that the expression 'reason to believe' cannot be read to mean that the Assessing Officer should have finally asserted the fact by legal evidence or conclusion inasmuch as the function of the Assessing Officer is to administer a statute which solicitude for the public exchequer with an in-built idea of fairness to tax payers.

44. Before further proceeding, this Court finds it relevant to take note of a very pertinent amendment to the Act of 1961 insofar as the provision of Section 147 by the Finance Act, 1989. Section 147 prior to 01.04.1989 stipulated twin conditions for reopening an assessment i.e. the Assessing Officer has to have reasons to believe and the reasons were to be recorded for the purpose of initiation of the reassessment proceedings. However, w.e.f. 01.04.1989, only one condition remained out of the two i.e. the Assessing Officer had to have reasons to believe that the income had escaped assessment. At this stage, this Court finds it relevant to take note of

the judgment of the Supreme Court in the case of ***Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd.*** *reported in* ***(2010) 2 SCC 723*** and more particularly in paragraph Nos. 5, 6 and 7. In the said judgment, the Supreme Court noted that the fulfilment of two conditions which were there to confer jurisdiction upon the Assessing Officer to make a back assessment was done away with by the amendment made to Section 147 w.e.f. 01.04.1989 and the only condition which remained was where the Assessing Officer had reasons to believe that the income had escaped assessment. It was observed by the Supreme Court that post 01.04.1989, the power to reopen assessment is much wider for which one needs to give a schematic interpretation to the words 'reasons to believe' so that the power under Section 147 to the Assessing Officer is not arbitrary and unbridled to reopen assessment. It was observed in paragraph No.7 that post 01.04.1989, the Assessing Officer would have the power to reopen, provided that there is/are "tangible material" to come to the conclusion that there is escapement of income from assessment. Paragraph Nos. 5, 6 and 7 of the said judgment are quoted hereinbelow:

> "***5.*** *On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the assessing officer to make a back assessment, but in Section 147 of the Act (with effect from 1-4-1989), they are given a go-by and only one condition has remained viz. that where the assessing officer has reason to believe that income has escaped assessment, confers Jurisdiction to reopen the assessment. Therefore, post 1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary*

powers to the assessing officer to reopen assessments on the basis of "mere change of opinion', which cannot be per se reason to reopen.

***6**. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of "'change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.*

***7**. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets Support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."*

45. The above observations that the power to reopen is subject to there being tangible materials to come to the conclusion that there is an escapement of income for assessment have been reaffirmed by the Supreme Court in its recent judgment rendered in the case of ***Deputy Inspector of Income Tax (Central) Circle 1(2) Vs. M.R. Shah Logistics Pvt. Ltd.*** *reported in* ***(2022) 14 SCC 101***.

46. This Court also finds it pertinent to take note of the observations of

the Supreme Court in the case of ***M/s Phool Chand Bajrang Lal and Another Vs. Income Tax Officer and Another*** *reported in* ***(1993) 4 SCC 77*** which throws light on the aspect of subsequent information being taken into account for reopening of assessment. It was observed by the Supreme Court that an Income Tax Officer acquires jurisdiction to re-open an assessment under Section 147(a) (as it then existed) read with Section 148 of the Act of 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, for which he had reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gain, chargeable to income tax had escaped assessment. It was further opined that the Assessing Officer may start reassessment proceedings either because some fresh facts comes to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession, which tends to expose the untruthfulness of those facts. In such circumstances, it is not a case of mere change of opinion or the drawing of a different inferences from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, it was opined that the sufficiency of the reasons for forming his belief is not for the Court to judge but it is open to an assessee to establish that there, in fact, existed no belief or that the belief was not at all a bonafide one or was based on vague, irrelevant and non-specific information. To that limited extent, it was opined that the Court may look into the conclusions arrived at by the Income Tax Officer and examine whether there was any material available on record from which the

requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief.

47. This Court further finds it relevant to take note of the judgment of the Supreme Court in the case of ***State of Uttar Pradesh and Others Vs. Aryaverth Chawal Udyog and Others*** *reported in* ***(2015) 17 SCC 324*** wherein the Supreme Court also opined that the materials on the basis of which the Assessing Authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of the action taken by the Assessing Authority in pursuance of such belief. In case of absence of such materials, the action taken by the Assessing Authority on such 'reason to believe' would be arbitrary and bad in law. Further to that, it was also opined that in case of the same material being present before the Assessing Authority during both, the assessment proceedings and the issuance of the notice for reassessment proceedings, it cannot be said by the Assessing Authority that 'reason to believe' for initiating assessment is an error discovered in the earlier view taken by it during original assessment proceedings. Further to that, the Supreme Court also observed in the said judgment that the standard of reason exercised by the Assessing Authority is that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. Therefore, the necessary sequitur is that a mere change of opinion while perusing the same material cannot be a 'reason to believe' that a case of escaped assessment exists, requiring reassessment proceedings to be reopened. The Supreme Court also explained what would amount to 'change of opinion' in the case of ***Aryaverth Chawal Udhyog (supra)*** and opined that if a conscious application of mind is

made to the relevant facts and materials available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to 'change of opinion'. It was opined by the Supreme Court that if an Assessing Authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it erroneous, it is not a valid reason for reassessment.

48. This Court further finds it relevant to take note of the judgment of the Supreme Court in the case of ***Income Tax Officer, Ward No.16(2) Vs. Techspan India Pvt. Ltd. and Another*** *reported in* ***(2018) 6 SCC 685***. This judgment in the opinion of this Court is very pertinent for the purpose of deciding the issues in the present writ petitions in view of the fact that the assessment orders which were sought to be reopened are non speaking assessment orders. Paragraph Nos. 14, 15, 16 and 18 being relevant are reproduced herein below:

> "*14. The language of Section 147 makes it clear that the assessing officer certainly has the power to reassess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words 'reason to believe' in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the assessing officer who may even initiate such reassessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the assessing authorities to reassess any income on the ground which was not brought*

on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.

15. Section 147 of the IT Act does not allow the reassessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to reassess and not the power to review.

16. To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The words "change of opinion" imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

18. Before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings."

49. Therefore from the above analysis of the settled principles of law, the following propositions emerges.

(a) The power of the Assessing Officer to initiate proceedings for reassessment has to be based upon the existence of some reasonable grounds for the Income Tax Officer to believe that there has been a non-disclosure as regards any fact which would have a material bearing on the question of under assessment.

(b) The jurisdiction of the Assessing Officer under Section 147 to initiate reassessment proceedings is subject to the Assessing Officer having reasons to believe that the income had escaped assessment.

(c) The power to reassess cannot be confused with the power to review.

(d) To reopen an assessment under Section 147 read with Section 148 of the Act of 1961, the same can be done only on the basis of specific, reliable and relevant information coming to the possession of the Income Tax Officer subsequently, for which he has reasons to believe on the basis of tangible materials that the income had escaped assessment. For the purpose of starting reassessment proceedings, the Assessing Officer either should have some fresh facts which were not previously disclosed or some information with regard to the facts previously disclosed, comes into his possession which tends to expose the untruthfulness of those facts.

(e) The sufficiency of reasons for forming the belief of the Income Tax Officer is not for the Court to judge or for that matter, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue.

(f) The power of judicial review can be exercised if and only if the assessee is able to establish that there exists no belief or that the belief was

not at all bonafide one or was based on vague, irrelevant and non-specific information. It is only to that limited extent, the Court may look into the conclusions arrived at by the Income Tax Officer and examine whether there was any tangible material available on record from which the requisite belief could be formed by the Income Tax Officer and further whether that tangible material had any rational connection or a live link for the formation of requisite belief. In other words, the existence of belief can be challenged by the assessee but not the sufficiency of the reasons for the belief.

(g) The materials on the basis of which the opinion is based must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the Assessing Authority in pursuance of such belief.

(h) The standard of reason exercised by the Assessing Authority is that of an honest and prudent person who would act on reasonable grounds and comes to a cogent conclusion.

(i) Mere change of opinion while perusing the same material cannot come within the ambit of the phrase 'reason to believe' that a case of escaped assessment exists requiring assessment proceedings to be reopened. Thus, 'reason to believe' cannot be said to be the subjective satisfaction of the Assessing Authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some income has escaped assessment.

(j) The words 'change of opinion' imply formulation of opinion and then change thereof. In terms of assessment proceedings, it means formulation of

belief by an Assessing Officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

(k) While deciding the question of change of opinion, the Court is required to verify whether the assessment earlier made had either expressly or by necessary implication expressed an opinion on a matter which is the basis of alleged escapement of income that was taxable. However, if the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the Assessing Officer any opinion on a question that are raised in the proposed reassessment proceedings. It is also required to take into account that every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings.

(l) Section 147 of the Act of 1961 confers jurisdiction upon the Assessing Officer to reopen assessment upon having reasons to believe that the income for the relevant assessment year had escaped assessment. This conferment of jurisdiction cannot be confused with the manner in which the jurisdiction is to be exercised. The exercise of the jurisdiction is to done in terms of and satisfying the provisions of Section 148 to 153 of the Act of 1961.

50. It is on the above parameters that this Court has to take note of as to whether on the facts of the instant cases, the Income Tax Officer had fulfilled the conditions for initiating reassessment proceedings.

51. Moving forward, let this Court now take up the Issue No. (B) i.e. as to whether the compliance to Section 151 of the Act of 1961 is mandatory and would the failure to comply with the same render the reassessment proceedings fatal. In the foregoing analysis, this Court had opined on the basis of the well settled principles that in order to exercise the powers for reassessment, the provisions of Section 148 to 153 of the Act of 1961 have to be satisfied. Keeping that in mind, this Court finds it relevant to quote the provisions of Section 151 which is reproduced herein below:

> "***151. Sanction for issue of notice.—***
>
> *(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.*
>
> *(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*
>
> *(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."*

52. Section 151 of the Act of 1961 stipulates who would be the authority for the purpose of Section 148 of the Act of 1961. In that view of the matter for a better understanding, this Court before dealing with Section 151 finds it relevant to take note of Section 148 of the Act of 1961. Section 148 of the Act of 1961 provides that before making the assessment, reassessment or re-computation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring the assessee to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect to which he is assessable. It also says no notice under Section 148 shall be issued unless the Assessing Authority records reasons for doing so.

53. This Court also finds it relevant to take note of Section 149(1)(a) of the Act of 1961 wherein it is stipulated that no notice under Section 148 shall be issued for the relevant assessment year if four years have elapsed from the end of the relevant assessment year, unless the case falls under Clause-(b) or Clause-(c). Clause-(b) of Section 149(1) provides that if four years, but not more than six years have elapsed from the end of the relevant assessment year, unless the income chargeable to for which had escaped assessment, amounts to or is likely to amount to Rs.1,00,000/- or more for that year. Sub-Section (2) of Section 149 stipulates that the provisions of Sub-Section (1) of Section 149 as to issue of notice shall be subject to the provisions of Section 151.

54. Therefore, a conjoint reading of Section 147, 148 and 149 of the Act of 1961 would show that Section 147 empowers the Assessing Authority to reopen assessment if he has reasons to believe that the income of an

assessee had escaped assessment. The reasons to believe has to be on the basis of tangible materials. This power conferred under Section 147 can be exercised subject to Sections 148 to 153. Section 148(1) stipulates that notice has to be issued to the assessee. Section 148(2) stipulates that no notice can be issued unless the Assessing Authority records reasons for doing so. Section 149(1) stipulates the time limit for issuance of a notice under Section 148. Section 149(2) categorically mandates that the provisions of Section 149(1) as to issue of notice shall be subject to Section 151.

55. In the backdrop of the above, a reading of Sub-Section (1) of Section 151 stipulates that no notice shall be issued under Section 148 by the Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issuance of such notice. However, in Sub-Section (2) of Section 151, it is stipulated that in any other case than a case falling under Sub-Section (1), no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. Therefore, from the above two Sub-Sections of Section 151, it stipulates that as in respect of notice to be issued under Section 148 by the Assessing Officer after the expiry of four years from the end of the relevant assessment year, would be the Principal Chief Commissioner or the Chief Commissioner or Principal Commissioner or Commissioner. However, in terms with Sub-Section (2) of Section 151, the authority would be the Joint Commissioner. This Court further finds it

relevant at this stage to take note of Section 2 of the Act of 1961 wherein various terms have been defined. Section 2(15A) defines the term "Chief Commissioner" to mean a person appointed to be the Chief Commissioner of Income tax or a Principal Chief Commissioner of Income-tax under Sub-Section (1) of Section 117. Section 2(16) defines the term "Commissioner" to mean a person appointed to be a Commissioner of Income Tax or a Director of Income Tax or a Principal Commissioner of Income Tax or a Principal Director of Income Tax under Sub-Section (1) of Section 117. In the same way, Section 2(28C) defines "Joint Commissioner" as a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under Sub-Section (1) of Section 117. This Court finds it relevant to observe that there is no provision in the Act of 1961 under which a power to be exercised by an Officer can be exercised by a superior officer.

56. In the backdrop of the above, if this Court takes note of various judicial pronouncements as regards Section 151 of the Act of 1961 and who would be the authority to give the prior approval for issuance of a notice under Section 148 of the Act of 1961, this Court finds it relevant to take note of the judgment of the Bombay High Court in the case of ***Ghanshyam K. Khabrani (supra)*** wherein the Division Bench of the Bombay High Court held that the Commissioner of Income Tax is not a Joint Commissioner as per the definition contained in Section 2(28C) of the Act of 1961. It was also observed that though the Commissioner of Income Tax may be a higher superior officer, but there was no statutory provision in the Act of 1961 under which a power to be exercised by an officer can be exercised by superior officer. It was also observed that when the statute mandates the satisfaction of a particular functionary for the exercise of the power, the

satisfaction must be that of the authority inasmuch as where a statute requires something to be done in a particular manner, it has to be done in that manner. This view has been consistently endorsed in the case of ***DSJ Communication Ltd. Vs. Dy. CIT*** *reported in* ***(2014) 222 Taxman 129 (Bom)***; ***Purse Holdings India (P) Ltd. Vs. ADDIT (IT)*** *reported in* ***(2016) 143 DTR 1 (Mum)***; ***Yum! Restaurants Asia Pte Ltd. Vs. Dy. DIT*** *reported in* ***(2017) 397 ITR 639 (Del)*** as well as ***CIT Vs. Aquatic Remedies Pvt. Ltd.*** *reported in* ***(2018) 406 ITR 545 (Bom)***.

57. This Court further finds it relevant to take note of another judgment of the Supreme Court in the case of ***Chhugamal Rajpal Vs. S. P. Chaliha and Others*** *reported in* ***(1971) 1 SCC 473*** wherein it was held that the important safeguards provided under Section 147 and 151 of the Act of 1961 should not be lightly treated by the Income Tax Officer as well as by the Commissioner. It is relevant to mention that in that case, there was no recording by the Commissioner of Income Tax that he was satisfied to be a fit case for issuance of notice under Section 148 of the Act of 1961. The facts of that case shows that in respect to question No.8 in the report which read "Whether the Commissioner is satisfied that it is a fit case for issuance of notice under Section 148" the Commissioner just noted the word "yes" and affixed his signature.

58. Therefore, from the above analysis, two pertinent aspects can be culled out. First, the power to be exercised by the authority to grant the approval for issuance of the notice under Section 148 is not a mere formality but is an important safeguard against any arbitrary exercise by the Income Tax Officer to reopen reassessment proceedings. The second aspect is that

Section 151 of the Act of 1961 specifically mandates who would be the authority inasmuch Sub-Section (1) of Section 151 of the Act of 1961 relates to issuance of notice under Section 148 after the expiry of the period of 4 (four) years from the end of the relevant assessment year and the authority would be the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner who had to arrive at the satisfaction on the reasons recorded by the Assessing Officer for issuance of such notice. On the other hand, in respect to all other cases, i.e. up to four years, the authority would be the Joint Commissioner which is the authority defined in Section 2(28C). It is also pertinent that the Act of 1961 does not stipulate that the power which had been entrusted by the Act to an Officer can be exercised by any superior officer.

59. Now let this Court take up the Issue No.(C) which more particularly arises in WP(C) No.5535/2016 and WP(C) No.5536/2016 as to whether the non-communication of the entire satisfaction note would vitiate the reassessment proceedings. The amendments to Section 147 and 148 brought into effect by the Act 3 of 1989 w.e.f. 01.04.1989 assumes importance inasmuch as the words 'for reasons to be recorded by him in writing, is of the opinion' was substituted by the words 'has reasons to believe'. Further to that Sub-Section (2) of Section 148 was inserted which reads as under:

> "*2. The Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so".*

60. By these amendments, as already stated supra, conferring of the jurisdiction upon the Assessing Officer to reopen assessment was only upon

the Assessing Officer having reasons to believe that an income chargeable to tax had escaped assessment for any assessment year. This Court while dealing with the Issue No.(A) had referred to the judgment of the Supreme Court in the case of ***Kelvinator of India Ltd. (supra)*** wherein the Supreme Court noted the said amendment and in order to check abuse of the power by the Assessing Officer, it was opined that the Assessing Officer would have the power to reopen provided that is/are tangible material(s) to come to the conclusion that there is escapement of income from assessment. It would also be pertinent that for conferment of jurisdiction, the recording of reasons is no more essential but recording of reasons would only be essential in terms with Sub-Section (2) of Section 148 for the Assessing Officer to issue any notice under Section 148. It is also pertinent herein to take note of that the words 'he, may, subject to the provisions of Section 148 to 153' as appearing in Section 147, makes the legislative intent further clear that for assessing or reassessing such income and also any other income chargeable to tax which had escaped assessment, the Assessing Officer has to do so or for that matter exercise the jurisdiction by satisfying the mandate of Section 148 to 153.

61. This Court also finds it relevant to mention that the provisions of Section 147 as well as the provisions of Section 148 to 153 do not mention that the reasons so recorded prior to issuance of notice under Section 148 is required to be furnished to the assessee. In fact, if this Court again refers to the judgment of the Supreme Court in the case of ***S. Narayanappa (supra),*** the Supreme Court though in the context of Section 34 of the Income Tax Act, 1922, observed that the proviso to Section 34 requires that the officer should record his reasons for initiating action under Section 34 and obtain

the sanction of the Commissioner who must be satisfied that the action under Section 34 was justified. It was categorically observed by the Supreme Court that there is no requirement in any of the provisions of the Act or any Section laying down as a condition for initiation of proceedings that the reasons which induced to the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee. Paragraph No.4 of the said judgment rendered in ***S. Narayanappa (supra)*** is quoted herein below:

> "*4. It was also contended for the appellant that the Income Tax Officer should have communicated to him the reasons which led him to initiate the proceedings under Section 34 of the Act. It was stated that a request to this effect was made by the appellant to the Income Tax Officer, but the Income Tax Officer declined to disclose the reasons. In our opinion, the argument of the appellant on this point is misconceived. The proceedings for assessment or re-assessment under Section 34(1)(a) of the Income Tax Act start with the issue of a notice and it is only after the service of the notice that the assessee, whose income in sought to be assessed or re-assessed, becomes a party to those proceedings. The earlier stage of the proceeding for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasijudicial. The scheme of Section 34 of the Act is that, if the conditions of the main section are satisfied a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 22. But before issuing the notice, the proviso requires that the officer should record his reasons for initiating action under Section 34 and obtain the sanction of the Commissioner who must be satisfied that the action under Section 34 was justified. There is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee. In Presidency*

Talkies Ltd. v. First Additional Income Tax Officer, City Circle II, Madras the Madras High Court has expressed a similar view and we consider that that view is correct. We accordingly reject the argument of the appellant on this aspect of the case."

62. This Court also finds another very pertinent insertion to Section 147 i.e. Explanation 3. It is relevant to take note of that this Explanation was inserted by Act 33 of 2009 but as the same was clarificatory in nature, the same was given effect from 01.04.1989. The said explanation is quoted herein below:

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

63. The explanatory note to the provisions of Finance (No.2) Act, 2009 as notified vide Circular No.05/2010 dated 03.06.2010 reveals as to why the clarificatory amendment was made thereby inserting Explanation-3. It was mentioned in Clause 47.2 of the said Circular that various Courts have held that the Assessing Officer had to restrict the assessment proceedings only to the reasons recorded for reopening of assessment and the Assessing Officer was not empowered to touch upon any other issue for which no reasons have been recorded. It was mentioned that the said interpretation was contrary to the legislative intent. It was under such circumstances, to articulate the legislative intent clearly, Explanation-3 was inserted in Section 147 to provide that the Assessing Officer may examine, assess/reassess any issue relevant to the income which comes to his notice subsequently in the

course of proceedings under Section 147 of the Act of 1961, notwithstanding that the reasons for such issue has not been included in the reasons recorded under Sub-Section (2) of Section 148 of the Act of 1961. The above Explanation-3 therefore gives a clear indication that, if the Assessing Officer has reasons to believe on the basis of tangible materials to come to a conclusion that there is escapement of income from assessment, the Assessing Officer would have the jurisdiction to reopen assessment not only on the reasons recorded but he would also have the jurisdiction to touch upon other issues for which no reasons were recorded.

64. The above analysis therefore would show that the furnishing of the reasons is not required as per the provisions of the Act of 1961 and the said aspect had been judicially also accepted. Now therefore the question arises as to why the Supreme Court in the case of ***GKN Driveshafts (India) Ltd. (supra)*** had observed that the reasons upon being requested has to be furnished which would provide an opportunity to the assessee to file objection against such reasons and further the Assessing Officer has to pass an order on the said objection and thereupon proceed. For ascertaining the said aspect, this Court finds it relevant to take note of the facts involved in the said case. In ***GKN Driveshafts (India) Ltd. (supra)*** a writ petition was filed challenging the validity of notices under Sections 148 and 143(2) of the Act of 1961. The said writ petition was rejected as premature by the High Court holding that the appellant in the said proceedings before the Supreme Court could have taken all these objections in his reply. The Supreme Court did not interfere with the said order but clarified that when a notice under Section 148 of the Act of 1961 is issued, the proper course of action for the noticee is to file return. The noticee would be at liberty to seek reasons for

issuance of notice and upon seeking such reasons, the Assessing Officer would be bound to furnish reasons within a reasonable time. It was further mentioned that on receipt of the reasons, the noticee would be entitled to file objection to issuance of notice and the Assessing Officer would be bound to dispose of the same by passing a Speaking Order.

65. From a perusal of the said judgment in the case of ***GKN Driveshafts (India) Ltd. (supra),*** it would clearly show that the said judgment is not an authority that the reassessment proceedings would be nullified for not furnishing the reasons. It is the opinion of this Court that if an objection is filed on the basis of the reasons so provided and the said objection is rejected, then it may be a good ground for the assessee to assail the assessment/reassessment order in an appeal. However, the reassessment proceedings cannot be nullified by way of writ petition on the ground that the reasons in the entirety was not furnished. The rationale behind the said opinion of this Court is taking into account that it is well settled that the existence of the belief is justiciable whereas the sufficiency of the reasons for forming the belief is not. Therefore, if an assessee has to challenge the existence of the belief, the same can be done so in a proceedings under Article 226 of the Constitution which is also well settled. Further, it is also the opinion of this Court that the existence of the belief cannot be challenged before the Assessing Officer as it touches upon his own jurisdiction. However, as the sufficiency of reasons for forming the belief cannot be challenged in a proceeding under Article 226 of the Constitution, the assessee would have a right to file objections against the sufficiency of the reasons for forming the belief by the Assessing Officer. It is in that context, the Supreme Court in the case of ***GKN Driveshafts (India) Ltd. (supra)*** made

the said observations.

66. In the backdrop of the above, let this Court apply the above propositions of law to the facts already delineated supra.

ISSUE (A) :-

WP(C)/5437/2016

67. In the instant writ petition, a perusal of the return so submitted on 21.09.2011 by the Petitioner revealed that the Petitioner earned capital gains to the tune of Rs.57,58,923/- which as per the Petitioner was exempted under Section 10(38) of the Income Tax Act, 1961. From the said computation of income, it is seen that Odycorp (6500) shares were purchased at Rs.1,03,208/- on 24.11.2008 and were sold at Rs.9,89,824/- on 20.09.2010. In respect to the company Splash M (35000), shares were purchased on 16.06.2009 at Rs.1,79,327/- and was sold at Rs.13,57,777/- on 21.03.2011. It is also seen that in respect to Company Splash M (35000) shares, Splash M (35000) shares, Splash M (28250) shares and Splash M (6750) shares, all such shares were purchased on 24.12.2009 at zero purchase cost and were sold at Rs.12,67,638/- on 22.03.2011, at Rs.12,29,542/- on 23.03.2011, at Rs.9,67,902/- on 28.03.2011 and at Rs.2,28,775/- on 29.03.2011 respectively thereby earning a Long Term Capital Gain of Rs.57,58,923/-. Now coming to the reasons so assigned, it has been stated that the assessee sold shares (penny stocks) as identified by SEBI and Investigation Wing, Kolkata during FY 2010-11 totaling to Rs.37,43,107/- but as per the return filed for assessment year 2011-12 relating to Financial Year 2010-11, no income/loss in respect to sale of

shares were disclosed. It is on the basis of such information received from the ITD-Penny Stock which formed the reasons for the Assessing Officer to believe that the income had escaped from assessment.

68. From the reasons so recorded as above noted and reading conjointly with the computation of income with the detail so given in the reasons for issuance of notice under Section 148 of the Act of 1961, it cannot be said that there was no existence of reasons to believe that the income had escaped assessment. Further to that, the reasons so assigned were neither vague nor indefinite. The reasons had a live link for the formation of the requisite belief. This Court during the course of hearing inquired with the learned counsel for the Petitioner as to how certain shares were shown in the computation of the income as purchased at nil value whereas were sold at certain amounts. The learned counsel for the Petitioner submitted that they were bonus shares which had no purchase costs. He however admitted that in the computation of the income, the same were not reflected as bonus shares issued at nil value. Under such circumstances also this Court is of the opinion that there existed reasons to believe for reopening of the assessment.

WP(C)/5530/2016

69. In the instant writ petition, a perusal of the return so submitted on 29.07.2011 by the Petitioner revealed that the Petitioner earned capital gains to the tune of Rs.57,51,915/- which as per the Petitioner was exempted under Section 10(38) of the Income Tax Act, 1961. From the said computation of income, it is seen that Odycorp (6500) shares were purchased at Rs.1,09,912/- on 24.11.2008 and were sold at Rs.9,89,824/- on

20.09.2010. In respect to the Company Splash M (35000), shares were purchased on 16.06.2009 at Rs.1,79,327/- and was sold at Rs.13,56,029/- on 21.03.2011. It is also seen that in respect to Company Splash M (35000) shares, Splash M (35000) shares and Splash M (35000) shares, all such shares were purchased on 24.12.2009 at zero purchase cost and were sold at Rs.12,67,288/- on 22.03.2011, at Rs.12,29,542/- on 23.03.2011 and at Rs.11,98,471/- on 28.03.2011 respectively thereby earning a long term capital gain of Rs.57,51,915/-. Now coming to the reasons so assigned, it has been stated that the assessee sold shares (penny stocks) as identified by SEBI and Investigation Wing, Kolkata during FY 2010-11 totaling to Rs.37,21,973/- but as per the return filed for assessment year 2011-12 relating to Financial Year 2010-11, no income/loss in respect to sale of shares were disclosed. It is on the basis of such information received from the ITD - Penny Stock which formed the reasons for the Assessing Officer to believe that the income had escaped from assessment.

70. From the reasons so recorded as above noted and reading conjointly with the computation of income with the detail so given in the reasons for issuance of notice under Section 148 of the Act of 1961, it cannot be said that there was no existence of reasons to believe that the income had escaped assessment. Further to that, the reasons so assigned were neither vague nor indefinite. The reasons had a live link for the formation of the requisite belief. This Court during the course of hearing was also given the same reply on the inquiry made with the learned counsel for the Petitioner as to how certain shares were shown in the computation of the income as purchased at nil value whereas were sold at certain amounts. Under such circumstances also this Court is of the opinion that there existed reasons to

believe for reopening of the assessment.

WP(C)/5535/2016

71. A perusal of the return so submitted by the Petitioner on 07.02.2014 for the assessment year 2013-14 revealed that in the computation of income, an amount of Rs.16,97,115/- was shown as exempted under Section 10(38) of the Act of 1961. In the said computation, it was shown that there was purchase of shares of a company namely CCL Inter (7500) on 29.01.2011 at a purchase cost of Rs.30,000/- and the same was sold on 13.09.2012 at Rs.9,97,500/-. Again shares were purchased by the said company i.e. CCL Inter (5000) on 29.01.2011 at Rs.20,000/- and was sold on 09.10.2012 at Rs.7,57,750/- thereby the total capital gains out of the sale of shares was Rs.16,97,115/- which was exempted under Section 10(38). In the reasons which were communicated to the Petitioner on 11.07.2016, it was mentioned that as per the information extracted from the ITD Application, the assessee (the petitioner herein) had made bogus long term capital gain/short term capital loss by way of transaction made through penny stock amounting to Rs.17,55,360/- during the financial year 2012-13. It was mentioned in the investigation conducted by the Investigation Directorate of Income Tax Department that the trading in the said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion. This Court also finds it relevant to take note of the reasons for opening as have been already quoted hereinabove. Apart from what has been said, it was also mentioned that the source of the fund for purchase of the shares for which the capital gain was raised was from the Petitioner's sources which was not declared in the return of income, for

which it was opined that the assessee had undeclared income in the return furnished which has escaped assessment. It was also mentioned that the income of the assessee from long term capital gain was not shown as income and the source for purchase of the said script for the assessment year 2013-14 was also not shown in the return of income for which the income has escaped assessment. From the above reasons which were furnished to the Petitioner as well as the satisfaction note which have been quoted hereinabove, the computation of income so filed by the Petitioner for the assessment year 2013-14 in the opinion of this Court cannot be said that there was no existence of reasons for formation of the belief for initiating of proceedings under Section 147 of the Act of 1961. Further to that, the reasons so assigned were neither vague nor indefinite. The reasons had a live link for the formation of the requisite belief.

WP(C)/5536/2016

72. A perusal of the return so submitted by the Petitioner on 07.02.2014 for the assessment year 2013-14 revealed that in the computation of income, an amount of Rs.17,97,975/- was shown as exempted under Section 10(38) of the Act of 1961. In the said computation, it was shown that there was purchase of shares of a company namely CCL Inter (6000) on 28.02.2011 at a purchase cost of Rs.24,000/- and the same was sold on 27.09.2012 at Rs.8,70,000/-. Again shares were purchased of the said company i.e. CCL Inter (4500) and CCL Inter (2000) both on 28.02.2011 at Rs.18,000/- and Rs.8,000/- respectively. The said shares i.e. CCL Inter (4500) were sold on 09.10.2012 at Rs.6,81,975/- and CCL Inter (2000) was sold on 11.12.2012 at Rs.2,96,000/- thereby the total capital gains out of the

sale of shares was Rs.17,97,975/- which was exempted under Section 10(38) of the Act of 1961. In the reasons which were communicated to the Petitioner on 11.07.2016, it was mentioned that as per the information extracted from the ITD Application, the assessee (the Petitioner herein) had made bogus long term capital gain/short term capital loss by way of transaction made through penny stock amounting to Rs.17,56,820/- during the financial year 2012-13. It was mentioned that the investigation conducted by the Investigation Directorate of Income Tax Department that the trading in the said penny stock was manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion. This Court also finds it relevant to take note of the reasons for opening as have been already quoted hereinabove. Apart from what has been said, it was also mentioned that the source of the fund for purchase of the shares as mentioned for which the capital gain was raised was from the Petitioner's sources which was not declared in the return of income, for which it was opined that the assessee had undeclared income in the return furnished, which has escaped assessment. It was also mentioned that the income of the assessee from long term capital gain was not shown as income and the source for purchase of the said script for the assessment year 2013-14 was also not shown in the return of income for which the income has escaped assessment. From the above reasons which were furnished to the Petitioner as well as the satisfaction note which have been quoted hereinabove, the computation of income so filed by the Petitioner for the assessment year 2013-14, in the opinion of this Court, it cannot be said that there was no existence of reasons for formation of the believe for initiating of proceedings under Section 147 of the Act of 1961. Further to that, the reasons so assigned

were neither vague nor distant. The reasons had a live link for the formation of the requisite belief.

ISSUE B :-

73. The Issue-B pertains to the question of non-compliance to Section 151 of the Act of 1961. Surprisingly, in none of the writ petitions such plea was taken. It is only during the course of the hearing that the said submission was made which led this Court to call for the records to see as regards the compliance to Section 151 of the Act of 1961. From the record so produced pertaining to the Petitioners in WP(C) No.5535/2016 and WP(C) No.5536/2016, it is apparent that there is effective compliance. In respect to the writ petitioner in WP(C) No.5437/2016, no records have been produced on the grounds that the same could not be traced. However, Mr. S. C. Keyal, the learned Standing counsel for the Income Tax Department submitted on instructions that due permission was taken from the Joint Commissioner, Income Tax, Range by making an online request for approval. He further submitted that on 30.03.2016, the said approval was granted and the notice under Section 148 was generated in system and issued. In respect to WP(C) No.5530/2016, the records are available wherein also it is seen that the Assessing Officer had made an online request for approval of the JCIT Range on 30.03.2016 and on the very date, the approval was granted and the notice under Section 148 of the Act of 1961 was generated in system and issued.

74. A perusal of the writ petition i.e. WP(C) No.5437/2016 shows that the reasons for issuance of notice for the reopening of assessment were furnished to the Petitioner and the Petitioner duly admits that the said

document was a certified copy. Now the question arises as to whether this Court should at all entertain the plea of non-compliance with Section 151 of the Act of 1961 when such plea was never raised in any of the writ petitions before this Court though the writ petitions were pending since 2016. The plea of non-compliance of Section 151 of the Act of 1961 is plea challenging the very reassessment proceedings and in the opinion of this Court, the said plea had to raise specifically in the pleadings else entertaining such plea on oral submissions would violate the principles of natural justice. In this regard, this Court finds it relevant to refer to a judgment of the Supreme Court in the case of ***S.S. Sharma and Others Vs. Union of India and Others*** *reported in* ***(1981) 1 SCC 397*** wherein the Supreme Court observed that the Court should ordinarily insist on the parties being confined to their specific written pleadings and should not permit deviation from them by way of modification or supplementation except through the well known process of formally applying for amendment. It was further observed that if undue laxity and a too easy informality is permitted to enter the proceedings of a Court, it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. It was categorically observed that oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity to which the principles of natural justice hold it entitled of adequately preparing its response. Paragraph No.6 of the said judgment being relevant is quoted hereinbelow:

> "*6. Shri Raghubir Malhotra, appearing on behalf of the petitioners, opened with the contention that the reservation of vacancies for members of the Scheduled Castes and Scheduled Tribes by the Office Memorandum dated July 20, 1974 was*

invalid. It was urged that the office memorandum possessed at best the status of departmental instructions and could not amend the Central Secretariat Service Rules. It is not, it was said, a case of administrative instructions filling any gap or area left uncovered by that body of rules but, on the contrary, it is a case where administrative instructions have been made inconsistently with the Rules. At the outset an objection was taken by the respondents to our entertaining the contention because, they point out, it is not a contention raised in the writ petitions and should not be allowed to be raised for the first time by way of oral submission in the course of arguments during the final hearing of the writ petitions. It is not denied by learned counsel for the petitioners that the point has not been specifically and clearly raised in the writ petitions, but he asks us to consider it by reason of what he describes as "its fundamental importance", We have carefully perused the writ petitions, and it is plain that the entire scope of the petitions is limited to challenging the validity and application of the Central Secretariat Service (Amendment) Rules, 1979 and the consequent Regulations for holding a limited departmental competitive examination. No relief has been sought for quashing the Office Memorandum dated July 20, 1974. No ground has been taken in the writ petitions assailing the validity of the office memorandum on the basis now pressed before us. We are of opinion that the courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails, Besides this, oral submissions raising new points for the first time tend to

do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response."

75. In view of the above settled propositions and the facts that the Petitioners in all the writ petition including WP(C) No.5437/2016 have not taken the plea of non-compliance to Section 151 of the Act of 1961, the same cannot be allowed to be raised by way of an oral submissions.

76. However, this Court finds it relevant to observe as regards WP(C) No.5437/2016 with utter surprise and anguish, the conduct of the Income Tax Department and more particularly the Assessing Officer as to how the records of the said reassessment proceedings could be lost/not traced that too when the records of the Petitioner in WP(C) No.5530/2016 which were contemporaneously pursued and kept by the same Assessing Officer. It is the opinion of this Court that such callous attitude on the part of the Assessing Authority in maintaining the records should be strictly viewed by the Department and more particularly by the Central Board of Direct Taxation. Be that as it may, if the records are not available pertaining to the Petitioner in WP(C) No.5437/2016, it is not known as to how any reassessment proceedings initiated against the said Petitioner in WP(C) No.5437/2016 can be brought to a logical conclusion.

Further to that, in WP(C) No.5530/2016, the material on record suggests that the online request was made to the Joint Commissioner of Income Tax and the said was duly approved. This Court is not inclined to disbelieve the said materials on record on the basis of just oral submissions that too when such plea have not been taken.

As regards WP(C) No.5535/2016 and WP(C) No.5536/2016, the said issue of non-compliance does not arise.

ISSUE C :-

77. The contention in respect to Issue No.(C) have been permitted to be raised by this Court even without pleadings on the ground that the Petitioners in WP(C) No. 5535/2016 and WP(C) No. 5536/2016 were furnished reasons on 11.07.2016 and the said Petitioners bonafidely believed that those were the reasons for which the Assessing Officer reopened the assessment. It was only when the records were produced on 18.11.2023 and the satisfaction note being perused, it revealed that only the relevant portion of the satisfaction note was furnished to the said Petitioners.

78. The analysis so made in respect to Issue No.(C) in the foregoing paragraphs of the instant judgment makes it therefore clear that the non-furnishing of the entire satisfaction note to the writ petitioners in WP(C) No.5535/2016 and WP(C) No.5536/2016 would not invalidate the reassessment proceedings. However, it is the opinion of this Court that the said Petitioners would have a right to file objections on the reasons so assigned in the said satisfaction note which have been quoted in the instant judgment as regards the sufficiency of the reasons for formation of the belief.

79. In view of the above, the four writ petitions stands disposed of with the following observations and directions:

(i) In respect to WP(C) No.5437/2016, the records were not produced on the ground that it has been lost/could not be traced. The reasons so

assigned for reopening of the assessment as contained in the certified copy enclosed to the writ petition shows that there existed reasons to believe on tangible materials that the income of the Petitioner had escaped assessment and as such as the instant writ petition was only filed taking the plea that there existed no reasons for the formation of the belief, this Court is not inclined to quash the impugned notices as well as the reasons for issuance of the notice under Section 148 of the Act of 1961 on the ground that the records were not produced.

(ii) The initiation of the reassessment proceedings against the Petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 is not interfered with as the respective Assessing Officer had reasons to believe on the basis of tangible materials that the income of the Petitioners had escaped assessment for the relevant assessment year. Under such circumstances, this Court is not inclined to quash the impugned notices as well as the reasons for issuance of the impugned notice under Section 148 of the Act of 1961.

(iii) The plea of non-compliance to Section 151 which touches on the exercise of the jurisdiction to reopen assessment cannot be allowed to be raised on the basis of oral submissions without there being foundational pleadings. Even otherwise, from the records so produced pertaining to the Petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 shows that the approval was taken from the Joint Commissioner of Income Tax prior to issuance of notice under Section 148 of the Act of 1961.

(iv) The reassessment records in respect to the Petitioner in WP(C)

No.5437/2016 having been lost/not traceable is a very serious issue. This Court directs the Income Tax Department as well as the Central Board of Direct Taxes to make necessary inquiry as to how the records of the Petitioner in WP(C) No.5437/2016 was not traceable or lost and thereupon initiate appropriate action against the erring officials.

(v) Taking into account that the Petitioners herein have a right to object to the sufficiency of the reasons which led to the formation of the belief for reopening of the assessment as held by the Supreme Court in the case ***GKN Driveshafts (India) Ltd.***, this Court grants liberty to the Petitioners herein to submit their respective objections within 30 days from the date of the instant judgment objecting to the sufficiency of the reasons for formation of the belief that the income had escaped assessment for the assessment year in question and if such objections are filed, the Assessing Officer shall dispose of the same by passing a speaking order. Depending upon the said decision of the Assessing Officer, the reassessment proceedings shall be carried out.

(vi) It is further made clear that the speaking order as directed to be passed hereinabove provided objections are filed, would be in relation to the sufficiency of the reasons for formation of the belief. Therefore, the same can only be challenged, if so aggrieved, pursuant to the order of assessment/reassessment in an appeal provided under the statute.

80. With above observations and directions, the instant batch of writ petitions stands disposed of.

81. The records in respect to the Petitioners in WP(C) No.5530/2016, WP(C) No.5535/2016 and WP(C) No.5536/2016 which were produced are

hereby returned.

82. All the interim orders are vacated in view of the judgment passed herein.

JUDGE

Comparing Assistant