2026 INSC 1163

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13953 OF 2026

(Arising out of Special Leave Petition (C) No. 20045 of 2019)

CHETAN SABHARWAL **...APPELLANT**

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 28(1) NEW DELHI **...RESPONDENT**

WITH

CIVIL APPEAL NO. 13954 OF 2026
(@SLP(C) No. 20535/2019)

CIVIL APPEAL NO. 13955 OF 2026
(@SLP(C) No. 21295/2019)

CIVIL APPEAL NO. 13956 OF 2026
(@SLP(C) No. 21242/2019)

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

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(I). WHETHER THE IMPUGNED NOTICE DATED 31.03.2015 REOPENING OF ASSESSMENTS OF THE APPELLANTS FOR THE AY 2008-09 AND AY 2009-10 SATISFIES THE ANVIL OF *"REASON TO BELIEVE"* UNDER SECTIONS 147-148 OF THE ACT AND, THUS, IS VALID? 12

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1. Leave granted.

2. These connected appeals arise from the self same judgment and order dated 06.08.2019 passed by the High Court of Delhi in Writ Petition (C) No. 10898 of 2015 preferred by the appellant herein, by which the High Court dismissed the said writ petition and thereby upheld the reassessment proceedings initiated by the respondent-revenue under Sections 147 and 148 of the Income Tax Act, 1961 respectively (hereinafter referred to as "**the Act**") in the case of the appellants for AY 2008-09 and AY 2009-10, respectively.

A. FACTUAL MATRIX

3. Mr. Chetan Sabharwal, the appellant-assessee herein, along with his brother – Mr. Nitin Sabharwal, the appellant-assessee in the connected matters, and two other shareholders, entered into two Share Purchase Agreements dated 19.10.2007 ("**SPA**") with GYS Real Estate Pvt. Ltd/ ("**Buyer Company**") for sale of 7.5 Lakh equity shares of one Pawan Impex (P.) Ltd. ("**Company No. 1**") and of 2.5 Lakh equity shares of another SVIIT Software (P.) Ltd. ("**Company No. 2**") held by each of the parties for a total sale consideration of Rs. 195 Crore and Rs. 60 Crore, respectively. The appellant and other selling shareholders were each entitled to 1/4th share of this total consideration. With respect to the company nos. 1 and 2, an amount of Rs. 110 Crore and Rs. 22.5 Crore, respectively, was received as advance during FY 2007-08/AY 2008-09 out of the sale consideration of Rs. 195 Crore and Rs. 60 Crore, respectively. The appellant's 1/4th share in this advance consideration amounted to Rs. 27.5 Crore and 5.62 Crore, respectively. Further, the buyer company made an additional payment of Rs. 18 Crore with respect to the sale of the company no. 2's share. The appellant's 1/4th share

in this additional payment amounted to Rs. 4.5 Crore. Therefore, the total of the 1/4th share of the appellant in advance consideration and additional payment aggregated to an amount of Rs. 37.64 Crore.

4. On 25.09.2008, the appellant filed his ITR for AY 2008-09, declaring a loss of Rs. 90.37 Lakh, which was accompanied by the computation of total income along with the tax audit report. In the return in Form ITR 4, particulars of the tax audit report obtained had been filed, and therein a sum of Rs. 37.64 Crore has been shown under the head sundry credit, which included the amount of liability in the name of the buyer company aggregating to a tune of Rs. 37.62 Crore.

5. As per the terms embodied in Article 1 read with Article 4 of the SPA, the 'Closing' of sale of equity shares of company nos. 1 and 2 respectively in favour of the buyer company had to take place subject to fulfilment of the conditions as stated in Article 4. At the time of Closing, the total consideration of Rs. 195 Crore payable for the shares of company no. 1 was reduced by Rs. 63.79 Crore, being the amount of unsecured loan standing in the books of the company, and by Rs. 3 Crore, being the estimated cost of construction of building as per the SPA, and the buyer company accordingly paid a net sale consideration of Rs. 128,20,66,501, of which the appellant's 1/4th share was Rs. 32,05,16,625. Similarly, with respect to company no. 2, the total consideration of Rs. 60 Crore was reduced by Rs. 18.99 Crore, being the amount of unsecured loan standing in the books of the company, and by Rs. 60 Lakh, being the estimated cost of construction of building as per the SPA, and the buyer company accordingly paid a net sale

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consideration of Rs. 40,40,84,770, of which the appellant's 1/4th share was Rs. 10,10,21,192.

6. On 17.11.2008, the shares of company no. 1 were dematerialised upon the request of the buyer company dated 19.11.2008, and were transferred to Religare Securities Ltd. (Depositary under NSDL), an associate company/concern of the Religare Group. On 25.09.2009, the appellant deposited amounts of Rs. 28 Crore and Rs. 3.915 Crore, respectively, in the Capital Gain Savings Bank Account No. 307802090000006 with the Union Bank of India, in accordance with Section 54F(4) of the Act.

7. On 21.04.2010, the two appellants jointly purchased an undivided and undefined 1/2 share in a residential property located in Delhi for an aggregate consideration of Rs. 61 Crore. The said property was purchased out of the capital gains arising in the hands of the appellant and his brother from the sale of shares of company no. 1 and company no. 2, respectively, within a period of 2 years, thereby entitling the appellant to the benefit of Section 54F of the Act.

8. On 06.08.2010, the respondent issued a notice under Section 142(1) of the Act, seeking an explanation on the nature of the transaction with the buyer company amounting to Rs. 37.62 Crore, and the production of the return documents of the buyer company for the last 5 years, among other details. In response to the queries raised by the respondent, the appellant submitted the requisite details along with supporting documents on 05.10.2010.

9. Thereafter, on 13.12.2010, the respondent issued notices under Section 133(6) of the Act to company no. 1, company no. 2 and the buyer company, calling for information in relation to the aforementioned transaction of sale of shares by the appellant. On

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16.12.2010, the company no. 1 and company no. 2 filed their reply to the said notice, submitting the documents sought thereunder. Similarly, on 16.12.2010, the buyer company filed its reply to the said notice, submitting the documents sought.

10. On 22.12.2010, the assessment under Section 143(3) of the Act was framed for AY 2008-09, whereby the returned income of the appellant was accepted.

11. Subsequent to the completion of the assessment, the Investigation Unit, Noida, under the DGIT (Inv.), Lucknow, conducted enquiries into the value of the shares of company no. 1 and company no. 2 and prepared a report ("**Investigation Report**"). The report concluded, *prima facie*, that the shares were overvalued when compared with the cost of their land and building, which was much lower than the transaction amounts of Rs. 195 Crore and Rs. 60 Crore, respectively. The enquiries also revealed that the appellants purchased one-half share of property at Sikandara Road, New Delhi in April 2010 through a court auction, and that the major source of this investment was the sale proceeds of the shares of company no. 1 and company no. 2.

12. Thereafter, on perusal of the investigation report and after a gap of 4 years, the respondent issued a notice dated 31.03.2015 under Section 148 of the Act ("**Impugned Notice**") for reassessment in the case of the appellant for AY 2008-09, calling upon the appellant to file his return of income. By letter dated 24.04.2015, the respondent communicated the recorded reasons under Section 148 of the Act for reopening the case of the appellant. On 20.05.2015, the appellant filed legal objections to the initiation of the impugned reassessment proceedings for AY 2008-09.

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13. On 24.09.2015, the respondent passed an order rejecting the legal objections of the appellant for AY 2008-09. Aggrieved by the said rejection of the legal objections against the initiation of reassessment proceedings for AY 2008-09, the appellant filed a writ petition bearing W.P.(C) No. 10898 of 2015 before the High Court. The High Court, by the impugned judgment and order, dismissed the writ petition filed by the appellant, thereby upholding the initiation of reassessment proceedings by the respondent under Section 147 of the Act in the case of the appellant for AY 2008-09.

14. In such circumstances referred to above, the appellant is here before us with the present appeal.

B. <u>SUBMISSIONS ON BEHALF OF THE APPELLANTS</u>

15. Mr. Mukul Rohatgi, the learned senior counsel appearing for the appellant, submitted that, after the expiry of 4 years from the end of the relevant AYs, the respondent issued impugned notice dated 31.03.2015 under Section 148 of the Act, initiating reassessment proceedings in the case of the appellant and his brother for AY 2008-09 and AY 2009-10, and that identical reasons to believe were recorded by the respondent under Section 148(2) of the Act in the case of both of them for both the years. He further submitted that it is trite law that the initiation of reassessment proceedings under Sections 147 and 148 of the Act, respectively, is required to be tested on the reasons to believe as they stand recorded by the respondent.

16. The learned senior counsel argued that there is an absence of valid *"reasons to believe"* demonstrating escapement of income in the present case. He submitted that, on a bare perusal of the reasons

recorded for the said notice, the reasons recorded by the respondent for alleging escapement of income in the hands of the appellant and his brother are legally unsustainable inasmuch as:

(a) The sole basis for reopening is the alleged overvaluation of shares sold by the appellant, which cannot result in escapement of income in the hands of the seller, and no doubt ever came to be raised on the genuineness of the sale, thereby showing non-application of mind to the jurisdictional condition of escapement of income;

(b) For AY 2008-09, there can be no escapement of income on the sale of shares of company no. 1 and company no. 2, as the transfer was complete only in AY 2009-10, upon fulfilment of the conditions under Article 4 of the SPAs and delivery of share certificates with transfer deed and/or transfer through Demat Account;

(c) For AY 2009-10, the Long Term Capital Gains ("**LTCG**") on the transfer was duly disclosed and offered to tax in the ITRs filed by the appellant and his brother;

(d) The transaction was independently enquired into by the respondent and confirmed by the said companies and the buyer company in the scrutiny assessment under Section 143(3) of the Act for both AYs. The reassessment of the buyer company on the same transaction also ended in acceptance of its returned income;

(e) The alleged colourable deferment of LTCG and the resultant claim under Section 54F, raised in the order disposing of the objections, formed no part of the reasons recorded, and amount to an improvement upon the same.

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17. The learned senior counsel further submitted that, in terms of the Proviso 1 to Section 147 of the Act, reassessment beyond 4 years from the end of the relevant AY, where an assessment has been completed under Section 143(3), is permissible only if income has escaped assessment by reason of the failure of the assessee to disclose fully and truly all material facts necessary for assessment, and that in the absence of such failure during the earlier scrutiny proceedings, reassessment initiated after the said period is illegal. Reliance was placed on various decisions to fortify the submission that the respondent must come into possession of some fresh tangible information relating to a concluded assessment which exposes the falsity of the statement made by the assessee at the time of the original assessment.

18. It was submitted that, in the case of the appellant, the transaction of sale of shares of company no. 1 and company no. 2, respectively, to the buyer company was fully disclosed in the accounts and the ITRs, and was thoroughly examined, and that all information and evidence was duly furnished for AY 2008-09 and AY 2009-10 respectively. He pointed out that at no stage has any failure on the part of the appellant to disclose the primary facts been alleged or made out. In this background, it was argued that since such failure to disclose is a jurisdictional precondition under the Proviso 1 to Section 147 of the Act, its absence renders the reassessment initiated beyond 4 years from the end of the relevant AY without jurisdiction.

19. The learned senior counsel further submitted that the reassessment could be said to have been initiated on a mere change of opinion, without any allegation, let alone evidence, of a failure on the part of the appellant to disclose the primary facts. It was

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submitted that, in the case of the appellant, the record clearly demonstrates that the transaction of sale of shares of company no. 1 and company no. 2 to the buyer company was specifically and thoroughly examined, and that it was only thereafter that the respondent found merit in the explanation offered by the appellant and accepted the returned income without drawing any adverse inference. He submitted that the mere fact that such opinion formed by the respondent in favour of the appellant did not find specific mention in the body of the assessment order does not, in any way, dilute the formation of the opinion itself.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. Ms. Nisha Bagchi, the learned senior counsel, along with Mr. K.M. Nataraj, the learned ASG, appearing for the respondent-revenue, submitted that the investigation report, which was made available to the respondent by the Investigation Unit, Noida, subsequent to the completion of the assessments, pointed out the overvaluation of the shares and constituted specific, reliable and tangible information sufficient to form a reason to believe that income had escaped assessment. The said investigation report concludes as follows:

> *"It can be prima facie concluded that the value of shares are overvalued to the extent of ₹109,80,00,000/– (In the case of M/S Pawan Impex Limited) and ₹40,40,28,000/– (in the case of SVIIT Software Private Limited) going by the cost of land and Building, which is much lower than the transaction amount of ₹195,00,00,000/– in the case of M/S Pawan Impex Private Limited plus ₹60,00,00,000/– in the case of SVIIT Software Private Limited"*

21. It was further submitted on behalf of the respondent-revenue that as per the settled law, whether the facts stated in the letter are true

or not is not the concern at this stage, as the truth of the allegations may be established after making the necessary enquiries, and that, at the stage of issuance of the notice, the only question is whether there was credible material on which a reasonable person could have formed the requisite belief. On these parameters, it was contended that the notices have been validly issued on a reason to believe formed on the basis of tangible material, and that the respondent has duly recorded reasons which have a live nexus to the notice. After perusing the letter dated 15.10.2015, the other correspondence in this regard and the report of the Investigation Unit, the respondent believed that the shares had been overvalued, that the capital gains were adjusted in future years and that deductions were also claimed under Section 54F of the Act. The AO had recorded that *"with respect to the share transactions, the capital gain earned, and deduction on the same claimed. I have the reasons to believe that substantial amount has escaped assessment during the assessment years 2008–09 and 2009–10*".

22. In respect of the assessee - Mr. Chetan Sabharwal, the respondent-revenue submitted that the original assessment orders for both AYs passed under Section 143(3) of the Act do not indicate that the respondent formed any opinion on the issue on which reopening has been ordered, and that the record indicates that the issue of overvaluation of shares was not considered during the scrutiny assessment. It was contended that, the order under Section 143(3) of the Act being a non-speaking order, no opinion can be attributed to the respondent on the issues sought to be raised in the proposed reassessment proceedings. As regards the requirement under the proviso to Section 147 of the Act that the under-assessment must have occurred by reason of, *inter alia*, the failure of the assessee to disclose fully and truly all material facts necessary for his

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assessment, it was submitted that the same essentially involves questions of fact, which stand relegated to the adjudicating authority. The Act postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. It was further submitted that the Assistant Commissioner of Income Tax, while disposing of the objections against reassessment by his order dated 24.09.2011, specifically recorded that the DDIT (Investigation), Noida, had clearly mentioned that the mechanism through which the net worth of the shares was calculated, and the due diligence report of the shares, were not provided despite the assessee being repeatedly asked to do so.

23. In respect of the assessee - Mr. Nitin Sabharwal, it was further submitted on behalf of the respondent-revenue that only an intimation under Section 143(1) of the Act was issued accepting his returns, and that the notice was issued within the time prescribed under Section 149(1)(b) of the Act on the basis of a valid reason to believe. It was contended that the contentions relating to change of opinion or failure to make full disclosure are not relevant to the reassessment proceedings in his case. It was further submitted that the only criteria for assessing income under Section 147 of the Act are the existence of a valid reason recorded by the respondent and the satisfaction of the jurisdictional Principal Commissioner, both of which stand satisfied on the facts of the present assessment.

D. ISSUES FOR DETERMINATION

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the sole question that falls for our consideration is whether the impugned notice dated 31.03.2015 seeking to reopen the assessments of the appellants for

the AY 2008-09 and AY 2009-10, respectively, satisfies the anvil of *"reason to believe"* under Section 147-148 of the Act and, thus, is valid?

E. ANALYSIS

(I). Whether the impugned notice dated 31.03.2015 reopening of assessments of the appellants for the AY 2008-09 and AY 2009-10 satisfies the anvil of *"reason to believe"* under Section 147-148 of the Act and, thus, is valid?

25. Before dealing with the rival submissions canvassed on either side, a bare reading of Sections 147-148 of the Act, respectively, that deal with reopening of the assessment must be undertaken.

26. Section 147 of the Act, as it stood on 31.03.2015, reads as follows:

> *"**Section 147. Income escaping assessment.—** If the Assessing Officer, has **reason to believe** that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, **assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently** in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*
>
> *Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to*

disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

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

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

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

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

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

Explanation 3.—For the purpose of assessment or 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."

(Emphasis Supplied)

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27. Section 148 of the Act, as it stood on 31.03.2015, reads as follows:

> *"**Section 148. Issue of notice where income has escaped assessment.—** (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer **shall serve on the assessee a notice requiring him to furnish within such period**, as may be specified in the notice, **a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year**, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*
>
> *Provided that in a case—*
>
> *(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and*
>
> *(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:*
>
> *Provided further that in a case—*
>
> *(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and*
>
> *(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub- section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.*

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> *Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.*
>
> *(2) The Assessing Officer shall, before issuing any notice under this section, **record his reasons** for doing so."*
>
> (Emphasis Supplied)

28. A conjoint reading of Sections 147 and 148 of the Act respectively makes it clear that the power to reopen an assessment is not unfettered and is hedged with conditions, the first being that the AO must have reason to believe that income chargeable to tax has escaped assessment, which is the jurisdictional foundation for assuming the power to reassess. Once this threshold is met, the AO is also empowered to bring to tax any other escaped income that comes to his notice in the course of the reassessment proceedings, provided the reason or at least one of the reasons, projected for reopening is eventually found to be escaped income. However, where the original assessment has been completed under Section 143(3) of the Act, a further safeguard is introduced by the proviso to Section 147, whereby a notice beyond 4 years from the end of the relevant AY can be sustained only if the escapement of income is attributable to the failure of the assessee to disclose fully and truly all material facts necessary for his assessment, and the existence of such failure thus becomes a condition precedent to the exercise of jurisdiction. Further, the power to reopen an assessment is not confined to cases where the assessee has concealed his income, and extends also to cases where, though there has been no concealment, the respondent has reason to believe, in consequence of tangible material in his possession, that income has escaped assessment. Section 148 then operates as the procedural safeguard, as it requires service of a notice on the

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assessee before the reassessment is undertaken, and, more importantly, mandates that the AO record his reasons before issuing the notice.

29. In the present case, the revenue's stand is that it issued the impugned notice under Section 148 of the Act on the strength of the investigation report submitted by the DGIT Investigation Unit, Noida, which constituted specific and tangible material on the overvaluation of shares. Thus, at the stage of issuing the notice, the only question that would be relevant is whether there was any credible material on which a reasonable person could form the requisite belief, the truth of the allegations being a matter for enquiry in the reassessment proceedings. The assessees' stand is that the reasons recorded for the impugned notice proceed solely on the alleged overvaluation of shares, which cannot result in escapement of income in the hands of the sellers and raises no doubt on the genuineness of the sale, and that the grounds of colourable deferment of LTCG and the claim under Section 54F of the Act, raised later in the order disposing of the objections, are an improvement on the reasons recorded. Further, the transaction having been examined in the scrutiny assessment under Section 143(3) of the Act, the reassessment amounts to a mere change of opinion.

30. In order to determine whether the impugned notice satisfied the test of *"reason to believe"* as required under section 147 of the Act, we have to understand the meaning and scope of the said expression.

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(a) Contours of the expression "reason to believe" under Sections 147 and 148 of the Act.

31. In the case of ***Calcutta Discount Co. Ltd.* v. ITO**, reported in **(1961) 41 ITR 191 (SC)**, the Constitution Bench of this Court observed that the duty of the assessee is to disclose fully and truly all primary relevant facts, and that it does not extend beyond this. It was further observed that, if there were in fact some reasonable grounds for thinking that there had been non-disclosure of any primary fact having a material bearing on the question of under-assessment, that would be sufficient to give the AO jurisdiction to issue the notice, and that the adequacy of such grounds is not open to the court's investigation. It was held that all that is necessary is that the AO had, when he assumed jurisdiction, some *prima facie* grounds or reasons for thinking that there had been some non-disclosure of material facts, and that it is the duty of the assessee who contends that jurisdiction was lacking to establish that the AO had no material at all before him for believing that there had been such non-disclosure. The relevant observations made by this Court are as under:

> *"13. We have therefore come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.*
>
> *14. The position therefore is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary 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 notices under Section 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give*

> *this special jurisdiction is that the Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts.*
>
> *15. Clearly it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income Tax Officer had no material at all before him for believing that there had been such non-disclosure. To establish this the company has relied on the statements in the assessment orders for the three years in question and on the statement of Kanakendra Narayan Banerjee in the report made by him to the Commissioner of Income Tax for the purpose of obtaining sanction to initiate proceedings under Section 34 and also on his statement in the affidavit on oath in reply to the writ petition."*
>
> (Emphasis Supplied)

32. The decision in ***Calcutta Discount*** *(supra)* was later also followed in the case of ***S. Narayannappa v. CIT***, reported in **(1967) 63 ITR 219 (SC)**.

33. In the case of ***Chhugamal Rajpal v. S.P. Chaliha***, reported in **(1971) 1 SCC 453**, the AO had issued a notice under Section 148 of the Act on a report which set out neither the reasons nor the material for his conclusion, and which showed only a vague feeling that the transactions were bogus. This Court held that, before issuing a notice under Section 148 of the Act, the AO must either have reason to believe that income chargeable to tax has escaped assessment by reason of the failure of the assessee to make a return or to disclose fully and truly all material facts necessary for his assessment, or, notwithstanding the absence of such failure, have reason to believe, in consequence of information in his possession, that income chargeable to tax has escaped assessment, and that, unless the requirements of Section 147 are satisfied, the AO has no jurisdiction to issue the notice. It was held that the AO

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had no material satisfying either clause, that a conclusion that a matter requires investigation is not the same as having reasons to issue a notice under Section 148, and that the Commissioner had mechanically accorded permission without recording his own satisfaction. The relevant observations are as under:

> *"5. In his report the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the CIT, Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications "it appears that these persons (alleged creditors) are name lenders and the transactions are bogus". He has not even come to a prima facie conclusion that the transactions to which he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. further his report mentions: "Hence proper investigation regarding these loans is necessary". In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income Tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless*

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the requirements of clause (a) or (b) of Section 147 are satisfied, the Income Tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or (b) of Section 147. Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

(Emphasis Supplied)

34. In the same year, this Court, in the case of ***Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta***, reported in **1972 (3) SCC 234**, observed that the expression *"reason to believe"* requires a belief of an honest and reasonable person based upon reasonable grounds, and that the AO may act

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on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. It was further observed that the AO would act without jurisdiction if the reason for his belief does not exist or is not material or relevant to the belief required by the section, and that, while the Court can always examine this aspect, it cannot investigate the sufficiency of the reasons for the belief. The relevant observations are as under:

> *"10. In our judgment, the law laid down by this Court in the above case is fully applicable to the facts of the present case. There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court."*
>
> (Emphasis Supplied)

35. Thereafter, in the case of ***ITO vs. Lakhmani Mewal Das***, reported in **[1976] 103 ITR 437 (SC)**, this Court observed that the adequacy of the grounds or reasons is not a matter for the Court to investigate, and that the sufficiency of the grounds which induce the AO to act is not a justiciable issue. It was further observed that, while it is open to the assessee to challenge the existence of the belief, the sufficiency of the reasons for the belief cannot be challenged, and that the expression *"reason to believe"* does not mean a purely subjective satisfaction on the part of the AO, as the reason must be held in good faith and cannot be merely a pretence. This Court held that the reasons for the formation of the belief must have a rational connection with or a relevant bearing on the

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formation of the belief, and that rational connection postulates a direct nexus or live link between the material coming to the notice of the AO and the formation of his belief that income has escaped assessment by reason of the failure of the assessee to disclose fully and truly all material facts. It was held that, though the courts cannot go into the sufficiency or adequacy of the material and substitute their own opinion for that of the AO on whether action should be initiated, yet it is not any and every material, however vague, indefinite, distant, remote or far-fetched, which would warrant the formation of the belief relating to escapement of income. Nevertheless, the courts can still examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief, and are not extraneous or irrelevant for the purpose of the section. The relevant observations are as under:

> *"8. […] Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of the grounds which induce the Income-tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that, the Income-tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section […]*
>
> *xxx xxx xxx*
>
> *11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link*

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> *between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment […]"*
>
> (Emphasis Supplied)

36. Similarly, in ***Ganga Saran & Sons (P). Ltd. v. ITO***, reported in **(1981) 130 ITR 1 (SC)**, this Court observed that the words *"has reason to believe"* in Section 147(a) are stronger than the words *"is satisfied"*, and that the belief entertained by the AO must not be arbitrary or irrational, but must be reasonable, that is, based on reasons which are relevant and material. It was held that, while the Court cannot investigate the adequacy or sufficiency of the reasons which weighed with the AO, it can examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief. It was further held that, if there is no rational and intelligible nexus between the reasons and the belief, so that no one properly instructed on facts and law could reasonably entertain the belief, the AO could not have reason to believe that income had escaped assessment, and the notice would be liable to be struck down as invalid. The relevant observations are as under:

> *"6. […] The important words under Section 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be*

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

(Emphasis Supplied)

37. Moreover, in the case of ***Phool Chand Bajrang Lal v. ITO***, reported in **(1993) 4 SCC 77**, this Court held that the AO acquires jurisdiction to reopen an assessment under Section 147(a) read with Section 148 of the Act only if, on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that income has escaped assessment by reason of the failure of the assessee to make a true and full disclosure of all material facts during the concluded assessment proceedings. It was held that the AO may start reassessment either because fresh facts come to light or because information comes into his possession which tends to expose the untruthfulness of the facts previously disclosed, and that, in such situations, it is not a case of mere change of opinion but of acting on fresh information. It was further held that, while the sufficiency of the reasons is not for the Court to judge, the Court may examine whether there was material on record from which the requisite

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belief could be formed, and whether that material had a rational connection or a live link with the formation of the belief. The relevant observations are as under:

> *"25. From a combined review of the judgments of this Court, it follows that an Income Tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and*

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> *therefore income chargeable to tax had escaped assessment […]"*
>
> (Emphasis Supplied)

38. In the case of ***CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.***, reported in **(2008) 14 SCC 208**, this Court held that the word *"reason"* in the phrase *"reason to believe"* means cause or justification, and that the AO need only have cause or justification to know or suppose that income has escaped assessment, without having finally ascertained the fact by legal evidence or conclusion. It was further held that, at the stage of initiation, what is required is a reason to believe and not the established fact of escapement of income, and that, at the stage of issuing the notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief, whether the material would conclusively prove the escapement being no concern at that stage. The relevant observations made by this Court are as under:

> *"19. Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.*
>
> *20. As observed by the Delhi High Court (sic the Supreme Court) in Central Provinces Manganese Ore Co. Ltd. v. ITO3 for initiation of action under Section 147(a) (as the provision*

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> *stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the assessing officer is within the realm of subjective satisfaction"*
>
> (Emphasis Supplied)

39. Further, in ***Income Tax Officer, Ward No. 16(2) v. Techspan India Private Limited and Another***, reported in **2018 (6) SCC 685**, this Court, by placing strong reliance upon the decision in ***CIT* v. *Kelvinator of India Ltd.*,** reported in **(2010) 2 SCC 723**, held that the words *"reason to believe"* in Section 147 of the Act have to be interpreted schematically, as a liberal interpretation would confer arbitrary power on the AO to initiate reassessment proceedings merely on a change of opinion on the same facts and circumstances already considered by him in the original assessment, which could never have been the intention of the legislature. It was held that the provision was incorporated to empower the assessing authorities to reassess income on a ground which was not brought on record in the original proceedings and escaped the knowledge of the AO, and which has a material bearing on the outcome of the assessment order. It was further held that Section 147 of the Act does not permit reassessment merely because the AO takes a different view of the law on facts that were well within his knowledge at the time of the assessment, as doing so would amount to a power of review, whereas Section 147 confers only the power to reassess. The relevant observations made by this Court are as under:

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> *"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.*
>
> (Emphasis Supplied)

40. The issue at hand recently fell for consideration before this Court in ***Sanand Properties (P) Ltd. v. CIT***, reported in **(2026) 488 ITR 337**, wherein one of us, J.B. Pardiwala, J., speaking for the Bench observed that the expression *"reason to believe"* in Section 147 of the Act means cause or justification, and that the AO need not have finally ascertained the facts to prove the escapement of income. It was held that the validity of the reopening has to be ascertained by

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limiting the enquiry to the reasons recorded under Section 148 of the Act, and that the merits of the reopening cannot be looked into to justify or discredit it. It was further observed that, to decide whether the AO had reason to believe, only the materials which were before him at the time of initiating the proceedings are to be taken into account, and not any further materials which subsequently came to light, and that the AO must have some tangible material in his possession to conclude that income has escaped assessment before assuming jurisdiction under Section 147 of the Act. It was thus held to be settled law that a document not referred to in the reasons recorded cannot be used to justify the validity of the reopening, as the assessee must not be deprived of a fair opportunity to dispute such grounds. The relevant observations made by this Court are as under:

> *"63. The expression "reason to believe" in section 147 of the Income- tax Act means cause or justification and there need not be an established fact of assessment at this stage. The Assessing Officer need not have finally ascertained the facts to prove escapement of income […] The validity of the reopening has to be ascertained by limiting the enquiry to the "reasons recorded" under section 148 only, and the merits of the reopening cannot be looked into to justify or discredit the reopening […] In such a scenario, the reopening would remain valid, irrespective of the outcome arrived at. On the other hand, there can be a scenario where even though the merits indicate that income had escaped assessment, if the Revenue failed to record those reasons under section 148, then the reopening in such a scenario would be invalid since the reopening cannot be justified by other reasons gathered subsequently at the merits stage […]*
>
> *64. To decide whether the Assessing Officer has a "reason to believe" that income chargeable to tax has escaped assessment, it is only those materials which were before the Assessing Officer at the time of initiating proceedings that have to be taken into account, and not any further materials which subsequently came to light in the course of the*

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proceedings under this section. The expression "reason to believe" has been interpreted by this court to mean that the Assessing Officer must have some "tangible material" in his possession to come to the conclusion that there is escapement of income from assessment, before assuming jurisdiction under section 147. In other words, this tangible material must provide him with the reason to believe that the income has escaped assessment […]

xxx xxx xxx

87. Thus, it is settled law that the validity of a reopening must be tested solely on the basis of the reasons recorded at the time of issuing the notice under section 148. A document not referred to in those reasons recorded under section 148 cannot be used to justify the validity of the reopening, as the assessee must not be deprived of a fair opportunity to dispute such grounds. In the present matter, while we exclude the extraneous documents relied upon by the High Court, our inquiry into the reassessment's validity, when tested strictly against the reasons recorded, reveals existence of "tangible material" to form a bona fide belief that income has escaped assessment. Accordingly, Civil Appeal No. 9107 of 2012 stands dismissed."

(Emphasis Supplied)

41. On a conspectus of the decisions discussed above, broadly the following principles emerge for the purpose of construing the meaning and scope of *the* expression *"reason to believe"*:

(i) The word *"reason"* in the phrase *"reason to believe"* means cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said that he has reason to believe that income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion;

(ii) The AO may start reassessment proceedings either because some fresh facts come to light which were not previously

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disclosed, or because some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available, but acting on fresh information. It would be immaterial whether the AO, at the time of making the original assessment, could or could not have found by further enquiry or investigation whether the transaction was genuine or not;

(iii) At the initiation stage, the final outcome of the proceeding is not relevant, and what is required is *"reason to believe"* but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage;

(iv) The words *"reason to believe"* are stronger than the words *"is satisfied"*. Accordingly, the belief entertained by the AO must not be arbitrary or irrational. It must be reasonable, or in other words, based on reasons which are relevant and material, and must be that of an honest and reasonable person based upon reasonable grounds. The expression does not mean a purely subjective satisfaction on the part of the AO. The reason must be held in good faith and cannot be merely a pretence;

(v) The AO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. A vague feeling that the transactions may be bogus does not fulfil the requirement, and the AO must give reasons for issuing a notice under

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Section 148 of the Act and must have some *prima facie* grounds before him for taking action. A conclusion that there is a case for investigating as to the truth of the alleged transactions is not the same thing as saying that there are reasons to issue the notice;

(vi) The reasons for the formation of the belief must have a rational connection with or a relevant bearing on the formation of the belief, and must not be extraneous or irrelevant for the purpose of the section. Rational connection here means that there must be a direct nexus or live link between the material coming to the notice of the AO and the formation of his belief that there has been escapement of the income of the assessee from assessment. It is not any and every material, however vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of income. If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the AO could not have reason to believe that income had escaped assessment;

(vii) Whether the grounds or reasons are adequate or not is not a matter for the court to investigate, and the sufficiency of the grounds which induces the AO to act is not a justiciable issue. The court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the AO on the point as to whether action should be initiated for reopening the assessment;

(viii) However, it is open to the assessee to contend that the AO did not hold the belief, as the existence of the belief can be

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challenged but not the sufficiency of the reasons for the belief. It is open to the assessee to establish that there in fact existed no belief, or that the belief was not at all a *bona fide* one, or was based on vague, irrelevant and non-specific information. To that limited extent, the court can examine whether there was any material available on the record from which the requisite belief could be formed by the AO, and whether that material had any rational connection or a live link for the formation of the requisite belief. It is the duty of the assessee who wants the court to hold that jurisdiction was lacking to establish that the AO had no material at all before him for believing that there had been such non-disclosure;

(ix) To decide whether the AO has a reason to believe that income chargeable to tax has escaped assessment, only those materials which were before the AO at the time of initiating the proceedings are to be taken into account, and not any further materials which subsequently came to light in the course of the proceedings under Section 147 of the Act. A document not referred to in the reasons recorded under Section 148 of the Act cannot be used to justify the validity of the reopening, as the assessee must not be deprived of a fair opportunity to dispute such grounds;

(x) The words *"reason to believe"* have to be interpreted schematically, as a liberal interpretation would confer arbitrary powers on the AO, who may initiate reassessment proceedings merely on his change of opinion on the basis of the same facts and circumstances already considered by him during the original assessment proceedings, which could not be the intention of the legislature. Section 147 of the Act does not allow reassessment merely because the AO has a change

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of opinion with regard to the interpretation of law differently on facts that were well within his knowledge even at the time of assessment, as doing so would give the AO the power of review, whereas Section 147 confers the power to reassess and not the power to review.

(xi) The concept of *"change of opinion"* (which we shall discuss below) is an in-built test to check abuse of power by the AO. There has to be some *"tangible material"* to come to the conclusion that there is escapement of income from assessment, and the reasons must have a live link with the formation of the belief.

(b) <u>In-built test of "change of opinion" and its applicability to the facts of the present case.</u>

42. The revenue's stand on this aspect is that the investigation report, which reached the respondent after the completion of the assessments, constituted fresh and tangible material, and that the order under Section 143(3) of the Act being a non-speaking order, no opinion can be attributed to the respondent on the issues sought to be raised in the reassessment proceedings. It was further contended that, in the case of Mr. Nitin Sabharwal, only an intimation under Section 143(1) of the Act was issued, so that the contentions of change of opinion are not relevant to the proceedings in his case. The appellants-assessees' stand, on the other hand, is that the reassessment has been initiated on a mere change of opinion, as the transaction of sale of shares was fully disclosed in the accounts and the ITRs, and was specifically and thoroughly examined in the scrutiny assessment, including through independent enquiries from company no. 1, company no. 2 and the

buyer company, before the returned income was accepted without any adverse inference. In view of the rival submissions, we must first understand what is meant by the expression *"change of opinion"* and its scope, before examining its applicability to the facts of the present case.

43. The meaning and scope of the expression *"change of opinion"* were explained by this Court in ***Kelvinator of India Ltd.*** *(supra)*, wherein it was held that a mere change of opinion cannot, per se, be a reason to reopen an assessment. This Court observed that, although the power to reopen became wider with effect from 01.04.1989, when only one condition, namely reason to believe that income has escaped assessment, was retained, the widened power cannot be exercised on the basis of a mere change of opinion. The reason was explained by drawing a conceptual difference between the power to review and the power to reassess, the AO having only the latter, and it was held that, if the concept of change of opinion is removed from consideration, a review would take place in the garb of reopening. The concept was thus held to be a built-in check against misuse of the power, so that an AO who has already formed a view on a matter cannot reopen merely because he now takes a different view, and may do so only where there is tangible material having a live link with the formation of the belief. The relevant observations made by this Court are as under:

> *"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 fulfilment 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*

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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 fulfilment 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 […]"

(Emphasis Supplied)

44. Thereafter, in ***Techspan India*** *(supra)*, this Court held that, in order to determine whether a case is one of change of opinion or not, one has to look at its meaning in literal as well as legal terms. This Court observed that the words *"change of opinion"* imply the formulation of an opinion and then a change thereof, and that, in terms of assessment proceedings, it means the formulation of a belief by the AO resulting from what he thinks on a particular question, being a result of understanding, experience and reflection. This Court, relying on ***Kelvinator of India Ltd.*** *(supra)*, further observed that the concept of change of opinion is an in-built test to check abuse of power by the AO, and that the AO has the

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power to reopen an assessment only if there is tangible material to conclude that income has escaped assessment, the reasons having a live link with the formation of the belief. It was further held that, before interfering with the proposed reopening on the ground that it is based only on a change of 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. It was observed that, if the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on the questions raised in the proposed reassessment proceedings, and 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 where the order of assessment does not address itself to the aspect sought to be examined. The relevant observations made by this Court are as under:

> *"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.*
>
> *17. It is well settled and held by this Court in a catena of judgments and it would be sufficient to refer to CIT v. Kelvinator of India Ltd.? wherein this Court has held as under: (SCC p. 725, para 5-7) [...]*
>
> > *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, assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income*

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> *from assessment. Reasons must have a live link with the formation of the belief.*
>
> *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.*
>
> *19. […] a bare perusal of notice dated 9-3-2004 which was issued in the original assessment proceedings under Section 143 makes it clear that the point on which the reassessment proceedings were initiated, was well considered in the original proceedings […] Hence, initiation of the reassessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the assessing officer is of the view that the deduction under Section 10-A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings."*
>
> (Emphasis Supplied)

45. Further, in ***Sanand Properties*** *(supra)*, this Court supported the decision of ***Kelvinator of India Ltd.*** *(supra)* and ***Techspan India*** *(supra)* on the aspect of *"change of opinion"*. This Court observed that, to constitute a change of opinion, there must first be a conscious application of mind and a formation of an opinion during the original assessment proceedings. It was held that a mere reference in the assessment order to an arrangement, derived from

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agreements involving different parties and separate subject matters, cannot be construed as a finding on the income in question. It was further observed that, where the AO's discussion in the original assessment was confined to one agreement, and there was a perceptible lack of any inquiry or adjudication on the specific terms of the other, the plea of change of opinion is legally untenable, as a change of opinion presupposes the existence of a previously formed opinion. This Court thus held that, where no such opinion was formed in the first instance, the revenue is not precluded from reopening the assessment upon the discovery of facts suggesting that income has escaped assessment. The relevant observations made by this Court are as under:

> *"79. […] These are two legally distinct agreements involving different contracting parties and separate subject matters. The mere fact that the assessment order contains a reference to a 35 : 65 sale-proceeds sharing arrangement, derived from two wholly different agreements involving different parties, it cannot be construed as a finding on the income derived from the association of persons. To constitute a "change of opinion", there must first be a conscious application of mind and a formation of an opinion during the original assessment proceedings.*
>
> *80. In the present case, the Assessing Officer's discussion in the assessment order for the assessment year 2007-2008 was confined to the joint venture agreement. There is perceptible lack of any inquiry or adjudication regarding the specific terms of the association of persons agreement, particularly the nature of income under clause 7. In the absence of such an initial inquiry, the plea of "change of opinion" is legally untenable. A change of opinion presupposes the existence of a previously formed opinion. Where no such opinion was formed in the first instance, the Revenue is not precluded from reopening the assessment upon the discovery of facts suggesting that income has escaped assessment. Thus, it can be concluded that since the Revenue had not formed any opinion on the fundamental nature of the income accrued to the SPPL from the association*

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of persons as to whether it is a share of profit or revenue, the Revenue retains the authority to reassess the income upon coming across information which prima facie indicates that the income is tax-liable revenue and not tax-exempt profit."

(Emphasis Supplied)

46. On a conjoint reading of the aforesaid decisions, the following principles emerge on the expression *"change of opinion"* in the context of Section 147 of the Act:

(i) A mere change of opinion cannot, *per se*, be a reason to reopen an assessment, as the AO has the power to reassess and not the power to review. The concept is an in-built test to check abuse of power, and after 01.04.1989 the AO may reopen only if there is tangible material, with the reasons having a live link with the formation of the belief;

(ii) A change of opinion implies the formulation of an opinion and then a change thereof. It presupposes a conscious application of mind and the formation of an opinion during the original assessment proceedings;

(iii) The court must verify whether the earlier assessment has, either expressly or by necessary implication, expressed an opinion on the matter which is the basis of the alleged escapement of income;

(iv) If the assessment order is non-speaking, cryptic or perfunctory, it may be difficult to attribute any opinion to the AO, and every attempt to tax escaped income cannot be absorbed by judicial intervention on an assumed change of opinion. Where there is a perceptible lack of any inquiry on the specific aspect, the plea of change of opinion is legally untenable;

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(v) Where no opinion was formed in the first instance, the revenue may reopen upon the discovery of facts suggesting that income has escaped assessment. But where the point was well considered in the original proceedings, reassessment merely because the AO now takes a different view on the same facts is a change of opinion.

(c) Applying the principles of law enunciated above to the facts of the present case.

47. Now, adverting to the facts of the present case, it has emerged that the appellant, along with his brother and two other shareholders, entered into SPAs dated 19.10.2007 with the buyer company for the sale of shares of company no. 1 and company no. 2 for a total consideration of Rs. 195 Crore and Rs. 60 Crore, respectively, the appellant being entitled to a 1/4th share. On 25.09.2008, the appellant filed his ITR for AY 2008-09, declaring a loss of Rs. 90.37 Lakh, accompanied by the computation of total income and the tax audit report, wherein the sum of Rs. 37.64 Crore received as advance and additional payment was shown under the head sundry credit. At the time of Closing, the consideration was reduced by the unsecured loans standing in the books of the two companies and the estimated cost of construction of building, and the buyer company paid a net sale consideration of Rs. 128,20,66,501 and Rs. 40,40,84,770, of which the appellant's 1/4th share was Rs. 32,05,16,625 and Rs. 10,10,21,192, respectively. On 25.09.2009, the appellant deposited Rs. 28 Crore and Rs. 3.915 Crore respectively in the Capital Gain Savings Bank Account with the Union Bank of India under Section 54F(4) of the Act, and on 21.04.2010, the appellant and his brother jointly purchased an

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undivided 1/2 share in a residential property in Delhi, claiming the benefit of Section 54F of the Act. In the original assessment proceedings, the revenue had issued a notice dated 06.08.2010 under Section 142(1) of the Act, seeking an explanation on the nature of the transaction with the buyer company amounting to Rs. 37.62 Crore and the production of the return documents of the buyer company for the last 5 years, among other details, to which the appellant replied with supporting documents on 05.10.2010.

48. Thereafter, on 13.12.2010, the respondent issued notices under Section 133(6) of the Act to the company no. 1, company no. 2 and the buyer company, respectively who filed their replies on 16.12.2010, and on 22.12.2010 respectively. The assessment under Section 143(3) of the Act was framed, accepting the returned income of the appellant. Subsequent to the completion of the assessment, the Investigation Unit, Noida, under the DGIT (Inv.), Lucknow, conducted enquiries and prepared a report, which concluded, *prima facie*, that the value of the shares of company no. 1 and company no. 2, respectively, was overvalued, going by the cost of land and building, which was much lower than the transaction amounts of Rs. 195 Crore and Rs. 60 Crore respectively. On 30.03.2015, the respondent sent the impugned notice with recorded reasons for reopening assessment. The relevant extract from the recorded reasons are as under:

> *"The letter DG/LKO/D/44/Vol.204/2011-12 dated 15-10-2015 (sic) from the O/o DGIT (Inv.), Lucknow to The Deputy Secretary (Inv. IV) and other correspondence in this regard mentions that the enquiries conducted by the Investigation Unit, Naida revealed that Shri Chetan Sabharwal (PAN-AATPS3048P) and his brother, Shri Nitin Sabharwal (PAN-ABKPS7284D) jointly purchased one half share of property No. 7, Sikandara Road, New Delhi in April 2010. The total*

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consideration for purchase of this property incurred by these two persons was Rs. 64,69,25,000/-. The property was purchased through auction made at the directions of the Delhi High Court. Enquiries revealed that the major source of investment has come from sale proceeds of shares of M/s Pawan Impex Pvt. Ltd. and M/s SVIIT Software Pvt. Ltd. Shares of M/s Pawan Impex Pvt. Ltd. and M/s SVIIT Software Pvt. Ltd. were sold by Shri Chetan Sabharwal and Shri Nitin Sabharwal to M/s GYS Real Estate Pvt. Ltd. [a Fortis Group Company]. The shares were sold through Share Purchase Agreement dated 19-10-2007. Enquiries conducted revealed that a total consideration of Rs. 195 crores was to be paid by M/s GYS Real Estate Pvt. Ltd. to the shareholders of M/s Paawan Impex Pvt. Ltd.

Similarly, share purchase agreement was signed in the case of SVIIT Software Pvt. Ltd. Total sale consideration of Rs. 60 crores was determined. The total long term capital gain derived by Shri Chetan Sabharwal was worked out to Rs. 40,38,40, 170/- out of which a sum of Rs. 31,91,50,000/- was deposited in the Capital Gains Saving Bank Ale before 30th September 2009 and the deduction u/s 54F of the Income-Tax Act, 1961 was claimed. Similarly, Shri Nitin Sabharwal has shown capital gains of Rs. 40,40,84,770/- out of which Rs. 35,80,97,629/- was deposited in the Capital Gains Saving Bank Ale before 30th September 2009 and the deduction u/s 54F of the Income Tax Act, 1961 was claimed. Shri Chetan Sabharwal and Shri Nitin Sabharwal have also purchased 1/4th share each in the Property No. 7, Sikandara Road, New Delhi vide sale deed dated 21.04.2010 for Rs. 9,33,69,928/- each.

xxx xxx xxx

After enquiries by the Investigation Unit, Naida about the value of shares of M/s Pawan Impex Pvt. Ltd. and M/s SVIIT Software Pvt. Ltd. It has been reported that:

"It can be prima facie concluded that the value of shares are overvalued to the extent of Rs. 109,80,000/- (in the case of M/s Pawan Impex Pvt. Ltd.) and of Rs. 40,40,28,000/- (in the case of M/s SVIIT Software Pvt. Ltd.) going by the cost of land and building which is much lower than the transaction amount of Rs. 195,00,00,000/- in the case of M/s Pawan Impex Pvt. Ltd. plus Rs. 60,00,00,000/-in the case of M/s SVIIT Software Pvt. Ltd."

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On further perusal of the information and mentioned above the shares' have been overvalued and the capital gains were adjusted in future years and the deductions were also claimed u/s 54.

The implication is as follows:

Share purchase agreement entered in FY 07-08 relevant to AY 08-09. The consideration for the sale of shares has been received majorly in FY 08-09 relevant to A Y 09-10 and deduction u/s 54F was claimed on the same.
With respect to the share transactions, the capital gain earned & deduction on the same claimed. I have the reasons to believe that a substantial amount has escaped assessment during the Assessment Years 2008-09 and 2009-10. In order to assess the above income or any other income which comes to the notice, subsequently in the course of proceedings u/s 147, issue of notice u/s 148 of the Income-tax Act, 1961 is necessary in the case."

(Emphasis Supplied)

49. From the above, it is evident that the reasons recorded in the impugned notice refer to the said investigation report, and state that the enquiries revealed that the appellant and his brother jointly purchased one half share of Property in Delhi, in April 2010, through a court auction, and that the major source of this investment was the sale proceeds of the shares of company no. 1 and company no. 2, respectively. The reasons further record that the total long term capital gain derived by the appellant was Rs. 40,38,40,170, out of which Rs. 31,91,50,000 was deposited in the Capital Gains Savings Bank Account before 30.09.2009 and the deduction under Section 54F of the Act was claimed, that the same was done by his brother, and that each of them had purchased a 1/4th share in the said property for Rs. 9,33,69,928. On the strength of the information, the respondent recorded that the shares had been overvalued, that the capital gains were adjusted in future years and that deductions were also claimed. The

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implication recorded was that the SPAs were entered into in FY 2007-08 relevant to AY 2008-09, the consideration was received majorly in FY 2008-09 relevant to AY 2009-10, and the deduction under Section 54F of the Act was claimed on the same, on which the respondent recorded that he had reason to believe that a substantial amount had escaped assessment for AY 2008-09 and AY 2009-10 respectively.

50. Adverting to the first aspect, the duty of the assessee, as discussed above, is to disclose fully and truly all primary relevant facts, and all that is required at the stage of reopening is that the AO had some *prima facie* grounds for believing that there had been some non-disclosure of material facts. The reasons recorded indicate that the enquiries conducted by the Investigation Unit, Noida revealed that the appellant and his brother jointly purchased one half share of a property at Sikandara Road, Delhi in April 2010, and that the major source of this investment was the sale proceeds of the shares of company no. 1 and company no. 2, respectively. They also record that the LTCG derived by the appellant was Rs. 40,38,40,170, out of which Rs. 31,91,50,000 was deposited in the Capital Gains Savings Bank Account before 30.09.2009 and the deduction under Section 54F of the Act was claimed. The report further concluded that the value of shares was overvalued, going by the cost of land and building, which was much lower than the transaction amounts. These facts came to the respondent through the enquiries of the Investigation Unit, after the assessment had been completed on 22.12.2010. On this material, the respondent had *prima facie* reasons to believe that all material facts relating to the transaction had not been fully and truly disclosed in the original assessment, which is all that is required at this stage.

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51. Further, it cannot be denied that the AO has the jurisdiction to initiate reassessment proceedings relying on some fresh facts having surfaced which were not previously disclosed, or because information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In the present case, the fresh facts that came to light through the Investigation Unit, Noida, after 22.12.2010 are one relating to the value of shares of company no. 1 and company no. 2 respectively as against the cost of land and building, and the investment of the sale proceeds in the property at Sikandara Road. In our view, what came to light afresh, through the investigation report, was the conclusion that the shares of company no. 1 and company no. 2 respectively were overvalued when compared with the cost of their land and building, which was much lower than the transaction amounts in the SPA, and that the major source of the investment in the property at Sikandara Road was the sale proceeds of those shares. That specific information was not available with the AO at the time of the original assessment, nor was such information disclosed by the appellant in those proceedings. In our opinion, the only question at the stage of issuing notice is whether there was relevant and credible material on which a reasonable person could have formed the requisite belief, and whether the material would conclusively prove the escapement is not the concern at that stage. At the time of issuing the impugned notice, the respondent had before him the investigation report stating that the shares were overvalued as against the cost of land and building, and the finding that the major source of the investment in the property was the sale proceeds of those shares. On this material, a reasonable person could form the belief that income had escaped assessment.

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52. Further, we need not go into the adequacy or sufficiency of the grounds which induced the AO to issue the impugned notice under Section 148 of the Act as the same is not a justiciable issue. The courts have only to see whether there is a rational connection or a live link between the material and the formation of the belief. The reasons recorded indicate this link at each step. The bare perusal of the information would indicate that the respondent recorded that the shares had been overvalued, that the capital gains were adjusted in future years and that deductions were also claimed. The implication recorded is that the SPAs were entered into in FY 2007-08 relevant to AY 2008-09, while the consideration was received mainly in FY 2008-09 relevant to AY 2009-10, and the deduction under Section 54F of the Act was claimed on the same. It is from this material that the respondent recorded that he had reason to believe that a substantial amount had escaped assessment for both the AYs. The contention of the appellants that overvaluation of shares cannot result in escapement of income in the hands of the seller, if accepted, would amount to overlooking the fact that the reasons do not end with the finding on valuation but also record the adjustment of the gains to future years and the claim under Section 54F of the Act. The escapement of income at the hands of the seller of the shares, the proceeds of which were later utilised to acquire capital assets to thus claim deduction, could as well be a diversion of income, assessable to tax under the guise of sale proceeds which, in the present case, assumes relevance for reason of the sale proceeds being far above the actual value of the shares. It is settled law that the AO must have some tangible material to conclude that there is escapement of income, and that the reasons must have a live link with the formation of the belief. The tangible material in the present case is the report of the

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Investigation Unit, Noida, which concluded, *prima facie*, that the shares of company no. 1 and company no. 2 respectively were overvalued. The expression *"reason to believe"* cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The present case is not one wherein it could be said that the AO had only a vague feeling on the basis of which he recorded that proper investigation was necessary. We are of the view that a conclusion that the truth of the alleged transactions needs to be investigated is not the same thing as having reasons, post investigation, to issue a notice. Where an officer records only that a proper investigation is necessary, the investigation is yet to be done, and the notice is issued in order to carry it out. The present case stands on a different footing. The investigation had already been carried out by the Investigation Unit, Noida, before the reasons were recorded, and its conclusion on the value of the shares is set out in the reasons, along with the other material and the belief formed by the respondent on that basis.

53. With respect to the argument of the appellants that the issuance of the impugned notice under Section 148 of the Act amounted to a change of opinion, we shall first look into the case of Mr. Nitin Sabharwal. In his case, the returns for the two AYs in question were accepted as such, and an intimation was sent to him under Section 143(1) of the Act. In ***CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.***, reported in **(2008) 14 SCC 208**, this Court held that an intimation under Section 143(1) of the Act cannot be treated as an order of assessment. This Court observed that, under Section 143(1), the AO has to pass an assessment order if he decides to accept the return, whereas, under the amended provision, an intimation is sent instead. It was further observed that the acknowledgement of a return, which is deemed to be an intimation, is done mostly by

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ministerial staff and not by the AO, and that no assessment can be said to be done by them. It was thus held that, there being no assessment under Section 143(1), the question of change of opinion does not arise. Applying this to the case of Mr. Nitin Sabharwal, the returns for the two AYs in question were accepted by an intimation under Section 143(1) of the Act, and no assessment was framed. Consequently, there was no occasion for the AO to form any opinion in the first place. Therefore, there is no question of change of opinion in his case as far as the notice under Sections 147 and 148 of the Act is concerned. The relevant observations made by this Court in ***Rajesh Jhaveri*** *(supra)* are as under:

> *"15. In the scheme of things, as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under Section 143(1)(a) as it stood prior to 1-4-1989, the assessing officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the legislature i.e. to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns […]*
>
> *16. It may be noted above that under the first proviso to the newly substituted Section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any assessing officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions*

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relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise."

(Emphasis Supplied)

54. As far as the case of Mr. Chetan Sabharwal is concerned, he filed his ITR for AY 2008-09 on 25.09.2008 declaring a total loss of Rs. 90,37,369/-. A sum of Rs. 37,64,40,000/- was shown under the head 'sundry creditors', which included Rs. 37,62,50,000/- being the liability in the name of the buyer company. A notice under Section 143(2) of the Act was issued on 09.08.2009. The AO also issued notices under Section 133(6) of the Act to company no. 1, company no. 2 and the buyer company, all of whom filed their replies and documents. Thereafter, on 20.12.2010, the AO framed the assessment order under Section 143(3) of the Act, which stated that *"after examination of the submissions of the assessee and discussion with the Authorised Representative of the assessee, assessed at loss of Rs. 90,37,369/- under Section 143(3) of the Act"*. The ITR was thus accepted without any change. For AY 2009-10, the appellant filed his ITR declaring a net income of Rs. 1,17,21,750/-, in which *inter alia*, the LTCG on the sale of the shares of company no. 1 and company no. 2 was declared, and the capital gain was deposited under the Capital Gains Account Scheme. On 19.12.2011, the AO framed the assessment order, discussing various issues, but there was no discussion in it on the LTCG. Additionally, in the inquiry carried out by the AO, the factum of the undervaluation was suppressed, and it came to light only on the investigation carried out, which further negates the case of *"change of opinion"*.

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55. Having said so, we are of the view that the original assessment orders for both AY 2008-09 and 2009-10 respectively under Section 143(3) of the Act do not indicate that the AO formed any opinion on the matters which form the basis of the present reopening. In view of the principles discussed above, a *"change of opinion"* presupposes a conscious application of mind and the formation of an opinion during the original assessment proceedings, and the court must verify whether the earlier assessment has, either expressly or by necessary implication, expressed an opinion on the matter which is the basis of the alleged escapement of income. The reasons recorded in the present case rest on the value of the shares as against the cost of land and building, the investment of the sale proceeds in the property at Sikandara Road, the adjustment of the gains to future years and the claim under Section 54F of the Act. The assessment order for AY 2008-09 in the present case is a bare acceptance of the returned income as it is. As held in ***Sanand Properties*** *(supra)*, in the absence of any inquiry or adjudication on the specific aspect, the plea of change of opinion is legally untenable. Where no opinion was formed in the first instance, the revenue is not precluded from reopening upon the discovery of facts suggesting that income has escaped assessment, and the notice here rests on the report of the Investigation Unit, Noida, which came after the assessment. Consequently, even in the case of Mr. Chetan Sabharwal, in view of the above, it cannot be said that the reason to believe constitutes a change of opinion.

56. In view of the above discussion, we are of the firm view that the impugned notice dated 31.03.2015 issued by the AO under Section 148 of the Act, for initiating reassessment for AY 2008-09 and AY 2009-10, was issued on reasons duly recorded and is valid. The

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reasons rest on tangible material, namely the report of the DGIT Investigation Unit, Noida, which *inter alia* concluded that the shares of company no. 1 and company no. 2 were overvalued when compared with the cost of their land and building, and they have a rational nexus and a live link with the belief formed by the AO. No case of change of opinion is made out either. In the case of Mr. Nitin Sabharwal, the returns were accepted by an intimation under Section 143(1) of the Act, so no opinion was formed. In the case of Mr. Chetan Sabharwal, the assessment orders under Section 143(3) of the Act reflect no opinion, expressly or by necessary implication, on the matters on which the notice rests, which came to light afresh through the investigation report after the assessment.

F. CONCLUSION

57. In view of the foregoing and considering the totality of the circumstances, the question formulated by us for our determination is answered as follows:

(i) The expression *"reason to believe"* in Section 147 of the Act means cause or justification. The AO must have tangible material having a rational connection or a live link with the formation of the belief that income has escaped assessment, and need not have finally ascertained the fact by legal evidence or conclusion. At the stage of the notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief, and the sufficiency of the reasons is not a justiciable issue. Further, a mere *"change of opinion"* cannot be a reason to reopen, as the AO has the power to reassess and not the power to review. A

change of opinion presupposes a conscious application of mind and the formation of an opinion in the original assessment, which the court must verify, either expressly or by necessary implication, before interfering with the reopening. The non-exhaustive principles governing *"reason to believe"* and *"change of opinion"* are at paragraph nos. 41 and 46 of this judgment, respectively.

(ii) In the facts of the present case, the impugned notice dated 31.03.2015 was issued on reasons duly recorded, based on the tangible material of the report of the Investigation Unit, Noida, prepared after the assessment, and which have a rational nexus and a live link with the belief formed by the AO. The notice is therefore valid. No case of change of opinion is made out either.

58. In view of the above, the appeals fail and are hereby dismissed.

59. Pending applications, if any, shall stand disposed of.

..... J.
(J.B. Pardiwala)

..... J.
(K. Vinod Chandran)

New Delhi;
28th October, 2026.

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