

Surendra Kumar Jain Vs. Deputy Commissioner of Income Tax

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Court : Income Tax Appellate Tribunal ITAT Nagpur

Decided On : Aug-31-2004

Reported in : (2004)85TTJ(Nag.)285

Judge : P Jagtap, N Vasudevan

Appellant : Surendra Kumar Jain

Respondent : Deputy Commissioner of Income Tax

Judgement :

1. These five appeals filed by the assessee are directed against five separate orders passed by the learned CIT(A)-I, Raipur, for asst. yrs.

1988-89 to 1992-93 and since common issues are involved therein, the same are being disposed of by a consolidated order for the sake of convenience along with Department's cross-appeal for asst. yr. 1988-89 being ITA No. 585/Nag/1997.

2. The relevant facts of the case giving rise to these appeals are as follows. The assessee is an individual During the years under consideration, he derived income from salary as managing director of M/s Bhilai Engineering Corpn. Ltd., share of profit from the firm in which he was a partner as well as income from other sources. The income so derived was declared by the assessee in his returns of income filed originally under Section 139(1) for the years under consideration and the same was subjected to tax in the regular assessments. The CBI conducted a search at the residential and business premises of the assessee as well as that of

Shri J.K. Jain, manager (accounts) of Bhilai Engineering Corpn. Ltd. at Delhi and Bhilai on 3rd May, 1991.

The said search was carried -out in connection with transfer of money to India through Hawala and was stated to be an offshoot of the search on one Shri Shambhudayan Sharma, a Hawala operator who had allegedly channelised funds for the terrorist operations. During the course of search, Indian currency of Rs. 58.5 lakhs, IVP of Rs. 10 lakhs and some foreign currency were found and seized from the residence of Shri J.K.Jain situated at G-36, 'Saket', New Delhi besides various incriminating documents and diaries. Mr. J.K. Jain was the accountant and a trusted employee of the assessee. Photocopies of some of such seized documents were handed over by the CBI to IT Department in February, 1994 for inquiries and investigations. Subsequently, the photocopies of remaining seized documents were handed over by the CBI to Directorate of IT (Inv.), New Delhi in the month of February, 1995 in response to warrant of authorisation issued by DIT (Inv.), New Delhi, under s, 132A on 17th Jan., 1995. Relevant copies of such documents received by the DIT (Inv.), New Delhi from CBI were handed over to the AO vide letter dt. 20th March, 1995. The documents so received by the AO included, inter alia, one spiral bound notebook marked as MR-71/91, In this diary, certain receipts and disbursement of money were found to be recorded. Copies of statement of the assessee and Shri J.K. Jain recorded by the CBI authorities were also received by the AO in the documents forwarded by DIT (Inv.), New Delhi, and from the perusal of the said statements, it was noticed by the AO that the recipients of money as recorded in the said diary are eminent politicians and bureaucrats. There were some other documents also found and seized during the CBI search and after correlating the entries appearing in the said documents with the diary, the AO was of the opinion that the entries recorded in the seized diary MR-71/91 are in coded form. The Addl. DIT also recorded the statement of Shri J.K. Jain in whose possession the said diary was found during the course of search/From a perusal of the said statement as well as the one recorded by the CBI, the AO was of the opinion that the said diary found in the possession of Shri J.K. Jain actually belonged to the assessee and the same was maintained by Shri J.K. Jain as per the directions. and dictats of the assessee. After taking into consideration the entire seized material forwarded by Addl. DIT(Inv.), New Delhi,

as well as the other documents accompanying thereto including the statements of the concerned persons, the AO entertained a belief that the monetary transactions reflected in the said diary belong to the assessee and that the same having regard to the nature of the said entries as well as the manner and method of recording the same in the seized diary, represented assessee's income for asst. yrs. 1988-89 to 1992-93 which had escaped assessment. In the opinion of the AO the prerequisite conditions for reopening the assessments in the case of the assessee for the said years were duly satisfied. He recorded the reasons for entertaining such belief and issued notices to the assessee on 30th March, 1995 under Section 148(1) reopening the assessments for all the five years under consideration. In response to the said notices, the assessee filed his returns on 6th June, 1995. During the course of reassessment proceedings, a detailed query letter was sent by the AO to the assessee along with statutory notices issued under Sections 143(2) and 142(1) communicating the adverse findings of the search and seizure operations by the CBI. The incriminating documents found during the course of the said operations including the crucial diary MR-71/91 were also brought to the notice of the assessee by the AO and the prima facie inference sought to be drawn from the said seized material as well as the statements of the concerned persons recorded by the CBI as well as by the Addl. DIT (Inv.) was also communicated to the assessee seeking his explanation/clarification in the matter. It was specifically communicated by the AO to the assessee that the amounts found to be credited in the said diary during the previous years relevant to asst. yrs. 1988-89 to 1992-93 are proposed to be considered for addition under Section 68 in his case and an opportunity was given to him to offer his explanations/clarifications on various points raised in the said letter. The assessee, however, did not divulge any information in order to offer his explanation/clarification to the various points raised in the letter sent by the AO and instead raised various objections thereby calling for clarifications/ elucidations from the AO on the points contained in the questionnaire issued by the AO on 17th Jan., 1996. The AO made an attempt to clarify the points raised by the assessee and while doing so vide his letter dt. 27th Feb., 1996, the AO also afforded one more opportunity to the assessee to offer his explanations/clarifications to the various points raised by him in connection with assessment of his escaped income in the reassessment proceedings. The

assessee, however, once again did not divulge any information in order to offer his explanations/clarifications in the matter and persisted with his earlier stand by raising his following objections : (1) The assessee has not received photocopies of all the seized diaries and documents.

(2) The originals of the seized diaries and documents should be shown to the assessee.

(3) Any officer (even though not expressly mentioned by Shri S.K. Jain but he intended it to mean Addl. DIT(Inv.), Unit-I, New Delhi) without authority to complete the assessment doing something is extraneous to assessment proceedings and any proceedings before such an authority or statements of persons before such authority are not admissible evidence.

(4) The matters in the notice issued by Addl. DIT(Inv.), New Delhi on 27th Nov., 1995 are under challenge before a criminal Court in collateral proceedings and the jurisdiction of the AO cannot extend over the proceedings of another authority or proceedings before a Court.

(5) The initiation of reassessment proceedings are erroneous and issuance of notice under Section 148 is bad in law and illegal.

(6) Onus to explain cash credits has been misplaced on him. Art.

20(3) of the Constitution provides protection and as such, this protection is a fundamental right which cannot be abridged even by Constitutional amendments.

(7) The witness whose statements have been recorded should be allowed to be cross-examined.

(8) Shri S.K. Jain is being tried in several criminal cases and compelling him to respond to co-operate in income-tax proceedings will mean to disclose his defence in criminal cases which will cause prejudice to his defence in the criminal proceedings. Therefore, income-tax proceedings being civil proceedings, be stayed till criminal proceedings are continuing.

3. From the stand taken by the assessee consistently and persistently in the matter of compliance to the various points raised by him for the purpose of completing the reassessments, the AO found that the assessee is apparently attempting to avoid the main issue of explaining the nature and source of credits found recorded in the relevant seized diary and other documents and taking note of this non-co-operation on the part of the assessee in complying with the requirements of notices issued during the course of reassessment proceedings, he proceeded to complete the reassessments for the years under consideration under Section 143(3) r/w Section 147 on the basis of material available on record before him assessing the income of the assessee at substantially higher figure than the one returned by the assessee.

4. The basis on which the AO determined the income of the assessee is as follows. The CBI during the search in the premises of Mr. J.K. Jain recovered 11 diaries and 9 files containing loose papers bunched together at the time of seizure by the CBI. The main diary based on which the various additions were made by the AO is MR 71/91. The other diaries and documents according to the AO supplement and corroborate the transactions found recorded in MR 71/91. The diary according to the Revenue consisted of receipts and disbursements of money. The source of receipt was indicated in abbreviated form in English alphabets and the amount was noted in Arabic numerals in code instead of absolute numerical. Similarly disbursements were also noted in the same pattern and the recipients were also indicated by their initials. The case of the CBI was that the recipients of payments whose names were mentioned in abbreviated forms in the diary were politicians and bureaucrats and payment of huge sums were made to politicians and officials of Government and public sector undertaking by procuring these monies through Hawala channels by the Jain brothers who had acted as middlemen in the award of certain big projects in the power sector of the Government of India to different bidders. That these payments were illegal gratification other than legal remuneration from the Jains as a reward for giving them and the companies they own and manage various contracts. The CBI registered cases against the Jain brothers as well as the persons whose names appeared in those diaries as recipients under the Prevention of Corruption Act, Foreign Exchange Regulation Act, etc. These are matters, which are subject-

matter of criminal prosecution against the assessee and his brothers. The IT Department in exercise of its powers under Section 132-A of the Act, called for these documents and material seized from the CBI. The CBI handed over copies of the documents and some of the materials seized to the IT Department for the purpose of assessing income, if any, in the hands of the assessee or other persons.

5. As already stated, the important document viz., MR 71/91 is a spiral notebook titled as "Alishan" and contains 13 written pages. It is a monthly record of receipts and disbursements of money written in code.

It pertained to a period between February, 1988 and April, 1991. The entries made therein gave an indication that it was maintained on a month-to-month basis: According to the AO, this diary belonged to the assessee and was written by Mr. J.K. Jain at the instructions of Shri S.K. Jain, the assessee. Mr. J.K. Jain was a trusted employee of Mr.

S.K. Jain, who according to the Revenue is to be considered as the person in whose hands these incomes (arising out of the entries in the diary) were to be considered as having been received or had accrued.

Before coming to the determination of the income from out of the seized diary, it was necessary for the Revenue to establish-- (i) that the seized diaries belonged to the assessee, Mr. S.K. Jain, though recovered from the possession and control of J.K. Jain, and' (ii) that the entries therein were made by Mr. J.K. Jain, the trusted employee of S.K. Jain under whose instructions and directions the entries in the diary were made by J.K. Jain, (iii) that these were books of account maintained by the assessee (i.e., S.K. Jain) for the relevant previous year (authenticity of the seized document and diaries), and (iv) that the entries found therein were in codes and what were the actual figures that were to be ascribed to the codes used in the diary, 6. It was only after all the above were established that the question of the quantum of income to be determined in the hands of the assessee was to be decided by the AO.. The AO dealt with all the above aspects and came to a conclusion on each of the above questions as follows : 1. The seized diaries and documents were authentic and were a contemporaneous

record of events that have actually taken place. He came to this conclusion after comparing some of the transactions recorded in the diary and other documents and found that some of these transactions were also recorded in the regular books of accounts of the assessee. The AO also came to the conclusion that the entries in the diary were checked and signed by S.K. Jain. The AO has also held that the assessee at no point of time challenged the authenticity of the diary and other documents. The AO also relied on the statement of J.K. Jain recorded on 2nd March, 1995 wherein he had stated that the diary was maintained in his own handwriting as per the oral and written instructions/information supplied by S.K. Jain.

2. The seized diaries and documents belong to the assessee and were maintained by J.K. Jain, his accountant, who maintained the same at the instructions, oral and written, of the assessee and that the income attributable to the entries of the transactions recorded in these documents is liable to be considered in the hands of the assessee. In coming to this conclusion the AO relied upon the statement of J.K. Jain, Shri Daniel P. Rambal, Mr. Ghoshal, Guha Roy (all employees of BECO) and the statement of B.R. Jain, Veenu Jain, N.K. Jain (all relatives of the assessee). It may be mentioned here that two of the statements relied upon by the AO viz., that of B.R. Jain and J.K. Jain were recorded by the CBI in the course of investigation into the allegations under the Prevention of Corruption Act, etc. The other statements were all statements recorded, by the DDIT (Inv.), New Delhi, These statements were recorded after the AO reopened the assessment proceedings in the case of the assessee. We may also mention here that the power of the DDIT (Inv.), New Delhi, to record statements when assessment proceedings were pending before the AO has been challenged by the assessee before us.

3. The basis adopted by the AO for decoding of entries recorded in the diary and documents in order to arrive at actual figure of transactions. As already stated, the figures as well as the names of the recipients were in codes, When CBI recorded the statement of J.K. Jain, he had originally stated that these figures were in code of lakh of rupees, Later on J.K. Jain changed his version and claimed that the figures were in thousands only and not in lakhs.

This change of version was adopted by J.K. Jain when he was examined by the DDIT (Inv.), New Delhi. It may be mentioned here that the Revenue has even launched prosecution against J.K. Jain for giving false statement, insofar as he changed his version in this regard, i.e., the figures in the diary were to be deciphered as in thousands as against the figure of lakhs as given in the statement before the CBI. Here again the statement of J.K. Jain and B.R. Jain recorded by the CBI and the deposition of Smt. Rachana Jain, Pawan Jain, Mukhul Jain, Veenu Jain and Pramod Jain (all relatives of the assessee) were recorded by the DDIT (Inv.), New Delhi, the statement of Mr. P. Ghoshal, Daniel P. Rambal, S.S. Sandhu, K.N. Dutta were also relied upon. The AO has set out various circumstances and the entries in the seized documents itself, which would go to show that the entries in codes were in lakhs. In this regard, the entries in the books of accounts were also compared. The AO arrived at the following total receipts and total disbursements in the diary MR-71/91 and other connected documents :-----F.Y.

Receipts	Disbursements	as	per	Disbursements	as
per-----					Rs. Rs.
Rs.1987-88	43,50,000	41,50,000	41,50,000	1988-89	2,58,22,500 2,60,22,500
2,60,22,500	1989-90	22,93,05,000	22,91,45,000	24,31,95,000	1990-91
23,67,34,460	22,01,96,210	22,12,96,210	1991-92	5,92,00,000	46,00,000
6,90,60.000	-----				4.

The AO held that the entries in the seized documents and diaries give rise to income chargeable to tax under the Act. In coming to the above conclusion, the AO also concluded that MR 71/91 is a book, maintained by the assessee for the various previous years and that the receipts found therein were credits and the assessee was bound to explain the nature and source of such credits and since the assessee failed to offer explanation, the sums so credited were to be construed as his income under Section 68 of the Act. There was excess of disbursements over the receipts in asst. yrs. 1992-93 and 1989-90 of Rs. 6,45,60,000 and Rs. 6,29,06,250, respectively. These were considered as unexplained expenditure under Section 69G of the Act. The cash and IVP's and foreign currency were treated as explained, being one out of the cash balances recorded in the seized diaries. Besides the above, certain other additions were

made with reference to the original assessments not connected with the search and seizure by CBI.⁷ The AO also dealt with the various objections raised by the assessee in the course of assessment proceedings.

(a) The objection of the assessee that he should be furnished with photocopies of the seized documents was rejected by the AO by observing that the assessee was given opportunity to inspect and that there is no requirement of furnishing copies.

(b) The request of the assessee for inspection of the originals of the seized documents was held to be device to protract the proceedings.

(c) The reliance placed by the AO on the material collected by the DDIT (Inv.), New Delhi, was proper as the said authority are investigating authorities and any material given by them can be used in evidence. The assessee was given opportunity of being heard on the material made available by DDIT (Inv.), New Delhi, and that the AO had independently evaluated the evidence so collected.

(d) Protection claimed by the assessee under Art. 20(3) of the Constitution of India and requesting for keeping the assessment proceedings in abeyance on the ground that any stand on the seized documents will tend to incriminate the assessee in the pending criminal proceedings was again rejected by the AO. (e) The assessee's request for cross-examination of the witnesses was held to be not an absolute right.

(f) The challenge to the validity of reopening of the assessments was also rejected by the AO.⁸ Aggrieved by the orders passed by the AO under Section 143(3) r/w Section 147 for all the years under consideration, the assessee preferred appeals before the learned CIT(A) raising various legal issues challenging, Inter alia, the validity of reassessments completed by the AO as well as disputing the various additions made by him on factual merits and after considering the submissions made on behalf of the assessee before him as well as the relevant material available on record including the orders of the AO, the learned CIT(A) upheld the orders of the AO passed under Section 143(3) r/w Section 147 substantially for all the years under consideration except allowing relief to the assessee on the issue relating to levy of interest under Section 139(8) and Section 217 in asst. yr. 19'88-

89. Still aggrieved, the assessee has preferred the present appeals before the Tribunal for all the five years under consideration whereas the Revenue is also in appeal for asst. yr. 1988-89 challenging the relief allowed by the learned CIT(A) by deleting the interest levied by the AO under Sections 139(8) and 217.

9. In his appeals, as many as fifty grounds had been originally raised by the assessee which were common in all the five appeals, During the course of appellate proceedings before us, the assessee however modified these grounds by substituting the same with 24 revised grounds which are common for all the years under consideration. He has also sought to raise some additional grounds and considering that the issues raised therein are legal and adjudication of the same is possible on the basis of material available on record before us, we have admitted the same keeping in view the decision of Hon'ble Supreme Court in the case of NTPC v. CIT (1999) 229 ITR 383 (SC). The various issues raised in the original (as modified) as well as additional grounds have been argued by the learned representatives of both the sides elaborately during the course of hearing before us. They have also filed voluminous paper books containing 1141 pages in four volumes from assessee's side and 587 pages in two volumes from Revenue's side. Moreover, keeping in view the time lag between the hearings in this case which has taken place at three different times, both the sides have placed on record their written submissions containing their arguments on various issues as well as the gist of case laws relied upon by them in support, as per the directions of the Bench. During the course of hearing before us, the correspondence between the AO and the higher authorities including DDIT (Inv.), New Delhi, and CIT, Jabalpur, prior to the date of initiation of reassessment proceedings stated to be relevant and material for deciding these appeals but not provided to the assessee earlier by the Department claiming it to be confidential, was also made available to the assessee for inspection at the instance of the Bench.

Before us, the learned counsel for the assessee has also submitted that even though copies of entire material received by the AO from DDIT (Inv.), New Delhi vide letter dt. 20th March, 1995 including the documents seized from Mr. J.K. Jain, report of CBI, appraisal report of Addl. DIT, New Delhi, etc., was not provided to the assessee by the Department claiming it to be privileged, the same may at least

be perused by the Bench to appreciate the reasons recorded by the AO placing reliance on the same as well as the contentions raised on assessee's behalf challenging the validity of reopening. Accordingly, in compliance with the Bench's direction, the Department has filed the copies of such entire material after conclusion of hearing for its perusal along with factual clarification in writing in the matter of extensive and elaborate rejoinder by learned counsel for the assessee.

A copy of written submissions so filed on behalf of the Department was also made available to the learned counsel for the assessee and objections/clarifications put forth by him in this regard in writing are also taken on record.

10. After considering the rival submissions in the light of entire material available on record before us as well as the various case laws cited at the bar, we now proceed to decide the various issues raised in the present appeals as follows : 11. The 1st and 2nd grounds of appeal in all these appeals read as follows : "1. That on the facts and in the circumstances of the case, the CIT(A) erred in law in not holding that the impugned assessment passed under Section 143/147 of the Act is bad in law, beyond jurisdiction and void ab initio.

2. That the CIT(A) erred on facts and in law in holding that the AO validly assumed jurisdiction under Section 148 of the Act without there being any reason to believe that the income of the appellant had escaped assessment" 12. These grounds are general in nature inasmuch as the issues raised therein challenging generally the validity of reopening as well as reassessment have been raised again in other grounds on specific basis and a decision thereon will answer the grievance of the assessee projected in these grounds.

13. The 3rd and 4th grounds of appeal raised by the assessee challenge the validity of the reassessment proceedings on the ground that the initiation of reassessment proceedings under Section 147 was at the dictates of other authorities. The relevant grounds of appeal which are common in all the appeals of the assessee read as follows : Ground No. 3 : That the CIT(A) erred on facts and in law, in holding that the AO validly assumed jurisdiction to reopen the concluded assessment without appreciating that the AO had not reached any independent satisfaction that the income of the appellant had escaped assessment.

Ground Wo. 4 : That the CIT(A) erred on facts and in law, in holding that the AO validly initiated action for reopening the assessment, without appreciating that such action was taken at the behest and dictates/directions/instructions of higher/other authorities and without any independent application of mind on the part of the AO." 14. The facts and the dates which are relevant for deciding these grounds of appeal may briefly be stated as follows. On 3rd May, 1991, there was a search conducted by the Central Bureau of Investigation (CBI for short) in the residential and business premises of one Shri S.K. Jain (the assessee in these appeals) managing director of M/s Bhilai Engineering Corpn., Bhilai, Madhya Pradesh, (hereinafter referred to as BECO) and one Mr. J.K. Jain, manager (accounts) of BEC. The searches were carried out both at Bhilai and Delhi. This search was in consequence of search carried out in the case of one Shri Shambu Dayal Sharma, a Hawala operator who had allegedly channelised funds to the terrorists. There is no reference in the order of assessment as to what was the connection between the assessee or J.K. Jain with the Hawala operations or what was the information on the basis of which the assessee and J.K. Jain were searched by the CBI. The search in the residential premises of Mr. J.K. Jain at G-36, Saket, New Delhi, lead to seizure of Indian currency of Rs. 58.5 lakhs, Indra Vikas Patra of Rs, 10 lakhs and some foreign currency. Various documents and diaries were also seized by the CBI. The diaries seized also contained some entries relating to payments made to politicians.

15. On 18th Jan., 1995, a requisition under Section 132-A of the IT Act, 1961 was issued by the Dy. Director of IT (Inv.), New Delhi, [DDIT(Inv.) for short] to the CBI to deliver the documents seized. In response to such requisition, on 2nd Feb., 1995 the CBI vide their letter dt. 2nd Feb., 1995 handed over the seized documents along with statement of accused persons as well as politicians who were shown as recipients of monies in the diary.

16. On 2nd March, 1995, the DDIT (Inv.), examined Mr. J.K. Jain after issuing summons to him under Section 131 of the Act. The copy of the statement of Mr. J.K. Jain which is placed at pp. 226 to 234 of the assessee's paper book shows that the same is recorded in the case of "Mr. S.K. Jain/Bhilai Engineering Corpn./personal case". The gist of the statement made by Mr. J.K. Jain on such

examination, insofar as the validity of reopening is concerned, was that there was a search by the CBI in his residence on 3rd May, 1991 and in the course of such search documents were seized and the photostat copies shown to him at the time of examination by the DDIT (Inv.) were the documents which were seized by the CBI from his residence. That he had given statement before the CBI and copies of such statements that were shown to him in the course of examination were his statements made before the CBI. He also added that in the statement given to the CBI, he had stated that the figures in the diary written in codes were to be interpreted as denoting lakhs or thousands of rupees, but he was not sure whether that part of the statement made was correct. In a later part of the statement, he had categorically stated that the figures were only in thousands and not in lakhs. That the entries in the diary seized by the CBI were made by him at the oral instructions of Mr. S.K. Jain and N.K. Jain and no other third person would give instructions for recording transactions in the diary. That the payments stated to have been made to various politicians as recorded in the diary were not made by him nor does he know the person who used to pay money to the politicians. That receipt of money recorded in the diary were monies received either from S.K.Jain or staff members of the company. That entries in the diary used to be made sometimes on a day-to-day basis, sometimes once in a month.

That the accounts as entered in the diary used to be shown by him to S.K. Jain once or twice and he has signed as token of approval of the accounts.

17. It is not in dispute that the assessee was being assessed to tax by the ITO, Ward-I, Bhilai and later on, i.e., on 12th March, 1993, the jurisdiction was transferred to Dy. CIT (Spl. Range), Bhilai, hereinafter referred to as the AO, who was also in charge of assessment of BECO.18. The DDIT (Inv.), vide letter dt. 20th March, 1995 informed the AO, that proceedings for initiating reassessment proceedings be taken in the case of the assessee. The contents of this letter are reproduced herein.

Sub : Search operation by CBI against Shri J.K. Jain and others regarding.

Please find enclosed herewith photo copies of documents. A set of such documents was sent to CIT, Jabalpur on 1st March, 1995 vide this office letter No.

DIT (Inv.)/U.I./DLH/1995-96/1407. Same set of documents are being sent to you for consideration along with photocopies of the letter referred above and addressed to the CIT, Jabalpur, In this, only relevant copies of statement of accused as per set X are being sent to you. Others being not presently material are not sent. This set would therefore contain statement of Shri J.K. Jain, S.K. Jain, B.R. Jain and N.K. Jain.

2. As per discussion held with CIT, Jabalpur, you are requested to kindly initiate reassessment proceedings under the income-tax and gift-tax proceedings against Shri S.K. Jain, B.R. Jain, BECO or any other relevant persons for the relevant assessment years. For this purpose you may kindly go through the report of the CBI set out in set DC, identify the person in whose hands the proceedings under IT and GT Act had to be initiated, specify years where such income/gift would be taxable and work out reasons for reopening the assessment.

You are also requested to please identify the items of root payments from the seized material which can be referred to regular books of account of BECO or other sister concerns of BECO so that quantum of receipt/payment can be cross-checked and accordingly the seized material can be correctly deciphered. If considered necessary, matter can be discussed with the undersigned. We are also working out the case and we will send you copy of the investigation report at the earliest possible time.

19. This was received by the AO only on 24th March, 1995. The set of documents that were sent with this letter are the same set of documents sent to CIT, Jabalpur by the DDIT (Inv.) on 1st March, 1995. The set of documents are as follows : (ii) Set-II--Containing detailed expenditure in firm and others having pp. 1-30.

(iii) Set-III--Titled as MR-69/91 containing pp. 1-8 showing summary of accounts in the diary.

(iv) Set-IV---Summary of accounts of diary titled as MR-70/91 having pp. 1-30.

(v) Set-V--Titled as MR-72/91 showing details of payments, etc.

having 51 pages.

(vii) Set-VH--Titled as MR-67/91 containing 11 pages representing ledger account of BECO, S.K. Jain.

(viii) Set-VIII--Copy of account of petition filed before Settlement Commission by Shri J.K. Jain having 12 pages.

(x) Set-X--Statement of accused recorded by CBI as containing 258 pages, I (xi) Set-XI--Containing statements of witnesses by CBI having 125 pages.

(xii) Set-XII--Containing a report sent by DDIT, Unit-I to DI about appraisal of some of the documents containing 18 pages.

20. We may also mention here that in the DDIT (Inv.) letter dt. 1st March, 1995 to CIT, Jabalpur, there are some references about reopening. Copy of this letter is at pp. 1064 to 1066 of assessee's paper book. There is a reference to this letter in the letter dt. 20th March, 1995 sent by the DDIT (Inv.), New Delhi to the AO at Bhilai. The contents of this letter insofar as it relates to a decision on these grounds of appeal are that there was a request to the CIT, Jabalpur to direct the AO to consider the report sent by CBI and take action under direct taxes. There is also a reference in para 5 of this letter that the Director General of Income-tax (Inv.), North, has desired that action for reopening assessment be taken up at the earliest.

21. The AO on receipt of the documents on 24th March, 1995 vide his letter dt. 29th March, 1995 addressed to the DDIT (Inv.) informed him that there are some missing pages in set-X (as against 258 pages stated to have been sent there are only 72 pages) and in set-IX there are only 113 pages as against 117 stated to have been sent. The AO thereafter requested for supply of these missing pages as in his opinion they might contain relevant matter which needs to be compared with the seized diaries, files, etc. There is also some clarification sought as to whether the name BECO refers to BECO Steel Castings Ltd. or Bhilai Engineering Corporation Ltd. The letter also refers to the fact that efforts are being made to scrutinise the photocopies of the diaries, files, various reports, etc. to ascertain the assessability and extent of income in various hands under the direct taxes. It also refers to some discussion with DDIT (Inv.), Mr. P.C. Chhotary, and G.P. Garg,

Director General and there is also a reference to the AO having followed the guidelines suggested by the DDIT (Inv.) in his letter to the CIT, Jabalpur, dt. 1st March, 1995 to which we have already made a reference.

22. The AO has recorded reasons for reopening of the assessments on 30th March, 1995. The reasons recorded are placed at pp. 37-46 of assessee's paper book. The reasons recorded are quite elaborate and these reasons recorded are dealt with while considering other grounds of appeal of the assessee. Some more facts that are relevant for determining these grounds of appeal are the order sheet entries in the assessment proceedings or one may call them record of proceedings before the AO. The relevant entries are for the period from 24th March, 1995 when the AO received the seized documents till 5th April, 1995.

These entries read as follows : 24th March, 1995 : Received photocopies of seized material, statements and report (CBI) by courier service (Ryp) at 5.00 P.M. 27th March, 1995 : Received phone call from Shri P.C. Chhotary, DDIT (Inv.), Delhi, he desired to know the latest development in the matter of investigation/reopening of the case of the persons to whose cases the seized materials relate. He is informed that this office has received the material/reports, etc., only on 24th March, 1995 at 5.00 P.M. from Delhi vide letter No. F. No. DDIT/Inv/U-I/T.W./DLH/1995-96/1464 dt. 20th March, 1995. Our position is being verified. The approval report of DDIT to DG contains set No. XII shall be perused and action of reopening, etc.

as suggested shall be taken shortly. Our report shall be submitted to Hon'ble Settlement Commission. He informed that their matters are fixed for hearing before Hon'ble Supreme Court.

28th March, 1995 : Received a phone call from DG, Shri G.P. Garg, Delhi. He informed of the..... (not legible) aspect of the matter. Viz., (a) the reopening of the assessment of Shri S.K. Jain, B.R. Jain and BEC (b) submission of the report to Settlement Commission..... (not legible) appraising them with the factual position and (c) Submission of detailed report to CBDT through Chief CIT (Bhopal, by week end).

28th March, 1995 : Received phone call from CIT, Jabalpur, who informed of his talk with Shri S.P. Garg, DG, Delhi, he has been informed of the action to be taken. He expressed his satisfaction about the progress so far.

30th March, 1995 : Recorded the detailed reasons under Sections 148(2), 17(1) and 16(1) of IT/WT/GT Act, for issue of notices under various direct taxes.

5th April, 1995 : Received a phone call from CIT/DDIT (Inv.) informing the visit of Shri D.C. Agarwal. It is informed by Shri Abhey Damble, Asstt. CIT that in the case action taken report (ATR) is to be submitted to the..... (not legible) by the CIT and the said report to be submitted to the CIT showing action taken on the following aspects : (a) reopening of the cases-reasons to work out; (b) submission of the report to the Settlement Commission on the basis of the documents of seized material record for CBI. Summons to B.R. Jain, issued.

23. It is in the light of the above factual details that the contentions put forth by the learned counsel for the assessee and the learned standing counsel have to be examined. The learned counsel for the assessee submitted that the letter dt. 1st March, 1995 addressed by the DDIT (Inv.) to the CIT, Jabalpur, contained a clear direction/dictate to reopen assessments in the case of the assessee. He further submitted that in the said letter the CIT, Jabalpur, has been directed to inform the AO to take action under direct taxes and to initiate proceedings to tax the unexplained investment. There is also a reference to the opinion of the DCIT (Inv.) North, that action for reopening assessment be taken up at the earliest and that the AO be directed to handle this case on top priority basis. The learned counsel further referred to some similarities in the opinion expressed by the DDIT (Inv.) in this letter and the reasons recorded by the AO for reopening assessment under Section 147. It is further contended by him that all the documents received from the CBI were not sent by DDIT (Inv.) to AO and, therefore, there was no independent application of mind by the AO. It is further pointed out by the learned counsel for the assessee that in the forwarding letter dt. 20th March, 1995 by the DDIT (Inv.) to the AO, there is a reference that the AO can discuss the matter with DDIT (Inv.) if required. All these facts according to the learned counsel for the assessee show that the DDIT (Inv.) was fully monitoring and directing the AO to

initiate reassessment proceedings.

According to him under the provisions of IT Act, it was the AO who, as a quasi judicial authority, is entrusted with the powers of forming a belief of escapement of income and, thereafter, reopening assessments and he has to independently come to such a conclusion and should not be influenced or be directed/dictated by his superiors in coming to such conclusion. It is further contended by the learned counsel for the assessee that there was no independent application of mind by the AO as can be gauged from the following : (a) The letter dt. 20th March, 1995 of DDIT (Inv.) was received by the AO on 24th March, 1995 at 5.30 P.M. (b) 25th and 26th March, 1995, were holidays being Saturday and Sunday; (c) The AO had only 3 working days, i.e., 27th, 28th and 29th March, to go through the voluminous records, statements of the various persons, decipher the notings in the diaries which, as admitted by the AO, were in alphabets, abbreviated forms, codes, etc., examine the assessment records, form prima facie link between the diary and S.K. Jain, have reason to believe that income of the assessee has escaped assessment and quantify the same.

(d) In the reasons recorded, the AO has referred to the report dt.

20th Oct., 1994 of DDIT (Inv.) to DI, the appraisal report of the Addl. DIT, the report of the CBI, etc. the contents whereof are not known; (e) The AO specifies, in the reasons recorded, that the assessee had made huge investment of Rs. 3,98,19,414 in a farm known as "Geetika Farm": it is not known as to wherefrom the AO got such information at that stage; (f) How did the AO know that "Meharauli", where the aforesaid farmhouse was situated, is on the outskirts of Delhi and located in a very posh locality and that the farmhouse is lavishly furnished and has all sorts of amenities.

(g) There is also a mention, in the ordersheet entry dt. 30th March, 1995, about the reasons recorded in writing being maintained in a separate confidential folder, inspection whereof has not been allowed.

24. It was submitted that having regard to the aforesaid and considering the complexities of the matter, it cannot be said that" within the short time available

with the AO, the AO could arrive at, leave alone, record elaborate reasons, as available on record, for formation of the belief that the income of the assessee has escaped assessment. In conclusion, it was contended that the AO did not apply his mind independently to reach satisfaction that income chargeable to tax has escaped assessment and that the decision to reopen was merely conveyed to the AO leaving him with no discretion in the matter, but to reopen the assessment. The initiation of reassessment proceedings is thus, sought to be challenged as one done at the dictates of higher authorities. Reliance was placed by the learned counsel for the assessee on the following decisions :State of U.P. v. Maharaja Dhaimander Prasad Singh AIR 1989 SC 997 (vii) Asstt. CIT v. O.P. Gupta (2001) 71 TTJ (Del) 82 : (2000) 75 ITD 123 (Del) 25. We may mention here that the proposition laid down in the aforesaid decisions are to the effect that a quasi judicial authority should exercise discretion vested in him by law independently without being influenced by any dictates or directions of superior authorities. There can be no quarrel to the proposition laid down in these decisions. The question for consideration is whether the AO acted at the dictates of his higher authorities in reopening the assessments or applied his judicial mind independently. This is a question of fact and we will examine this in the light of the material available on record.

26. The learned Departmental Representative on the other hand submitted that the correspondence relied upon by the learned counsel for the assessee does not lead to the conclusion that the initiation of reassessment proceedings was done by the AO at the dictates of his superiors and that he did not independently apply his mind before recording reasons for reopening assessments. In this regard, it was submitted by him that the entire proceedings before the Revenue authorities were to be viewed in the light of the writ petition Nos.

340-343 of 1993 filed in the Hon'ble Supreme Court in the case of Vineet Narain and Ors. v. Union of India and Anr. wherein a public interest litigation was filed directing all Government agencies to perform their duty in accordance with law in the matter of seizure of diaries by the CBI from J.K. Jain. This was in the light of the fact that names of several politicians and persons well placed in society were found in the diaries seized and because of this reason there was a possibility of

the Government agencies not performing their statutory duty in accordance with law. It was thus contended by the learned Departmental Representative that the letters by themselves do not show that there were any dictates by the superior authorities to the AO before reopening. It was submitted that in the forwarding letter, the DDIT (Inv.), New Delhi, merely forwarded the seized documents and informed the AO to consider reopening of assessments. It was argued that it goes without saying that the AO was to act in accordance with law. The letters that transpired between the CIT, Jabalpur, and the DDIT (Inv.), New Delhi, wherein it has been alleged that there was a dictate to reopen assessment was never in possession of the AO prior to his recording reasons for reopening. In the circumstances, it was submitted that there is nothing on record to suggest that the AO did not act independently before reopening assessments and recording his reasons for doing so.

27. We have considered the rival submissions. From the correspondence referred to above as well as the entries in the order sheet, we do not find any such dictates to reopen as has been alleged on behalf of the assessee. The AO received information along with documents (though not complete documents) on 24th March, 1995, and on perusal of the same, he entertained a belief that income of the assessee has escaped assessment. He recorded the reasons for entertaining such a belief on 30th March, 1995 and issued notice under Section 148. There is nothing on record to suggest that during this period when AO received information or prior to that or between 24th March, 1995 to 30th March, 1995, there was any other dictates from any other external agency to reopen the assessments. Much has been said about the letter dt. 1st March, 1995 by the DDIT (Inv.) to the CIT, Jabalpur. The letter dt, 1st March, 1995 was addressed to the CIT, Jabalpur by the DDIT (Inv.) and there is nothing on record to show that the directions contained in this letter were ever conveyed to the AO either by the DDIT (Inv.) or CIT, Jabalpur. The fact that the time gap between the time the AO received information and recorded reasons was very short would not be fatal and in any event cannot lead to the conclusion that reasons were recorded by somebody else or his superior authorities or that the AO did not apply his mind before forming a belief about escapement of income. There is no evidence on record to show that the AO did not record reasons on his own. The fact that voluminous records were to be

perused before recording reasons is again not a relevant consideration.

The assessee has merely relied on certain circumstances and seeks a finding on the basis of these circumstances that the reopening was at the dictates of superiors. We are of the view that the AO was in possession of information and there is nothing to show that between the period when he received information and he recorded the reasons there was any dictates from any other person to reopen the assessment. The normal presumption is that official acts have been properly done. There is no material available on record to come to the conclusion that there was no independent application of mind by the AO before reopening the case and recording reasons for such reopening.

28. The contention that there were references to certain material or certain facts in the reasons recorded and the AO at the time of recording reasons was not in possession of the necessary documents or information necessary for recording such facts in the reasons recorded and, therefore, he could not have on his own recorded reasons for reopening is again not substantiated. The entire documents sent by DDIT (Inv.) and the correspondence between the AO or his higher authorities before reopening of assessment were produced before us. In the letter dt. 28th Feb., 1995 by the DDIT (Inv.), Delhi, to the CIT, Jabalpur (MP), there is a reference to 12 set of documents which were part of the seized documents found in the course of search carried out by the CBI in the case of J.K. Jain. These were the documents that were forwarded to the AO also under cover of DDIT (Inv.), Delhi, letter dt.

20th March, 1995 wherein he had requested the AO to initiate reassessment proceedings and on the basis of which the reasons were recorded before reopening assessments. According to the learned standing counsel, documents serialised as set No. IX (report of CBI) part of set-X (statement of accused as recorded by CBI) set-XI (statement of witnesses recorded by CBI) and set-XII (report sent by DDIT (Unit-I) to the DI about appraisal of some of the documents, containing 18 pages), should not be made available for perusal by the counsel for assessee. According to him, documents serialised at set-IX, portion of set-X excluding documents which had already been given to the assessee and set-XI

are matters pertaining to criminal proceedings initiated against the Jain Brothers and J.K. Jain in respect of which proceedings are pending in a Court and, therefore, they are not to be made available for inspection by them. Document serialised at XII according to the learned Departmental Representative might contain name of the informant which in the public interest should not be revealed.

The remaining documents were however offered for inspection by the learned counsel for the assessee.

29. The learned counsel for the assessee drew our attention to Section 124 of the Evidence Act and submitted that the Revenue cannot refuse to produce documents and in terms of Section 124 of Evidence Act, privilege can be claimed only where the documents relate to communication of matters which will have adverse impact on public interest, He relied on the decision of the Hon'ble Allahabad High Court in the case of Union of India v. Sheo Shankar Sitaram and Anr. (1974) 95 ITR-523 (All) and submitted that in the present case, the Revenue cannot seek privilege, We have considered his submissions. Section 124 of the Evidence Act reads as follows : 124. Official Communications--No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

The decision of the Allahabad High Court was rendered after a finding of fact that disclosure of information would not be in the interest of public. In the present case; we have to consider whether the privilege claimed by the AO can be accepted. We direct the learned counsel for the assessee to have inspection of the documents production of which is not objected by the Revenue. In our view the documents production of which have been objected to by the Revenue, prima facie, appear to be documents in respect of which the Revenue was entitled to claim privilege. We, therefore, rule that the said documents will be perused by us and in case any adverse inference is to be drawn on the reopening of the assessments, we shall do so. But for the present we accept the contention of the Revenue that the documents relate to matters of official confidence and the assessee cannot seek inspection of the same. The opinion of the officers that the documents relate to matters of official confidence is alone relevant in this regard. This is clear from the

expression used in Section 124, 'when he considers that the public interest would suffer by the disclosure'.

30. The learned counsel sought leave of the Bench to argue on the validity of reopening after perusal of the relevant documents and was heard again on this aspect. We have perused the documents scrutiny of which by the counsel for the assessee was denied on the ground of privilege by the Revenue. We do not find that there is any basis for coming to any conclusion on the basis of these documents that there were any dictates of superior officers which influenced the mind of the AO before recording reasons for reopening or in concluding that there was escapement of income.

31. The cases relied upon by the learned counsel for the assessee are not applicable to the facts of the present case. As already mentioned by us, there can be no dispute about the proposition laid down in the decisions relied upon by the learned counsel for the assessee. In view of the fact that the AO in the present case did not act at the dictates of his superior while recording reasons for reopening, the decisions relied upon by the learned counsel for the assessee are not of any assistance, to the case pleaded by him. For the aforesaid reasons, we hold that the reopening of the assessments was not done by the AO at the dictates of his superior. Ground Nos. 3 and 4 are therefore, dismissed.

32. The next issue challenging the validity of initiation of reassessment proceedings on different counts is raised by the assessee in ground Nos. 5, 6 and 7 which read as follows : "5. That the CIT(A) erred on facts and in law, in holding that the AO validly initiated action for reopening the assessment of the assessee without appreciating that the AO did not reach prima facie conclusion that the income alleged to have escaped assessment belonged to the assessee.

6. That the CIT(A) erred on facts and in law, in holding that the AO validly initiated proceedings under Section 148 of the Act without appreciating that the AO failed to quantify the income of the assessee alleged to have escaped taxation, 7. That the CIT(A) erred on facts and in law, in not holding that the impugned assessment is bad in law and void ab initio since there was no live link/nexus between the reasons recorded and the income assessed in the hands of the assessee." 33.

The learned counsel for the assessee at the outset invited our attention to the reasons recorded by the AO and pointed out that the same were recorded in a consolidated manner in 'Jain Group of Cases' and not in the individual case of the assessee. He submitted that judicious comparison between the material available, reasons recorded and prima facie conclusion purportedly arrived at in the reasons recorded clearly show that there was no material, leave alone live/rational material, on the basis of which there could be formation of the belief that the entries in the diary represented cash credits in the hands of the assessee and/or unexplained expenditure of the assessee and, therefore, there was no "reason to believe" that the assessee's income has escaped assessment. According to him, the following facts show that the AO did not even reach a prima facie conclusion as regards whose income had escaped assessment and exact nature of such income : (i) As per CBI report, assessee, Shri N.K. Jain and Shri B.R. Jain were indulging in 'Hawala business' and were enjoying 'commission' income.

(ii) The statement of Shri J.K. Jain before CBI, in fact records that the diary was being written by him at the instance of the assessee in the capacity of managing director of BEC (and not in assessee's individual capacity).

(iii) As per the alleged statements of the assessee, Shri B.R. Jain and N.K. Jain recorded by CBI, the unaccounted money is stated to be through sale of scrap of BEC Ltd. (iv) On some pages there is working showing conversion into Indian currency. This, therefore, represents nothing but foreign currency brought in India.

(v) It is stated "I find that in fact the transaction recorded in these diaries were pertaining to assessee's business of Hawala transaction, the exact mechanism of which has not come on record".

(vi) Narration in the diary to the effect that diary shown to B.R. Jain and N.K. Jain. This shows that all the brothers were involved.

(vii) Name of Krishna Jain, wife of N.K. Jain also appears and income is partly liable to be assessed in her hands.

(viii) Commission is to be separately assessed in the hands of the 'Jain Brothers' in equal proportion for want of correct bifurcation.

(ix) The financial affairs "of this group" as seen through the seized material appears to be intertwining bringing into fold three brothers viz., S/Shri B.R. Jain, N.K. Jain and S.K. Jain and Smt.

Poonam Jain wife of Shri S.K. Jain and their company BECL Ltd. and that the "group of assesseees" have utilised the black money in the investment by way of acquisition, renovation and modification of their immovable properties and purchasing lavish household goods.

34. Referring to the above observations recorded by the AO in his reasons, the learned counsel for the assessee also submitted that the AO had suspected involvement of not the assessee alone but also the various other persons and had also referred to various nature of income. He contended that the AO, however, came to the prima facie conclusion that entries in the diary represent unexplained cash credits and the same represent undisclosed income belonging to assessee and/or of BEC Ltd. which no prudent person could have reached on the basis of the material available or reasons recorded by the AO. According to him, if the prima facie conclusion of the AO as to involvement of the assessee/BEC Ltd. only is tested on the touchstone of the material available with him, it is patently clear that there is no nexus at all to come to that belief. In fact, the material available pointed towards involvement of many persons and not the assessee alone. Further the nature of income sought to be taxed is not what could be deduced/concluded from the available material since the available material indicated, if at all, towards an entirely different nature of transactions. He contended that the AO thus was not sure either about the nature of income or the persons actually involved on the basis of material available before him and still proceeded to reopen the assessments for exploring various options. He pointed out that reassessment proceedings initiated in the case of other assesseees namely Shri B.R. Jain, Shri N.K. Jain and M/s BEC Ltd. however were subsequently dropped by the AO without assigning any reason. He contended that the assessment of income has to be done in the hands of the person legally entitled to

that income and there could be no assessment as a matter of convenience or to serve the interests of the Department, His contention therefore was that the AO had not been able to make up his mind as to whose income (i.e., the assessee's or B.R.Jain or N.K. Jain or BEC Ltd. or all of them) has escaped assessment and what is the income that has escaped assessment (i.e. whether commission income, income from sale of scrap, cash credit, etc.) on the basis of material available before him and in fact, there was absolutely no material, leave alone live/rational material, on the basis of which belief could have been formed that the entries in the diary represented cash credits in the hands of the assessee and/or unexplained expenditure of the assessee.

35. The learned counsel for the assessee further contended that reasonable belief about escapement of assessee's income from assessment is a condition precedent to exercise jurisdiction under Section 147 and such reasonable belief of the AO available in the form of reasons recorded by him under Section 148 should have a rational connection or a live link with the materials on the basis of which the belief was arrived at. According to him, on examination of the reasons recorded by the AO, one must be able to reasonably determine that there was application of mind by the AO on the material available on record and the conclusion arrived at must reflect honest and reasonable belief based on available material and not merely on suspicion, gossip or pretence, He submitted that on a judicious comparison between material available and reasons recorded in the present case by the AO, the prima facie conclusion purportedly arrived at that the entries in the diary represented cash credits taxable in the hands of the assessee could not have been arrived at by a reasonable person. The material received and the prima facie conclusions following therefrom never indicated that the diary exclusively belonged to the assessee and represented cash credits taxable in the hands of the assessee. The prima facie conclusion arrived at by the AO, as recorded in the reasons, never indicated that the amounts were taxable in the hands of the assessee.

He contended that the proceedings thus were initiated on the basis of reasons recorded having no nexus with the material available but the same were initiated to explore various options and the assessee was targeted as a matter of

convenience.

36. The learned counsel for the assessee also contended that the only basis of connecting the impugned diary with the assessee was the statement of Mr. J.K. Jain, who had never been the employee of the assessee as assumed by the Revenue authorities. He reiterated that, in any case, reliance could not be placed on the statement of Mr. J.K.Jain for the reason that no opportunity was afforded to the assessee to cross-examine the said deponent.

37. In support of his contentions, the learned counsel for the assessee relied on the decision of Hon'ble Supreme Court in the case of Sheo Nath Singh v. AAC (1971) 82 ITR 147 (SC) wherein it was held 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 ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. It was also held that the ITO 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. He also cited the decision of Hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Das (1976) 103 ITA 437 (SC) wherein it was held that the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief and rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year.

38. The learned counsel for the assessee also cited the decision of Hon'ble Supreme Court in the case of Ganga Saran and Sons (P) Ltd. v.ITO (1981) 130 ITR 1 (SC) for the proposition that the belief entertained by the ITO must not be arbitrary or irrational and it must be reasonable or in other words it must be based on reasons which are relevant and material, If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment. He also

relied on the decision of Hon'ble Madhya Pradesh High Court in the case of Arjun Singh v. Asstt. Director of IT and Ors. (2000) 246 ITR 363 (MP) wherein it was held that the reasons to believe must be based on objective and relevant materials and not those which are extraneous and merely opinion or ipse dixit by the officer, vague, farfetched, fanciful, remote information or only allegation. He contended that it is a settled position that there should be a clear nexus between material and reasons to believe.

39. Further reliance was placed by the learned counsel for the assessee on the decision of Hon'ble Gujarat High Court in the case of Seth Bros.

v. Jt. CIT (2001) 251 ITR 270 (Guj) to contend that reasons referred to must disclose the process of reasoning by which he holds 'reasons to believe', and change of opinion does not confer jurisdiction to reassess. He also contended that the reasons recorded must show application of mind by the AO. He then cited the decision of Hon'ble Madhya Pradesh High Court in the case of Bombay Pharma Products v. ITO (1999) 237 ITR 614 (MP) wherein it was held that the notice issued under Section 148 of the Act should follow the reasons recorded by the ITO for reopening of the assessment and such reasons must have a material bearing on the question of escapement of income by the assessee from assessment.

40. The decision of Hon'ble Madhya Pradesh High Court in the case of Lokendra Singh Rathore v. WTO (1985) 155 ITR 629 (MP) was also relied upon by the learned counsel for the assessee wherein it was held that the expression used in the relevant provisions being 'reason to believe' and not 'reason to suspect', action can be taken only when there is an honest and reasonable presumption based on reasonable grounds and not mere guess, gossip, suspicion or rumour. There should be a direct link or nexus with the information or material with the officer and the formation of the belief as to the escapement of net wealth in a particular assessment year. He submitted that the decisions of Hon'ble Delhi High Court in the case of United Electrical Co. (P) Ltd v. CIT (2002) 258 ITR 317 (Del) and Bawa Abhai Singh v. Dy. CIT (2002) 253 ITR 83 (Del) are also to the similar effect, wherein it was held that the crucial expression 'reason to believe' predicated that the AO must hold a belief... by the existence of reasons for holding such a belief.

In other words, it contemplates existence of reasons on which the belief is founded and not be merely a belief in the existence of reasons, inducing belief. Such a belief may not be based merely on reasons but it must be founded on information.

41. Further the learned counsel for the assessee relied on the following case laws in support of his contention that initiation of proceedings under Section 147 r/w Section 148 merely for the purpose of making roving/fishing enquiry is not permissible in law :HCL Employees and Investment Co. Ltd. v. Asstt. CIT (ITA No. 6874/Del/1995) 42. The learned standing counsel for the Revenue, Shri Anand Jaiswal, on the other hand, contended that there was enough information available with the AO at the time of recording the reasons to entertain a belief that substantial income of the assessee had escaped assessment. In order to support and substantiate this contention, he enumerated the following information obtaining from the record as relied upon by the AO in his reasons recorded : (a) Shri J.K. Jain has stated before the Addl. DIT (Inv.) on 2nd March, 1996 in response to Q. Nos. 5, 6 and 7 of his statement that he used to make entries in the diaries on the basis of oral instructions of Shri S.K. Jain and in response to Q. Nos. 57 and 76 it is stated by him that he used to receive written accounts also from Shri S.K. Jain.

(b) In his statements given to CBI on 15th Sept., 1993, 16th Sept., 1993, 17th Sept., 1993 and 23rd Sept., 1993 placed on pp. 164 to 175 of CBI's report dt. 7th Feb., 1995, Shri J.K. Jain has stated that : "My father as well as father of Shri S.K. Jain were very close friends since very beginning and due to their acquaintance, I was.

associated in M/s Bhilai Engineering Corpn. Ltd. by Shri Surender Kumar Jain and working with him since 1978" (page No, 166 statement dt. 15th Sept., 1993) "I am working with M/s Bhilai Engg. Corpn. since 1978 and presently, I am getting a salary of Rs. 6,900 per month, besides free accommodation and car" (as senior executive in M/s BEC Ltd., 13 Masjid Moth, New Delhi,--as given in the caption to his statement) "I was looking after the liaison work, sales relating to the export and other activities with various management Departments, on behalf of M/s Bhilai Engg, Corpn.". (Page No. 166 of CBI's report)".

"Today, I have been shown two spiral note-books and two files marked as (MR-208, 209, 325 and 326/93). The note-books and the files mentioned above have been seized from the search of my house conducted by the CBI, SIC-II, New Delhi, on 3rd May, 1991. In the note book (marked as M-209/93), the details of credit/debit have been maintained from the month of February, 1988 to April, 1991.

This bears my writing. The entry relates to receipt of various amounts and their disposal monthwise and this has been written on the instruction/dictation of Shri S.K. Jain, the managing director of Bhilai Engineering Corpn., the same were to be shown to him regularly from time to time. The details as mentioned in coded words in abbreviated forms, have been written as per instruction of Shri S.K. Jain aforesaid." "According to me, the figure is in thousand and the words written therein are the names of the individual person. The full details of the same are known to Shri S.K. Jain on whose dictation/instruction, I have noted the same in the files as well as in the note books aforesaid." (Page No. 172 of CBI's report) "These entries have been made by me as per instructions of Shri S.K. Jain." (Page No. 176 of CBI's report--Statement dt. 23rd Sept., 1993).

(b)(i) All these statements given by Shri J.K. Jain before CBI were confirmed by him before the Addl. DIT (Inv.) in response to question No. 3 of his statement dt. 2nd March, 1995. All these evidences the fact that Shri J.K. Jain is an employee and a trusted man of Shri S.K. Jain and had written these diaries and documents at the instructions/dictates of Shri S.K. Jain and that the same were to be shown to the assessee regularly from time to time. Shri J.K. Jain also admitted that the transactions recorded in the impugned diary and documents related to the financial affairs of Shri S.K. Jain.

The fact that Shri J.K. Jain, employee of the assessee had to write this diary and documents as per dictates/instructions of the assessee and that it was the assessee alone who had full knowledge, personal interest, involvement and control over the transactions recorded therein, is further evident and fortified from the fact that the assessee's signatures are affixed on pages Nos. 3 & 35 of MR-76/9 and on page Nos. 44 and 45 of MR-73/91. Since Shri Veenu Jain and Shri

Pramod Jain, directors in some companies of this group, when confronted, having identified the impugned signatures as having been of the assessee, there is no doubt and dispute in this regard that the assessee had the complete control and knowledge over the entries made therein.

(c) The fact that Shri S.K. Jain has been occasionally checking and signing these documents is evident from his checking marks and signatures placed on page Nos. 3 and 35 of MR-71/91 and page Nos. 44 and 45 of MR-73/91, the authenticity of which had been identified by Shri Veenu Jain and Shri Pramod Jain, directors in the companies of this family group of the assessee. Occasionally, these accounts have also been shown to his brothers Shri B.R. Jain and Shri N.K. Jain as there are remarks in the handwriting of Shri J.K. Jain on page No. 7, page No. 8 (reverse) and page No. 10 of MR-71/91 to this effect.

(d) In his statement recorded on 24th April, 1995 Shri Daniel P. Rambal, an employee of Shri S.K. Jain and his companies stated that Shri J.K. Jain had given him money in Bombay office which was to be spent as per the instructions of Shri S.K. Jain, Shri Rambal had submitted the account of the expenses incurred on behalf of Shri S.K. Jain to Shri J.K. Jain who recorded them in the seized diary.

(e) Shri P. Ghoshal, an employee of Shri S.K. Jain and his companies stated in his statement recorded on 26th April, 1995, that he had received in Calcutta from Shri J.K. Jain a sum of Rs. 10 lakhs which was spent for purchase of various articles of Shri S.K. Jain. The account of Rs. 10 lakhs was submitted by him to Shri J.K. Jain and which was found recorded in the impugned diary.

(f) In his statement recorded on 27th April, 1995, Shri H.P. Guha Roy, an employee of Shri S.K. Jain and his companies stated that he had received money on most of the occasions from Shri J.K. Jain which was spent at the airport for custom clearance of goods/articles imported by Shri S.K. Jain for his farmhouse. The accounts of the expenditure relating to the farmhouse of the assessee were submitted to Shri J.K. Jain which were found recorded in the documents seized from the premises of Shri J.K. Jain.

(g) In his statement given before CBI on 8th Oct., 1993, Shri B.R. Jain has clearly stated as under : These accounts, were being maintained by Shri S.K. Jain who is the managing director of the company and used to look after the affairs of the company in all matters. The accounts were being maintained in a rough accounts paper by Shri J.K. Jain as per instructions by Shri S.K. Jain, only in order to keep a track on the receipts and payments. I do not remember if I had been shown these accounts by Shri J.K. Jain on 1st June, 1989 as mentioned therein and even if he had shown me the said account, I simply saw the receipts and expenditure mentioned therein in a very cursory manner. On the said accounts paper, there is mention of payment made to Jaffar Sarif, Arif Mohd. and others. I am not aware as to what amounts were paid to them and whether they were political persons or anybody else. It is purely in the personal knowledge of Shri S.K. Jain." (g)(i) In order to verify above information given by Shri B.R. Jain to the CBI, his statement was recorded by the AO on 7th April, 1995 under Section 131 of the IT Act. Question No. 2 and his answer in the above statement are reproduced below : Q. No. 2 Do you affirm the statement given by you to CBI on 8th Oct., 1993 "In the statement there seems to have been some typographical error which has changed the meaning of my statement. I was not aware whether any account was maintained by Shri J.K. Jain and I have no personal knowledge that they were selling scrap and generating money. I was never shown any accounts by Shri J.K. Jain. Except above and the information connected to the above, I confirm the statement".

43. Shri Anand Jaiswal contended that all the above information arising from the material available before the AO lead to an irresistible conclusion that transactions recorded by the assessee's employee Shri J.K. Jain in the impugned diaries/documents related to the unrecorded business affairs of the assessee and since none else other than the assessee had any knowledge about the said transactions, his involvement therein and control thereon was very much evident. He further contended that all these transactions found recorded in the said diary belonging to the assessee represented cash credit entries and expenditure of the assessee and since the same was not disclosed in his regular returns filed for the relevant years, a prima facie case of income escaping assessment under the deeming provisions of Sections 68 and 69C r/w Section 147 was clearly made out.

This is more so because the assessee had failed to prove and explain all the essential ingredients of Sections 68 and 69C insofar as they relate to the unrecorded incomings and outgoings, evident from the impugned documents.

44. Shri Anand Jaiswal pointed out that Shri Arif Mohd. Khan in his statement dt. 21st Sept., 1994 given before the CBI had admitted that he was given donation of sizeable sums of Rs. 50,000 by the assessee and that Shri S.K. Jain was also making payment of the telephone bills and incurring sundry expenses on his behalf, i.e., on behalf of the said deponent. He had also deposed that the assessee had donated sums ranging between Rs. 20-50 thousands on various occasions. In his statement dt. 8th Dec., 1994, Shri Rajesh Pilot had deposed before the CBI as under:-- "I admit having received some money from the said Shri S.K. Jain through my P.A. but, cannot exactly remember the said amount.

But, I definitely remember that the said Shri S.K. Jain did come to me in April, 1991 and wanted to help in my election by contributing that money." Shri Mukul Jain in his statement dt. 12th Dec., 1994 deposed before the CBI that he was given amounts in thousands for meeting expenditures on the construction work for farmhouse from time to time and the details of such expenditure made, were given to the assessee.

Smt. Krishna Jain in her statement dt. 7th Dec., 1994 deposed before the CBI that she used to receive money from Shri S.K. Jain and return the same on demand and further stated that she did not know about the entries in the diary. Shri Rameshwar Gupta in his statement dt. 23rd Dec., 1994 deposed before CBI that once for coming over to Bhilai from New Delhi, he asked for Rs. 500 from Shri S.K. Jain and he gave the amount to him. Shri Daniel P. Ramball in his statement dt. 13th Dec., 1994 deposed before the CBI that the amount shown against his name in the diary was actually paid to a party at Mumbai against purchases of Italian marbles and glass decor items to be fitted at the farmhouse of Shri S.K. Jain. Shri Ved Prakash Mahipal in his statement dt. 23rd Dec., 1994 deposed before the CBI that while he was on official tour to Delhi during the year 1989-90, an amount of Rs. 2,000 was taken from Shri S.K. Jain and he was never paid an amount of Rs. 2 lakhs as per the entries in the diary. Shri Damodar Vikrama Nair in his statement

dt. 19th Dec., 1994 has deposed before the CBI that in the month of May/June, 1988, he had gone to Delhi on account of some personal work and that he was in need of money, which he took from Shri S.K. Jain.

The amount was Rs. 500 only. This amount was given to him by Shri J.K. Jain on the instructions of Shri S.K. Jain. Regarding entries in diaries of 0.50, he deposed that he did not know in what context it pertains to. Shri Dhrub Mathur in his statement dt. 23rd Dec., 1994 has deposed before the CBI that he had been posted at Nagpur before August, 1991. He further stated that he had once taken an amount of Rs. 500 to Rs. 600 from Shri S.K. Jain, director of BEC. He also stated that he did not recollect the exact date and time when the amount was received.

The entries stating receipt of Rs. 4.50 lakhs from his employer is incorrect. Shri Satya Bagla has deposed before the CBI that he might have received about Rs. 25,000 on various occasions from Shri S.K. Jain towards repairs of his car. Shri Vinod Kumar Jain in his statement dt.

10th Feb., 1994 deposed before the CBI that he used to receive cash from Shri S.K. Jain from time to time but the same used to be in thousands only. He denied having any knowledge regarding the entries in the impugned diary. Shri M.P. Nair in his statement dt. 18th Feb., 1994, deposed before the CBI that he did not know in what context the entries in the impugned diary were made. Further, he deposed that Shri S.K. Jain used to give him some amounts being in thousands. Shri Sanjay Kumar, S/o Shri Chandram in his statement dt. 12th Dec., 1994 deposed before the CBI that his father had arranged for a loan of Rs. 10 lakhs from Jains and he personally went to the office of Jains and collected the cheque for the same. Shri T.T. Bhatia, an employee of BEC, Bhilai, in his statement dt. 29th Dec., 1993 had deposed before the CBI that he had received Rs. 60,000 as against Rs. 80,000 shown in the impugned diary as loan from the assessee.

45. Shri Anand Jaiswal submitted that the entire aforesaid information available with the AO made it abundantly clear that all the transactions were recorded by Shri J.K. Jain in the said diaries as per the instructions of the assessee and it was the assessee alone who had the fullest involvement and control/knowledge

regarding the nature and nomenclature of the entries recorded therein. He contended that the entries in the diary were found to be real events by the AO on examination of loose documents as well as statements of the concerned persons recorded by the Addl. DIT, New Delhi and without rebutting this finding of the AO, the explanation of the assessee that the reopening was without any material or foundation and was based on hearsay could not discharge him from the onus lay upon him under Section 68 or 69C. He also submitted that the relevant seized diaries and documents also contained a record of disbursements, inter alia, on investment in construction of farmhouse at Mehrauli on the land belonging to Shri S.K. Jain and his spouse. In this regard, he contended that the expenses for import of artefacts included therein were incurred in the name of assessee which is evident from various documents viz., MR-76/91 as well as statements of Shri H.P. Guha Roy and Shri D.K. Guha both dt.

27th April, 1995 given before Addl. DIT (Inv.) Unit-I, New Delhi.

46. Mr. Anand Jaiswal contended that the seized diary and documents thus were clearly established as belonging to Shri S.K. Jain on whose instructions Shri J.K. Jain used to maintain these records. According to him, the information contained in the impugned photocopies received by the AO had been independently and analytically examined and verified by him with reference to the returns originally filed by the assessee for these years under consideration and it was such an exercise independently carried out by the AO that brought to light the fact that sizable undisclosed income assessable in the hands of the assessee, had escaped assessment. He submitted that the prima facie conclusion and satisfaction was independently arrived at by the AO on proper evaluation of the material information in his possession and hence it was incorrect on the part of the assessee to assert that the AO did not arrive at a prima facie conclusion that the income alleged to have escaped assessment belonged to the assessee. He further submitted that a critical analysis of all the depositions made by various concerned/involved persons, as enumerated above, clearly leads to an irresistible conclusion that the entries in the seized diary were recorded by the assessee's employee as per the instructions of the assessee. Even the assessee himself had explained before CBI, the nature and nomenclature of the transactions found

recorded by the assessee's employee in the questioned diaries. These facts also are further fortified from the signatures of the assessee affixed on some pages of these diaries, as mentioned supra and all these evidences the fact that the entries in the said diaries were being made only as per the instruction of the assessee and it was the assessee alone who had fullest control and knowledge about the same. He contended that the AO, therefore, was fully justified in treating the entries found recorded in the seized diary as cash credit entries in the hands of the assessee considering that the same had been not disclosed in the regular returns of income filed by the assessee and no satisfactory explanation was forthcoming from him.

47. In short, Mr. Jaiswal submitted that the entries in the questioned diaries were written by Shri J.K. Jain, employee of the assessee and in his statement given before the CBI, Shri J.K. Jain had explained in clear terms that he had written the transactions in the impugned diary as per instructions of the assessee and it was the assessee alone who could explain the nature of transactions recorded therein. This assertion of Shri J.K. Jain is further fortified from the statement given by Shri B.R. Jain (assessee's brother) wherein he had categorically stated that it was only Shri S.K. Jain (i.e. the brother of Shri B.R. Jain and assessee in this case) who could explain the nature of the entries recorded therein because, according to the assessee's brother, it was only the assessee who had complete knowledge and control over the transactions recorded therein since they were written by Shri J.K. Jain as per the instructions of the assessee.

48. In support of his contention, Mr. Jaiswal relied upon the decision of Hon'ble Gujarat High Court in the case of Praful Chunilal Patel v.M.J. Makwana, Asstt. CIT (1999) 236 ITA 832 (Guj) wherein it was held that the word 'reason' in the phrase 'reason to believe' would mean cause or justification and if the AO has a cause or justification to think or suppose that income had escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. It was also held that such justification for his belief is not to be judged from the standards of proof required for coming to a final decision and at the stage where he finds cause or justification to believe that such income has escaped assessment, the AO is not required to base his belief on any final adjudication of

the matter based on any judicial or quasi judicial enquiry. He also cited the decision of Ahmedabad Bench of Tribunal in the case of Asstt. CIT v. Gujarat Bitumen Ltd. (2002) 76 TTJ (Ahd) 940 : (2002) 82 ITD 614 (Ahd) wherein it was held that the words 'reason to believe' cannot mean that the AO should have finally ascertained the facts by legal evidence and if the AO has a cause to believe that income had escaped assessment, he can be said to have a reason to believe that the income had escaped assessment.

49. Further reliance was placed by Mr. Jaiswal on the decision of Hon'ble Calcutta High Court in the case of ITO v. Electro Steel Castings Ltd. (2003) 264 ITR 410 (Cal) for the proposition that the validity of proceedings has to be judged on the basis of facts as existed on the date of assumption of the jurisdiction and not on the ultimate result of any reassessment proceedings. He also relied on the decision of Hon'ble Supreme Court in the case of ITO v. Selected Dalurband Coal Co. (P) Ltd. (1996) 217 ITR 597 (SC) wherein it was held that the formation of belief by the AO is within his subjective satisfaction and, therefore, 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 facts stated in the material are true or not is not the concern at this stage.

Relying further on another decision of Hon'ble apex Court in the case of Shri Krishna (P) Ltd. v. ITO (1996) 221 ITR 538 (SC), he contended that the enquiry at the stage of examining the validity of reassessment notice is only to see whether there are reasonable grounds for the AO and not whether the omission/failure and the escapement of income is established. Mr. Jaiswal also cited the decision of Hon'ble Supreme Court in the case of CIT v. A. Raman and Co. (1968) 67 ITR 11 (SC) wherein it was held that the expression 'information' in the context in which it occurs must mean instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to a matter bearing on the assessment.

50. Mr. Jaiswal also contended that the objection of the learned counsel for the assessee regarding non-quantification of escaped income, which according to him, vitiated the proceedings under Section 147 taken in this case, has also no merit

and is unsustainable in law because the Act does not require quantification of escaped income before initiation of proceedings under Section 147 of the Act. In support of this contention, he relied on the decision of Hon'ble Gauhati High Court in the case of Dhanisiam Agarwalla v. CIT (1993) 201 ITR 192 (Gau) [Special Leave Petition dismissed by the Supreme Court 204 ITR (St) 45-46] wherein it was held that it is not needed, at the stage of issuance of a reassessment notice, that the assessee must be informed about the specific or exact amount which is proposed to be added to his income. He submitted that notwithstanding this position of law, it will be most evident from the annexure to the order sheet entry dt. 30th March, 1995 (appearing at page Nos. 110 to 122 of paper book, Vol. I) that the AO had duly quantified the probable income escaping assessment and thus, this objection of the assessee, being without any merits either on facts or in law, merits rejection.

51. Mr. Jaiswal contended that in the case of the assessee under consideration, the information received by the AO was thoroughly investigated and verified with reference to the facts disclosed by the assessee in original returns and this exercise made by the AO brought to light escapement of sizeable income and to bring to tax such escaped income, the AO recorded his satisfaction, after due application of mind and recorded extensive and speaking reasons in support of his belief regarding escapement of income before issuing notice under Section 148 of the Act. Hence, not only the law applicable to the cases relied upon by the assessee, is not applicable to the years under consideration but the facts in the cases relied upon by the assessee are also quite different and distinguishable from those obtaining from the record of the assessee under consideration. The ratio laid down in the said decisions relied upon by the assessee, therefore, has no application at all to the acts of the case under consideration. He also contended that the facts documented by the AO clearly evidences the fact that the reasons recorded were on the basis of the material facts available before him, which indicated escapement of sizeable sums from taxation.

Thus there was live link between the material on record and the reasons extensively recorded by the AO to justify action under Section 147 in this case. According to him, the information received was minutely verified and examined by

the AO with reference to the returns originally filed by the assessee and this exercise independently made by the AO, after due application of mind, brought to light that the transactions reflected in the seized diaries were not disclosed in the returns originally filed and thus, there was every reason to believe escapement of substantial amount of undisclosed income/investment having direct nexus and live link between material available on record which was the basis for taking action under Section 147.

52. It was also submitted by Mr. Jaiswal that the voluminous information received by the AO from the office of the DDIT(Inv.) was thoroughly verified by him with reference to the returns originally filed by the assessee which resulted in detection of escapement of substantial income in the respective years under consideration and the proceedings under Section 147 were, therefore rightly initiated for the assessment years under consideration quantifying the probable income that had escaped assessment although there was no such requirement as per law.

53. Mr. Jaiswal then proceeded to distinguish the decisions relied upon by the learned counsel for the assessee in support of the assessee's case. In this regard, he submitted at the outset that most of these decisions cited by the learned counsel for the assessee involved period prior to 1st April, 1989 wherein pre-amended provisions of Section 147/148 were applicable whereas in the present case, law as amended w.e.f. 1st April, 1989 is applicable according to which the only condition precedent for invoking jurisdiction under Section 147 is that the AO should have reason to believe that the income chargeable to tax has escaped assessment. He submitted that even the facts involved in the present case are different than that of these cases inasmuch as in the case of the assessee, the AO had material information in his possession pointing to the sizeable escapement of income and hence, after recording his satisfaction and reasons therefor, the AO initiated proceedings under Section 147 after observing all statutory formalities. The action of the AO was thus perfectly in conformity with the provisions of law enumerated above and hence the law pronounced in the decisions relied upon by the assessee, has no relevance and application at all to the assessment years involved in the case of the assessee under consideration. He further submitted that in the case of the assessee, under consideration. Incriminating documents

received from the office of the DDIT (Inv.) were thoroughly examined by the AO and after due application of mind, the AO recorded his satisfaction that a sizeable amount of receipts and disbursements, found recorded in the diary No. MR-71/91, were not found recorded and were not disclosed in the returns originally filed by the assessee. Hence to bring to tax such escaped income, the AO initiated action under Section 147 after complying with all the statutory formalities. Therefore, the information, which enlightened the escapement of sizeable income, and the investigation and verification of the same with reference to the facts disclosed by the assessee in the original returns filed for these years, were very much preceded the initiation of the impugned reassessment proceedings under Section 147 and hence the action of the AO in this regard was in conformity with the ratio laid down by the Patna High Court in the case mentioned supra, although the facts of the case under consideration are entirely different from those before the Patna High Court in the case relied upon by the assessee.

54. In the rejoinder, the learned counsel for the assessee submitted that the contention of the Revenue that the assessee had signed on pp.

3 and 35 of the impugned diary is factually incorrect inasmuch as the said pages (placed on pp. 338 and 314 of the paper book) were not part of the impugned diary, i.e., MR-71/91 but were part of MR-76/91. He pointed out that p. 3 is the statement of expenses on farmhouse belonging to BEC Impex International (P) Ltd. whereas p. 35 is some statement prepared by Mr. P. Ghosal to Shri J.K. Jain wherein there is a reference of payment being made as per managing director's instructions. Thus, there is no reference of any payment being received or paid on behalf of the assessee and it would be totally absurd to connect the impugned diary - MR-71/91 with the assessee on the basis of these two pages which were part of MR-76/91. In any case, the assessee was never confronted with the said pages to confirm that the signatures assumed to be that of the assessee were actually of the assessee or not.

55. The learned counsel for the assessee also submitted that the assessee had never explained the contents of the impugned diary before the CBI, as alleged. In the returns filed by the assessee, he had denied connection with the documents

seized from Mr. J.K. Jain.

Further, in the only statement of the assessee recorded by the AO on 7th Feb., 2003 (pp. 1000 to 1002 of the paper book), the assessee had categorically denied having made any such statements before the CBI and it was also stated in the said statement that he had never given any instructions to Mr. J.K. Jain for recording the entries in the impugned diary and that Mr. J.K. Jain was never his personal employee. Moreover, even the CIT(A) (refer p. 53 of CIT's order) has held that the statements before the CBI have not been relied upon by the AO and, therefore, reliance placed by the Revenue at this stage on the statements made before the CBI is uncalled for despite the fact that the said finding of the CIT(A) has attained finality, since no appeal has been preferred against the finding of the CIT(A) by the Department.

56. The learned counsel for the assessee further submitted that the argument of the Revenue that some of the entries in the diary were found recorded in the books of some of the concerns, in fact, supports the contention of the assessee. If that be the case, then how could the AO form a belief that the entries in the diary belonged to the assessee. The belief of the AO, therefore, did not follow from the material received. As regards the observations of the Hon'ble Supreme Court in the case of *v. C. Shukla* (pp. 757 to 789 @ 777 of paper book), he submitted that the said observations of the Supreme Court were based on the allegation of the prosecution that the diary related to Jain Brothers and the same having been recorded in totally different context, could not be the basis for justifying the arbitrary action of the Revenue authorities. Further, assuming that the Supreme Court gave a factual finding, even then the diary was observed to relate to the 'Jain Brothers' and not the assessee alone. Therefore, it is for the Revenue to explain as to why the entire diary was held relatable to the assessee alone.

57. As regards the decisions of the Punjab & Haryana High Court in *Mrs.*

Rama Sinha v. CIT (2002) 256 ITR 481 (P&H) and the Calcutta High Court in *Simplex Concrete Piles (India) (P) Ltd. v. Dy. CIT* (2002) 255 ITR 49 (Cal) relied upon by the Revenue, he submitted that the same were rendered in totally different context. There is no dispute with the legal proposition laid down in the

said decisions that at the time of issuance of notice, the AO is only required to come to a prima facie belief. The case of the assessee, however, is that on the facts and circumstances as have been highlighted, prima facie conclusion purportedly arrived at by the AO is in direct conflict with the inference that a reasonable person could have drawn from the available material. He submitted that there is also no dispute with the proposition that validity of initiation of proceedings have to be tested on the basis of material available at that time. The contention of the assessee has been that on the basis of reasons recorded and the available material no prudent person would have come to the prima facie conclusion that entries recorded in the impugned diary represented cash credit and undisclosed income belonging to the assessee. Therefore, there was no live link/connection between the material received and the reasons recorded. He submitted that the decisions relied upon by the assessee and sought to be distinguished by the Revenue, merely lay down an accepted legal principle that proceedings under Section 147 could be initiated only after recording reasons under Section 148 of the Act.

Further, the reasons recorded must reflect application of mind by the AO and the reasons recorded must have live and rational connection/link with the material available. The said principles apply both to the pre-amended as well as the post-amended law since the expression 'reasons to believe' exists under both the provisions as held, inter alia, in the case of Arjun Singh (supra) and Seth Bros. (supra).

58. The learned counsel for the assessee further submitted that the Revenue has missed the import of the assessee's arguments inasmuch as it has never been the contention of the assessee that the document received from the CBI by the AO could not be held to be "information" in order to form a prima facie belief as to whether there has been any escapement of income or not. The vehement contention of the assessee has been that the AO initiated the proceedings under Section 147 of the Act on dictates of the higher authorities without conducting adequate enquiries to even form prima facie belief that income of the assessee has escaped assessment. It has also been contended by the assessee that the proceedings were initiated on a mass scale in number of cases to conduct further

enquiry on the basis of suspicion that there has been escapement of income and the AO was not in a position to make up his mind as to whose income has escaped assessment and what is the nature of income that has escaped assessment. According to the assessee, there is no connection between the material received, prima facie belief formed as stated in the reasons recorded as well as the conduct of the AO in reopening the assessment in number of cases on a mass scale and thus, the proceedings were initiated merely to conduct fishing and roving enquiries without even forming a prima facie belief that income of the assessee has escaped assessment.

59. The learned counsel for the assessee submitted that the Revenue's argument that the documents revealed escapement of assessee's income is also not correct as highlighted on pp. 18 to 21 of the propositions on the basis of material found and the inference drawn/puma facie conclusion arrived at by the AO does not have live nexus/connection with the available material. According to him, even the decision reported in CIT v. Sun Engineering Works (P) Ltd. (1992) 198 ITR 297 (SC) and CIT v. D.R. Vadera (sic) of Hans Raj Vadera relied upon by the Revenue are not applicable in the facts of the present case since the issue raised by the assessee is whether the proceedings could be initiated to conduct further enquiry and investigation. The decisions thus cited are not relevant.

60. As regards the statement of Shri B.R. Jain relied upon by the Revenue, the learned counsel for the assessee submitted that Shri B.R.Jam had never stated that the entries in the diary related to the assessee. On the contrary, Shri B.R. Jain had stated that accounts were being maintained to look after the affairs of the company out of funds generated from sale of scrap and for promoting business interest. On the basis of the said statement the only logical inference which could be drawn is that the entries in the diary related to the company and not to the assessee and the same reflected income from sale of scrap and not cash credits. The AO, on the contrary, had come to a conclusion that the diary belonged to the assessee and entries therein represent unexplained cash credits which shows that there was not even prima facie link between the material relied upon and the conclusions drawn by the AO.⁶¹ We have considered the rival submissions and also perused the relevant . material on record to which our attention was drawn

during the course of hearing. It is observed that in his arguments in support of ground Nos. 5, 6 and 7 raised in the assessee's appeal, the learned counsel for the assessee has challenged the validity of initiation of reassessment proceedings for the years under consideration mainly on the following grounds ; (a) The AO did not reach prima facie conclusion that income alleged to have escaped assessment belonged to the assessee.

(b) The AO failed to quantify the income of the assessee alleged to have escaped assessment.

(c) There was no live link/nexus between reasons recorded and the income assessed in the hands of the assessee.

In support of his contentions on the aforesaid issues, the learned counsel for the assessee has cited various case laws whereas the learned standing counsel for the Department in his submissions has made an attempt to distinguish these cases cited by the learned counsel for the assessee on facts besides contending that in many of these cases, the pre-amended provisions of Section 147/148 were under consideration whereas the amended provisions are applicable to the present case. No doubt, the facts of each case are required to be considered independently in order to decide the question relating to validity of initiation of reassessment proceedings, but the same have to be appreciated in the light of legal position emanating from various judicial pronouncements. In this regard, the decision of Hon'ble Gujarat High Court in the case Seth Bros. v. Jt CIT (supra) can be usefully referred to wherein after analysing the provisions of Section 148 r/w Section 147, their Lordships summarised the settled legal position in the matter of conditions precedent for valid initiation of reassessment proceedings as under : (b) Circumstances must exist and cannot be deemed to exist for arriving at an opinion; (c) Reason to believe must be honest and not based on suspicion, gossip rumour or conjecture; (d) Reasons referred to must disclose the process of reasoning by which the AO held "reasons to believe" and change of opinion does not confer jurisdiction to reassess; (f) The reasons referred to must show application of mind by AO. 62.

It is therefore relevant to find out as to whether the aforesaid conditions were duly satisfied in the present case by the AO before initiating reassessment proceedings for the years under consideration. In this regard, it is observed that during the course of search carried out by the CBI at the residential premises of Shri J.K. Jain situated at G-13, Saket, New Delhi, various incriminating documents besides cash and other valuables were found and seized.

Out of this seized material, photocopies of following documents were received by the AO on 24th March, 1995 through DDIT under letter F. No. DDIT/INB/U-1/JW/BLH/95-96/1464, dt. 20th March, 1995 along with statements recorded of the concerned persons as well as investigation report of CBI and DDIT-- (ii) Set-II-- Containing detailed expenditure in firm and others having pp. 1-30.

(iii) Set-III--Titled as MR-69/91 containing pp. 1-8 showing summary of accounts in the diary.

(iv) Set-IV--Summary of accounts of diary titled as MR-70/91 having pp. 1-30.

(v) Set-V--Titled as MR-72/91 showing details of payments, etc.

having 51 pages.

(vii) Set-VII--Titled as MR-67/91 containing 11 pages representing ledger account of BECO, S.K. Jain.

(viii) Set-VIII--Copy of account of petition filed before Settlement Commission by Shri J.K. Jain having 12 pages.

(x) Set-X---Statement of accused recorded by CBI as containing 258 pages. I (xi) Set-XI--Containing statements of witnesses by CBI having 125 pages.

(xii) Set-XII--Containing a report sent by DDIT, Unit-I to DI about appraisal of some of the documents containing 18 pages.

63. All the above documents seized by CBI and received from DDIT office under letter dt. 20th March, 1995 were scrutinised by the AO on receipt of the same on 24th March, 1995 as specifically mentioned in the reasons recorded and after

scrutiny of this voluminous material, he proceeded to form a belief about the escapement of assessee's income from assessment for the reasons recorded in the following manner. A diary identified as MR-71/91 was forming part of the material seized from the premises of Shri J.K. Jain. In the said diary, various financial transactions were found recorded pertaining to the period from February, 1988 to April, 1991. The description of the said transactions apparently representing receipts and payments however was given in coded terms and even the amounts involved in the said transactions were written in coded numbers. In his statement recorded by CBI, Shri J.K. Jain stated that the said diary was not pertaining to him but the same had been written by him in his own handwriting at the instance of the assessee who was the managing director of his employer-company, i.e., BEC Ltd. He also expressed his inability to explain the nature of transactions found recorded in the said diary stating that only Shri S.K. Jain had the knowledge of the said transactions. The relevant portion of the reasons recorded by the AO relating to this aspect is reproduced below : "During the course of interrogation by CBI, Shri J.K. Jain has stated that so far as the valuables seized from his house are concerned, they belong to him but the diaries and registers were not pertaining to him, even though, those have been written in his hand at the instance of Shri S.K. Jain, his employer in the capacity of managing director of BEC. When he was asked about the nature of writings, etc. he maintained utter silence on the plea that he did so at the directions and dictation's of Shri S.K. Jain who knows as to what was directed to be written by him." 64. The aforesaid statement of Shri J.K. Jain was confronted to the assessee by the CBI and in his statement recorded before CBI in this regard, assessee explained almost all the transactions appearing in the relevant seized diary and also deciphered the code words and figures as pointed out by the AO in the reasons recorded as follows : "When Shri S.K. Jain was confronted by the CBI Officer, he explained that the same represented the receipt of money from Bhilai to the persons who are in employment with the company or the firm at Bhilai which was taken to Delhi and was handed over to the personnel of account section to hand over to Shri J.K. Jain for safe custody. The nature of the receipts was stated to be of unaccounted money generated as a receipt of sale of scrap of BEC Ltd. which has not been accounted for by them in the regular books of account. So far

as the codes abbreviated names appearing, he explained that so far as the letter 'A' is concerned, it is assigned to BEC Ltd. and 'Beco' their another concern whose full name is Beco Steel Casting Ltd, It is further contended by Shri Jain that the figures given in the diary were only in thousand and not in lakhs. As regards the names of politicians and others is concerned, he admitted of having given some donations and gifts to ministers on various occasions which he could not remember, etc." 65. Even the statements of S/Shri B.R. Jain and N.K. Jain were also recorded by the CBI as well as by the DDIT and the findings based on the said statements as well as on the report of CBI and DDIT were recorded by the AO in his reasons as follows : "When the other partners of Jain were interrogated, S/Shri B.R. Jain and N.K. Jain also reiterated the version of Shri S.K. Jain particularly on two aspects that the money in question was representing their black money generated from various concerns of the group mainly BEC and receipts noted in the diaries were representing the amounts only in thousands and not in lakhs.

Wherever the Investigating Officer of the CBI confronted them that the specific entries where the amounts written in absolute terms which clearly showed the figures to be in lakhs, the concerned person pleaded his ignorance saying that he could not explain the same as to how Shri J.K. Jain had written so It has been amply made clear by the Investigating Officer that the absolute figures were separated by putting a dot bifurcating the figures of lakh on the left hand side and the figures of thousand on the right hand side. To further confirm this, they pointed out to a specific entry viz./ "pound 32000 multiplied by 42 is 12.80". Here the Investigating Officer confronted Shri S.K. Jain that had his version been correct, then the corresponding figure should have been written as 12,80,000 in absolute figure but it was written as 12.80 which revealed the position of writing of figures of lakh on left hand side of the dot and figures of thousand on right hand side of the dot.

Shri S.K. Jain here could not give any convincing counter-reply except saying that it is done by Shri J.K. Jain. The said diaries and registers were referred by the Investigating Officer to the Jr.

Technical Officer of CBI, Shri v. K. Sharma who had also concluded that the figures were only in lakhs and since on some pages there is a clear working of amounts as converted into Indian currency by applying a conversion rate. This therefore represents nothing but the foreign currency brought on in India. This fact has been further corroborated by the fact that the various amounts were multiplied by 'cash Hawala' rates prevailing during that period and obtained from Directorate Of Enforcement by requisition.

It is pertinent to mention here that no instant statement has been recorded by the CBI, i.e., on the date of search on 3rd Sept., 1991 but it was recorded on 15th Sept., 1991 and in the meantime these persons consulted each other and came out with a different story about what was found noted in the diary, etc. I have very carefully gone through the photocopies of the diary, opinion of the CBI and report of the Directorate and I find that in fact the transactions recorded in these diaries were pertaining to assessee's business of Hawala transactions, the exact mechanism of which has not come on record. However, since the concerned persons have admitted the diaries and other records as belonging to them and have accepted the receipts as representing their black money, the Department's purpose is served if the said entries are treated as cash credits in the hands of Shri S.K. Jain and/or BEC Ltd. on which the nexus of earning has been conceded by the Jains. It may be mentioned that in some places of the diary there are narrations to the effect that these accounts have been shown on a particular date and shown to Shri B.R. Jain and N.K. Jain. This shows that all the three brothers viz. S/Shri B.R. Jain, N.K. Jain and S.K. Jain were involved in this affair and the accounting of it was being done by their manager Shri J.K. Jain who appears to be man of confidence of the Jains, as he happened to be an old employee since 1978 and otherwise happens to be their distant relative. So far as the payment of money to various persons as mentioned above is concerned, in addition to making the payments, the Jains have enjoyed the same by making investments in properties and spending on various social and cultural functions like Diwali, birthday, etc.

66. Further a huge amount was found invested in farmhouse known as Tanchavati Park' subsequently named as Geethika Park from the material seized from Shri J.K. Jain, copies of which were made available to the AO and finding recorded by

the AO in his reasons are reproduced hereunder : "One aspect noted is that Shri S.K. Jain has made investment of huge amount of Rs. 3,78,19,441 in a farmhouse known as 'Panchwati Farm' later on renamed as 'Geethika Farm' after the name of his only daughter and the said farmhouse has been required by Shri J.K. Jain sometime in 1990 and its value is shown in the WT return for asst.

yr. 1990-91 at Rs. 4,82,000 as its heir share and other heir belongs to his wife Smt. Poonam Jain and thus the cost of the farmhouse for the wealth-tax purpose is taken at Rs. 8,64,000 only. The said farmhouse is situated near Mehrauli at the outskirts of Delhi and it is a very posh locality for this purpose. The investment in this farmhouse has been made of huge amounts and has been made lavish by providing all sorts of amenities. It has been given to BEC Impex Ltd. on a lease rent of Rs. 1 lakh per annum. And utilised by the company as its guest house where VIP guests including politicians are entertained by the group. This is gathered from some of the statements of politicians. The entire investment made may be ranging between 4-5 crores as the figure of investment stated above is upto September, 1990. Thereafter further investment of Rs. 83,55,643 has been found noted on pp. 22 and 23 of the file numbered as MR 72/91 as on 23rd Feb., 1991. Thus the unaccounted investment as per seized materials works out to Rs. 4,61,75,057 which shall be assessable at half of it in the hands of the wife and husband as they being joint owner of the property. Thus a sum of Rs. 2,30,87,528 shall be assessed under Section 69 of the IT Act, 1961 in the hands of each spouse as unexplained investment during the financial year 1991-92 relevant to asst. yr. 1991-92. So far as the wealth-tax assessment is concerned, the valuation shall be taken after getting the valuation report for which the case shall be referred shortly. In this connection it is curiously noted that these assesseees have been claiming deduction under Section 5(1A) of WT Act as exemption, It is patently incorrect as it is not allowable to them as it is not simply a house meant for the storage of crop by cultivator or for housing his live stock, but is a palatial structure. From the case files of Shri S.K. Jain and his wife Smt. Poonam Jain it is further gathered that they are showing lease rent of this farmhouse at Rs. 50,000 p.a. in each of their hands which appears to be highly understated looking to the total investment made and amenities provided. The said lease rent should be around Rs. 1 lakh per month.

It will call further addition of Rs. 5,50,000 in their respective hands which would be from asst. yr. 1990-91." 67. Further a trial balance was also found during the course of search conducted at the premises of Shri J.K. Jain and in the reasons recorded by him, AO has dealt with the same as under : The trial balance further reveals that there is a receipt of Rs. 2,24,68,029 which has been given under code letter 'C' which has been deciphered to be cash by the Addl. DIT in his appraisal report which does not appear to be correct meaning of it because towards the end of the trial balance, the opening cash balance has been clearly given separately. In all probability 'C' may mean 'commission' received by the persons of the group on account of Hawala transactions since in the diary pertaining to the notings of receipt and payment of money on account of Hawala transactions does not separately give the figure of commission. It has to be separately assessed in the hands of S/Shri S.K. Jain, B.R. Jain and N.K. Jain in 'equal proportion' for want of correct bifurcation of it as per their memorandum of understanding, since no note found placed in the seized material and it is chargeable to tax for the asst. yr.' 1991-92. Thus, Rs. 64,97,900 is assessable in the hands of each.

68. The seized material also contained an invoice in the name of the assessee evidencing purchase of furniture for Rs. 3,75,600 from M/s Southend Furniture and Interior Decorators. The said investment had not been reflected/disclosed in the relevant return of income filed by the assessee and this fact along with other circumstances representing other amounts of assessee's undisclosed income which had escaped assessment was recorded by the AO in his reasons as follows : "The seized material contains an invoice seized during search on 3rd May, 1991 which is in the name of Shri S.K. Jain and mentions the purchase of furniture by Shri Jain for Rs. 3,75,600 from M/s Southend Furniture and Interior Decorators. Copies of account filed with the return for the asst. yr. 1986-87 does not reflect such withdrawals. Therefore, it has also to be assessed as unexplained investment by Shri Jain for the asst. yr. 1986-87. Also the case file of the assessee shows withdrawal of Rs. 72,246 on 16th July, 1985 on account of air ticket and the destination of the journey has not been mentioned, whether the amount is for to-and-fro journey or for one side, is also not ascertainable. However, looking to the facts of the case, the same appears to be on account of foreign trip by Shri Jain and his family members. The corresponding expenses required to be spent have

not been reflected in the accounts. Even for household expenses a paltry sum of Rs. 20,000 is only shown in the account. It will, therefore, definitely involve expenditure met out from undisclosed sources of income and calls for further addition around Rs. 2 lakhs for asst. yr. 1986-87." 69. All the above aspects finding place specifically in the reasons recorded by the AO are sufficient to show that there was objective and relevant material available before him and even the required circumstances for entertaining the belief about the escapement of assessee's income from assessment were much in existence at the time of initiation of reassessment proceedings by the AO. It also shows that the belief of the AO was based on cogent and relevant material coming to his possession from CBI through DDIT and after analysing and scrutinising the said material as well as the reports of these two investigating agencies, the AO had entertained a reasonable and honest belief that the income of the assessee had escaped assessment. It is worthwhile to note here that the information coming to his possession had been duly verified by him with the relevant returns of income filed by the assessee and after having satisfied that the financial transactions reflected in the relevant seized material have not been disclosed by the assessee in the said returns, he had entertained a belief about the escapement of assessee's income from assessment which, in our opinion, was an honest and bona fide belief in the facts and circumstances of the case as well as the evidence/material available on record before him at the relevant time. In these circumstances, we find it difficult to agree with the contention of the learned counsel for the assessee that the same was based on suspicion, gossip, rumour or conjectures. In the case of Praful Chunilal Patel v. Asstt. CIT (supra) cited by the learned standing counsel for the Department, Hon'ble Gujarat High Court has held that the word 'reason' in the phrase 'reason to believe' would mean cause or justification and if the AO has a cause or justification to think or suppose that income had escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. It was also held that such justification for his belief is not to be judged from the standards of proof required for coming to a final decision and at the stage where he finds cause or justification to believe that such income has escaped assessment, the AO is not required to base his belief on any final adjudication of the matter based on any judicial or quasi judicial enquiry. In the case of ITO v.

Selected Dalurband Coal Co. (P) Ltd. (supra), Hon'ble Supreme Court has held that the formation of belief by the AO is within his subjective satisfaction and therefore, 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 facts stated in the material are true or not is not the concern at this stage. In the case of CIT v. A. Raman and Co. (supra), Hon'ble Supreme Court has held that the expression 'information' in the context in which it occurs in Section 147 must mean instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to a matter, bearing on the assessment. If the facts of the present case are considered in the light of legal position emanating from the aforesaid judicial pronouncement, we find that specific information in the form of relevant seized material as well as statements of the concerned persons and report of two investigating agencies, i.e., CBI and DDIT was available before the AO at the relevant time and the formation of his belief about escapement of assessee's income as reflected in the reasons and based on such relevant information as well as the circumstances which did exist as discussed above, was honest and bona fide.

70. Having held that the first three conditions precedent for entertaining the belief about the escapement of income and initiating the reassessment proceedings, i.e., existence of material as well as circumstances and honest and bona fide belief entertained by the AO about escapement of assessee's income on the basis of the same were duly satisfied in the present case, it is . now necessary to ascertain as to whether the other three conditions precedent to this process, i.e., nexus between the material and belief as well as application of mind and process of reasoning by the AO to hold such belief were satisfied or not in the present case. In our opinion, these three important aspects relating to justification of initiation of reassessment proceedings are inter-linked and it is, therefore, necessary to consider and deal with the same concurrently to decide the validity of initiation in the present case.

71. In this context, a useful reference can be made to the decision of Hon'ble Bombay High Court in the case of N.D. Bhatt, IAC v. IBM World Trade Corporation (1995) 216 ITR 811 (Bom) wherein it was held that for adjudicating the issue

relating to validity of initiation of reassessment proceedings, it is well settled that reasons for reopening are required to be recorded by the assessing authority before issuing notice under Section 148 and only the reasons so recorded can be looked at for sustaining or setting aside a notice issued under Section 148.

Hon'ble Madras High Court in the case of Asha John Devinathan and Anr.

v. Addl CIT (1980) 126 ITR 270 (Mad) held that only the material available before the AO at the time of recording of reasons is required to be taken into consideration to judge the validity of initiation of reassessment proceedings. A conjoint reading of both these decisions shows that the validity of initiation of reassessment proceedings needs to be considered mainly on the basis of reasons recorded by the AO in the light of material available before him at the time of recording the same reasons.

72. As already discussed, various documents seized during the course of search conducted by the CBI in the premises of Shri J.K. Jain were received by the AO through DDIT along with the report of CBI as well as the Investigation Wing of the Department and on the basis of the said material, the AO entertained belief about the escapement of assessee's income from assessment. Before us, the Department has filed copies of all these documents available before the AO at the time of recording the reasons as per our directions and after perusal of the same and on appreciation of reasons recorded by the AO in the light of the said material, we find that the background of the case and source of and reasons for coming to the possession of the said material was discussed by the AO in his reasons recorded as follows : "In this case, search operations were carried out by the CBI at the residential premises situated at G-30 Saket, New Delhi of Shri J.K. Jain who happens to be the manager of Bhilai Engineering Corporation Ltd. (BEC for the short). During the search, cash amounting to Rs. 58,09,100 was seized along with Indira Vikas Patras of Rs. 10.5 lakhs, some foreign currency of UK, US, Duchmark, France and Hong Kong, in addition to two diaries and files which were seized by the CBI. The seized materials have now been received from the CBI through the DDIT, New Delhi and comprise of photocopies of diaries, registers, reports, etc. which have been received on 24th March, 1995 vide DDIT's letter F.

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20th March, 1995. Since then the entire materials have been scrutinised and also the case files of Jain group assessed in this range viz., S/Shri S.K. Jain, B.R. Jain and N.K. Jain and Smt.

Poonam Jain as also M/s BEC Ltd- The Jain group of Bhilai have been engaged in the business of manufacturing of engineering structure steels, fertilisers, processing of food stuff, etc. The entire company is known as BEC. The firm viz., M/s Bharat Industrial Works, Bhilai in which Jain brothers happened to be partners has been engaged in executing contracts of mainly construction of boilers for thermal power plants all over the country. In the report of CBI, it has been given that these persons were indulging in 'Hawala business, transferring money from abroad to India and were enjoying commission thereof. The diary seized has been containing relevant information of transactions and pertain to the period from February, 1988 to April, 1991. The description of the diary is in the form of monthly summary of the receipts and payments of money whereas the source of receipts has been given by putting some code names and on payment side names of various persons including politicians and bureaucrats have been given in abbreviation." 73. As is evident from the aforesaid portion of the reasons recorded, the AO scrutinised the entire material received by him and also taken into consideration the relevant findings recorded by the CBI in its report to ascertain the nature of transactions recorded in the relevant incriminating documents including the diary identified as MR-71/91. He also ascertained the involvement of the assessee as well as the other persons in the said transactions and after verifying the assessment records of the said persons including the assessee, he noticed that the transactions appearing in the relevant seized documents representing receipts of money as well as investments made out of such receipts had not been disclosed in the regular returns of income filed by the said persons. In this regard, the learned counsel for the assessee has contended before us that the transactions in the relevant seized documents had been recorded by Shri J.K. Jain not only at the instance of the assessee but also at the instance of Shri N.K. Jain as stated in his statement recorded and the AO therefore was not correct in singling out only the assessee for assessing the entire transactions/credits

reflected in the said diary in the hands of the assessee. He has also pointed out that Shri J.K. Jain has stated of having shown the said diary regularly to Mr. B.R. Jain and since the transactions as explained by Shri B.R. Jain had represented sale of scrap of BEC Ltd., the AO was not justified in treating the entire credits of said diary as income of the assessee under Section 68. In this regard, it is observed that the entire transactions reflected in the relevant seized diary were not considered by the AO in hands of the assessee alone at least at the stage of initiation of reassessment proceedings and as is evident from the reasons recorded by him, the reassessment proceedings were initiated not only in the case of the assessee but also in the case of his brothers S/Shri B.R. Jain, N.K. Jain, wife Smt. Poonam Jain and their company M/s BEC Ltd. It is true, as pointed out by the learned counsel for the assessee, that the reassessment proceedings initiated in the case of other persons including the company were subsequently dropped by the AO and the entire amount found credited in the relevant seized diary was treated as income of the assessee in the assessment finally completed under Section 147 r/w Section 143(3), but the fact remains to be seen is that the assessment of all these persons were reopened by the AO along with the assessment of the assessee and belief entertained by the AO about the escapement of income as is evident from the reasons recorded was not just confined to the case of the assessee but also to the case of other persons whose involvement was apparent from the material available with the AO at the relevant time. In these circumstances, even though the reassessment proceedings initiated in the case of the other persons were dropped by the AO and the entire amount was assessed in the hands of the assessee finally, the same could not be a material or relevant factor for the purpose of ascertaining the validity of initiation of reassessment proceedings which necessarily has to be judged on the basis of facts as existed on the date of assumption of the jurisdiction and not on the ultimate result of assessment proceedings as held by Hon'ble Calcutta High Court in the case of ITO v. Electro Steel Castings Ltd. (supra).

74. As already observed, the nature of transactions reflected in the relevant seized documents was ascertained by the AO on the basis of material coming to his possession and the relevant observation of the AO in this regard contained in the reasons recorded are reproduced below : "During the course of interrogation by

CBI Shri J.K. Jain has stated that so far as the valuables seized from his house are concerned, they belong to him but the diaries and registers were not pertaining to him, even though, those have been written in his hand at the instance of Shri S.K. Jain, his employer, in the capacity of managing director of BEC. When he was asked about the nature of writings, etc. he maintained utter silence on the plea that he did so at the directions and dictations of Shri S.K.. Jain who knows as to what was directed to be written by him. When Shri S.K. Jain was confronted by the CBI Officer, he explained that the same represent the receipt of money from Bhilai to the persons who are in employment with the company or the firm at Bhilai which was taken to Delhi and was handed over to the personnel of account section to hand over to Shri J.K. Jain for safe custody. The nature of the receipts were stated to be of unaccounted money generated as a receipt of sale of scrap of BEC Ltd. which has not been accounted for by them in the regular books of account. So far as the codes abbreviated names appearing, he explained that so far as the letter 'A' is concerned, it is assigned to BEC Ltd. and 'Beco' their another concern whose full name is Beco Steel Castings Ltd. It is further contended by Shri Jain that the figures given in the diary were only in thousand and not in lakhs. As regards the names of politicians and others is concerned, he admitted of having given some donations and gifts to ministers on various occasions which he could not remember, etc.

When the other partners of Jain were interrogated, S/Shri B.R. Jain and N.K. Jain also reiterated the version of Shri S.K. Jain particularly on two aspects that the money in question was representing their black money generated from various concerns of the group mainly BEC and receipts noted in the diaries were representing the amounts only in thousands and not in lakhs.

It is pertinent to mention here that no instant statement has been recorded by the CBI, i.e., on the date of search on 3rd Sept., 1991 but it was recorded on 15th Sept., 1991, and in the meantime these persons consulted each other and came out with a different story about what was found noted in the diary, etc. I have very carefully gone through the photocopies of the diary, opinion of the CBI and report of the Directorate and I find that in fact the transactions recorded in these diaries were pertaining to assessee's business of Hawala transactions, the exact

mechanism of which has not come on record. However, since the concerned persons have admitted the diaries and other records as belonging to them and have accepted the receipts as representing their black money, the Department's purpose is served if the said entries are treated as cash credits in the hands of Shri S.K. Jain and/or BEC Ltd. or which the nexus of earning has been conceded by the Jains. It may be mentioned that in some places of the diary there are narrations to the effect that these accounts have been shown on a particular date and shown to Shri B.R. Jain and N.K. Jain. This shows that all the three brothers viz. S/Shri B.R. Jain, N.K. Jain and S.K. Jain were involved in this affair and the accounting of it was being done by their manager Shri J.K. Jain who appears to be man of confidence of the Jains, as he happened to be an old employee since 1978 and otherwise happens to be their distant relative. So far as the payment of money to various persons as mentioned above is concerned, in addition to making the payments, the Jains have enjoyed the same by making investments in properties and spending on various social and cultural functions like Diwali, birthday, etc." 75. A perusal of the aforesaid observations of the AO shows that the receipts/credits found recorded in the relevant seized diary were explained by the concerned persons as unaccounted money generated as a result of sale of scrap of BEC Ltd. whereas the AO was of the prima facie opinion that the same, having regard to the report of CBI and DDIT as well as the working given therein showing conversion of foreign currency into Indian currency, represented transactions pertaining to assessee's business of Hawala transactions. The AO also noted that, in any event, the said entries of receipts/credits represented unaccounted transactions of the assessee and since there was no satisfactory explanation offered by the assessee or by the other persons either before the CBI or before the DDIT, he thought it fit to treat the said entries as cash credit in the hands of Shri S.K. Jain and/or BEC Ltd. to serve the purpose of Revenue.

76. Before us, the learned counsel for the assessee has taken a strong exception to this treatment sought to be given by the AO to serve the purpose of the Department. He has contended that the assessment has to be made in accordance with law by the AO as a quasi-judicial function and there cannot be an assessment of income by convenience to serve any specific purpose of the Department. In our opinion, this objection of the learned counsel for the assessee,

if considered in the factual background of the present case, is farfetched and therefore, unsustainable. As is evident from the reasons recorded by the AO, some of the credits/receipts appearing in the relevant seized document/diary as per the version of the concerned persons represented unaccounted monies generated as a result of sale of scrap of BEC Ltd. and this was stated to have been indicated with the capital letter "A" in the seized diary. There were some other credits/receipts also appearing with the letter "C" which the AO treated as commission from Hawaia business of the assessee as well as his two brothers, Mr. N.K. Jain and B.R. Jain for the reasons given by him based on the detailed reports of investigating agencies viz. CBI and DDIT as well as on the working given therein showing conversion of foreign currency into Indian currency to indicate/suggest that the said credits represented unexplained transactions of assessee's Hawaia business. In any case, the said credits representing apparently receipts in cash as commission from Hawaia business were ultimately treated as unexplained cash credits in the hands of all the three brothers in equal proportion, whereas the other cash receipts stated to be against sale of scrap were considered in the hands of M/s Bhilai Engineering Corporation Ltd., while quantifying the income alleged, to have escaped assessment in annexures to the reasons recorded by the AO. In these circumstances, even if the observations made by the AO in the reasons recorded were to the effect that it would serve the interest of the Revenue if the credits appearing in the diary are treated as unexplained cash credits in the hands of the assessee and/or BEC Ltd., going by the quantification of income alleged to have escaped assessment done by him in the annexures to the reasons recorded as well as the fact that the assessments of all the assessees have been reopened, the same were ultimately considered in the hands of all the concerned persons and not in the hands of assessee alone, as alleged by the learned counsel for the assessee.

77. In the relevant seized diary, certain transactions were also found recorded showing investment of huge amount made in the farmhouse known as "Geethika Park" earlier known as "Panchavati Park". This aspect has been dealt with by the AO in his reasons recorded in the following manner : "One aspect noted is that Shri S.K. Jain has made investment of huge amount of Rs. 3,78,19,441 in a farmhouse known as Tanchwati Farm' later on renamed as Geethika Farm after

the name of his only daughter and the said farmhouse has been acquired by Shri J.K. Jain sometime in 1990 and its value is shown in the WT return for asst.

yr. 1990-91 at Rs. 4,82,000 as its heir share and other heir belongs to his wife Smt. Poonam Jain and thus, the cost of the farmhouse for the wealth-tax purpose is taken at Rs. 8,64,000 only. The said farmhouse is situated near Mahraulion, at the outskirts of Delhi and it is a very posh locality for this purpose. The investment in this farmhouse has been made of huge amounts and has been made lavish by providing all sorts of amenities. It has been given to BEC Impex Ltd. on a lease rent of Rs. 1 lakh per annum. And utilised by the company as its guest house where VIP guests including politicians are entertained by the group. This is gathered from some of the statements of politicians, The entire investment made may be ranging between 4-5 crores as the figure of investment stated above is upto September, 1990. Thereafter, further investment of Rs. 83,55,643 has been found noted on pp. 22 and 23 of the file numbered as MR 72/91 as on 23rd Feb., 1991. Thus, the unaccounted investment as per seized materials works out to Rs. 4,61,75,057 which shall be assessable at half of it in the hands of the wife and husband as they being joint owner of the property. Thus, a sum of Rs. 2,30,87,528 shall be assessed under Section 69 of the IT Act, 1961 in the hands of each spouse as unexplained investment during the financial year 1990-91 relevant to asst. yr. 1991-92. So far as the WT assessment is concerned, the valuation shall be taken after getting the valuation report for which the case shall be referred shortly. In this connection it is curiously noted that these assesseees have been claiming deduction under Section 5(1A) of WT Act as exemption. It is patently incorrect as it is not allowable to them as it is not simply a house meant for the storage of crop by cultivator or for housing his live stock, but is a palatial structure. From the case files of Shri S.K. Jain and his wife Smt.

Poonam Jain it is further gathered that they are showing lease rent of this farmhouse at Rs. 50,000 per annum in each of their hands which appears to be highly understated looking to the total investment made and amenities provided. The said lease rent should be around Rs. 1 lakh per month. It will call further addition of Rs. 5,50,000 in their respective hands which would be from asst. yr.

1990-91." 78. As is apparent from the above reasons recorded by the AO, the said farm house was owned by the assessee along with his wife Smt. Poonam Jain jointly and this being the admitted position, the AO had every reason to believe that that the said investment having not been reflected/disclosed in the regular return of income of the assessee, represented his undisclosed income at least to the extent of 50 per cent. No doubt, this unexplained investment, as pointed out by the learned counsel for the assessee, ultimately was considered in the hands of the company M/s BEC Impex Ltd. who had taken the farmhouse of the assessee on lease for the purpose of assessment, but the fact remains to be seen is that the farmhouse being admittedly owned by the assessee with his wife jointly and there being nothing in the relevant seized document to indicate that the huge investment made in the said farmhouse was entirely made by the said lessee or was required to be made by the said lessee in terms of the lease agreement, the AO had every reason to believe that the said investment was made by the assessee out of his undisclosed income having regard to the entries found recorded in the relevant seized document and involvement of the assessee in such transactions going by the reports of the investigating agencies as well as the statements of the concerned persons recorded by these investigating agencies.

79. During the course of search conducted by the CBI at the residence of Shri J.K. Jain, the trial balance as on 28th Feb., 1991 styled as "trial balance of New Delhi" was found and seized. A monthly cash flow chart of Hawala transaction also formed part of the documents/material received by the AO from CBI through DDIT and after examining these documents, the AO recorded following findings in the reasons recorded by him : "A study of the monthly cash flow chart of the Hawala business shows a name of 'KJ' which has been explained to be Krishna Jain, wife of N.K. Jain from whom many a times the money shown to have been received and at times it has shown to have been paid to her. That shows her involvement also and atleast wherever her name is appearing, she should be held responsible so far as the tax liability is concerned. As such, it is partly liable to be assessed in her hands also. Another lady viz. Smt. Poonam Jain, wife of Shri S.K. Jain, has made investment to the tune of Rs. 28,09,739 till 29th Sept., 1986 as per the letter seeking legal opinion from some counsels, photocopy of which is found in the seized material, i.e., MR 72/91 placed in set No. v. As per the details stated above

in the letter to the counsel, this investment has been made in respect of B-5, Maharani Bag property which has been agreed to be purchased for Rs. 36 lakhs jointly vide agreement dt. 1st Aug., 1986, part payment of which has been stated to be made of Rs. 23 lakhs and odd as stated above, though the extent of the share in property is not mentioned which may be safely presumed to be 50-50. As such, a sum of Rs. 14 lakh comes to the share of each as their investment which is not found recorded in the income-tax and wealth-tax record, are separately liable to be assessed for asst. yr. 1987-88 and corresponding levy of wealth-tax in their hands. In this connection, it may be mentioned that the DDIT's report to DI dt. 20th Oct., 1994 at page mentions about this property that it is owned by the group company viz., Jafferson Leasing & Finance Ltd., 31-Maker Chamber, Nariman Point, Bombay, in which both the husband and wife hold directorship. This position does not appear to be correct on the basis of record available as in the letter of the counsel they have never identified themselves as directors of the aforesaid company, rather they made query in their individual capacity than showing their nexus in any capacity with the said company. As per trial balance as on 28th Feb., 1991 styled as trial balance of New Delhi, there is an indication that they have further invested Rs. 5,14,149 in this property. It will also be unexplained investment in their hands and half of it shall be assessable in the hands of the husband and wife, respectively. In this trial balance, a sum of Rs. 22,51,000 has been shown to have been given to Smt. Poonam Jain which also appears to be unaccounted funds with the lady and assessable as such for the asst. yr. 1991-92." 80. As is apparent from the aforesaid portion of the reasons recorded by the AO, part payment of Rs. 23 lakhs was stated to be made against the property situated at B-5, Maharani Bagh, which had been agreed to be purchased for Rs. 36 lakhs jointly by the assessee and his wife Smt.

Poonam Jain. As per the letter written to the counsel, a photo copy of which was found in the seized material MR 72/91, a payment of Rs. 28,09,739 was claimed to be made by Smt. Poonam Jain, wife of the assessee upto 29th Sept., 1986 and since the said investment was neither reflected/disclosed in the return of income filed by the said lady or by the assessee, the AO entertained a belief that income representing unexplained investment to the extent of Rs. 14 lakhs each had escaped assessment in the case of assessee as well as his wife considering that

the said property was agreed to be purchased jointly by both of them. Moreover, as per the trial balance as on 28th Feb., 1991 forming part of seized material, there was an indication of further investment of Rs. 5,14,149 having been made in the said property and this unexplained investment was also held to be assessable in the hands of the husband and wife on the same analogy. Here again, it could be seen that the belief entertained by the AO about the escapement of assessee's income in the form of unexplained investment in the property situated at B-5, Maharani Bagh was based on material coming to his possession after the assessment showing apparently that such investment was made by the assessee and his wife jointly which had not been disclosed in their returns of income for the relevant years.

It could also be noted that the relevant documents found during the course of search and relied upon by the AO to come to this conclusion were corroborative inasmuch as the letter sent to counsel indicated the investment made in the said property which was further corroborated by the trial balance as on 28th Feb., 1991 showing an additional investment of Rs. 5,14,149 in the very same property. Thus, there was direct nexus or live link not only in the material coming to the possession of the AO and the reasons recorded for entertaining the belief about the escapement but such nexus or direct link was there even between the relevant seized documents corroborating the fact of investments as is evident from the reasons recorded by the AO in this regard. Moreover, the reasons recorded by the AO in this regard also clearly indicate the independent application of mind by the AO inasmuch as DDIT's report to DI dt. 20th Oct., 1994 mentioning the aforesaid property as owned by the group company viz., Jefferson Leasing & Finance Ltd., 31 Maker Chambers, Nariman Point, Bombay, was found to be incorrect by him based on record available before him particularly a letter written to the counsel wherein the assessee and his wife had never identified themselves as directors of the said company as mentioned by the DDIT in its report to DI. In our opinion, this portion of the reasons recorded by the AO clearly shows that the material coming to his possession from DDIT had been carefully scrutinised by him independently applying his own mind and it was not the case of mere acceptance of whatever was stated by the DDIT in its report to DI.⁸¹ The independent application of mind by the AO in the matter of recording of reasons and forming belief about the

escapement of assessee's income is also indicative from the following portion of the reasons recorded by him ; "The trial balance further reveals that there is a receipt of Rs. 2,24,68,029 which has been given under code letter 'C' which has been deciphered to be cash by the Addl. DIT in his appraisal report which does not appear to be correct meaning of it because, towards the end of the trial balance, the opening cash balance has been clearly given separately. In all probability 'C' may mean 'commission' received by the persons of the group on account of Hawala transactions since in the diary pertaining to the notings of receipt and payment of money on account of Hawala transactions does not separately give the figure of commission. It has to be separately assessed in the hands of S/Shri S.K. Jain, B.R. Jain and N.K. Jain in 'equal proportion' for want of correct bifurcation of it as per their memorandum of understanding, since no note found placed in the seized material and it is chargeable to tax for the asst. yr. 1991-92. Thus, Rs. 64,97,900 is assessable in the hands of each." 82. As is evident from the aforesaid portion of the reasons recorded by the AO, the receipts of Rs. 2,24,68,209 shown in the trial balance under the code letter "C" had been deciphered by the Addl. DIT in his appraisal report as cash. This meaning assigned by the Addl. DIT was held to be incorrect by the AO on the basis of his observations that towards the end of the trial balance, the opening cash balance had been clearly given separately. According to the AO, the said code letter "C" in all probability meant commission received by the assessee and other persons belonging to Jain group and this opinion of the AO again was based on the entries appearing in the relevant seized material which had been treated as Hawala transactions for which the assessee and his brothers ought to have received certain commission which was not separately appearing anywhere in the seized documents. Whether this opinion of the AO was correct or not on merits is not the matter of consideration here, but expression of such opinion by the AO, which was different from the one contained in Addl. DIT's appraisal report and was based on the scrutiny and analysis of the relevant seized documents, clearly shows that the AO had applied his mind independently to the material coming to his possession and on such application, he had recorded reasons for entertaining the belief about the escapement of assessee's income from assessment.

83. The relevant seized documents coming to the possession of the AO also revealed expenses incurred in connection with foreign visits of the assessee as well as his employees and friends. The reasons recorded by the AO in this regard are as follows : "Shri S.K. Jain and some of his employees and friends have undertaken a number of foreign visits, the expenses of which were stated to be borne by their respective companies except in the case of Mr. S. Begla and- Mr. S.S. Sandhur. It is contended by Shri S.K. Jain in his letter dt. 31st May, 1995 to the Directorate that they used to receive various foreign articles on behalf of Shri S.K. Jain and the customs duty and other expenses in respect of such items were borne by Shri S.K. Jain himself which he stated that these were his own expenses and have been given as an item of unaccounted expenditure in the settlement petition before the Settlement Commission, Bombay. Such expenses for the financial year 1990-91 work out to Rs. 2,73,695 and, therefore, assessable in the hands of Shri S.K. Jain as income for the asst. yr. 1991-92. It may be mentioned that most of these expenses have been on account of import of marble articles like statues, slabs, etc. for the decoration of his farmhouse as mentioned in the appraisal report of the Addl. DIT which is made as an annexure to the DDIT's report as aforesaid." 84. A perusal of the aforesaid reasons recorded by the AO shows that the assessee himself in his letter dt. 31st May, 1995 addressed to the DI had accepted that Shri Begla and Mr. S.S. Sandhur used to receive various foreign articles on his behalf and the customs duty and other expenses in respect of such items/articles had been borne by him. He also admitted in the settlement petition filed before the Settlement Commission, Bombay, that such expenditure amounting to Rs. 2,73,695 incurred in financial year 1990-91 represented his unaccounted/unexplained expenditure. On this basis, the AO found that the expenditure of Rs. 2,73,695 was incurred by the assessee in the previous year relevant to asst. yr. 1991-92 and the same having been not disclosed or accounted for in his return of income for the relevant year filed in the regular proceedings, he came, to the conclusion that the income of the assessee for the said year had escaped assessment.

This belief entertained by the AO was further fortified from the fact that even in the DDIT's report such expenses had been stated to have, been incurred for import of marble articles like statues, slabs, etc.

and were used for decoration of the assessee's farmhouse situated near Delhi. This action goes to establish that the belief entertained by the AO about the escapement of assessee's income was based on the material coming to his possession after assessment as well as the specific admission of the assessee before the DDIT in the letter dt. 31st May, 1995 as well as before the Settlement Commission in the settlement petition filed by him.

85. The seized material received by the AO from CBI through DDIT also contained a bill/notice issued by M/s Southend Furniture and Interior Decorators in the name of the assessee, evidencing investment made by him in the purchase of furniture amounting to Rs. 3,75,600 and the AO has recorded his reasons in respect of the said bill as follows : "The seized material contains an invoice seized during search on 3rd May, 1991 which is in the name of Shri S.K. Jain and mentions the purchase of furniture by Shri Jain for Rs. 3,75,600 from M/s Southend Furniture and Interior Decorators, Copies of account filed with the return for the asst. yr. 1986-87 does not reflect such withdrawals. Therefore, it has also to be assessed as unexplained investment by Shri Jain for the asst. yr. 1986-87. Also the case file of the assessee shows withdrawal of Rs. 72,246 on 16th July, 1985 on account of air ticket but the destination of the journey has not been mentioned, whether the amount is for to-and-fro journey or for one side, is also not ascertainable. However, looking to the facts of the case, the same appears to be on account of foreign trip by Shri Jain and his family members. The corresponding expenses required to be spent have not been reflected in the accounts. Even for household expenses a paltry sum of Rs. 20,000 is only shown in the account. It will therefore definitely involve expenditure met out from undisclosed sources of income and calls for further addition around Rs. 2 lakhs for asst. yr. 1986-87." 86. A copy of the aforesaid bill received by the AO is forming part of the paper set filed on behalf of the Revenue before us and a perusal of the same reveals that the aforesaid bill evidencing purchase of furniture for Rs. 3,75,600 was issued in the name of the assessee.

Since this investment apparently made by the assessee in purchase of furniture was not disclosed in his regular return of income filed for the relevant year, there was every reason for the AO to believe that the income of the assessee on

account of unexplained investment made in purchase of furniture to that extent had escaped assessment and this belief was based on the relevant documentary evidence coming to his possession after the assessment which had direct nexus or live link with the reasons recorded by the AO to form the belief about the escapement of assessee's income from the assessment.

87. A detailed analysis and examination of the reasons recorded by the AO made above leads to an irresistible conclusion that there was independent application of mind by the AO to the material available on record and the reasons recorded by him reflect an honest and reasonable belief based on available material and not merely on suspicion, gossip or pretence. It also shows that there was a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the assessee for the years under consideration and such belief entertained by the AO was based on relevant and material information and on proper and independent application of mind.

88. Before us, the learned counsel for the assessee has also -challenged the validity of initiation of reassessment proceedings on the ground of AO's failure to quantify the income of the assessee alleged to have escaped assessment. However, as held by Hon'ble Gauhati High Court in the case of Dhanisram Agarwalla v. CTT (supra) there is no such requirement in law to quantify the income escaping assessment at the stage of reopening and in any case, as pointed out on behalf of the Revenue, the AO having duly quantified the probable income escaping assessment as is evident from the annexure to the reasons recorded dt.

30th March, 1995 (appearing at page Nos. 1003 to 1011 of assessee's paper book), the contention raised by the learned counsel for the assessee in this regard is devoid of any merit and accordingly is liable to be rejected. The other contention of the assessee, that the assessee was implicated with the relevant seized diary only on the basis of statement of Mr. J.K. Jain is also unfounded and is contrary to record inasmuch as there was enough material/information available with the AO besides the said statement to establish the nexus of the assessee with the said

diary as already discussed. Similarly, his assertion before us that the statement of the assessee was never recorded by the CBI is also found to be factually incorrect inasmuch as such statement was recorded by the CBI initially on 17th Sept., 1993 which continued up to 24th Sept., 1993. In his statement recorded on 17th Sept., 1993, 20th Sept., 1993 and 21st Sept., 1993, the assessee explained and deciphered most of the coded words and figures appearing in the relevant seized diaries giving details of each and every transaction. Further, the statements of the assessee were also recorded by the CBI on 22nd Dec., 1993, 6th Jan., 1994, 12th Dec., 1994 and 3rd Jan., 1995.

89. Keeping in view the detailed discussion made hereinabove in the light of the reasons recorded by the AO as well as the relevant material available before him at the time of recording such reasons, one can easily conclude that sufficient material having direct nexus with the escapement of the assessee's income was available before the AO at the relevant time and by applying his mind independently to such material and after recording his observations elaborately giving process of reasoning for formation of belief about such escapement, the AO had formed a belief about such escapement. It is thus clear that all the conditions precedent for valid initiation of reopening the assessments had been satisfied by the AO in the present case and there was no infirmity much less any legal infirmity in the action of the AO in initiating the reassessment proceedings for the years under consideration. As such, considering all the facts of the case in the light of the material available before the AO at the relevant time as well as the legal position emanating from the aforesaid judicial pronouncements, we are of the considered opinion that the reassessment proceedings for all the years under consideration had been validly initiated by the AO and the learned CIT(A) was fully justified in upholding his action on this count. His impugned orders on this issue are, therefore, upheld dismissing ground Nos. 5, 6 and 7 of the assessee's appeals.

90. The next issue for consideration is as to whether the reassessment was completed at the dictates of another officer and, therefore, is illegal and needs to be annulled. The grievance is projected in ground Nos. 8 and 10, which reads as follows : Ground No. 8 : That the CIT(A) erred on facts and in law in not holding

that the impugned assessment is bad in law and void ab initio for the reason that the assessment order was passed by the AO without independent application of mind; Ground No. 10 : That the CIT(A) erred on facts and in law in not holding that the impugned assessment is bad in law for the reason that the assessment was monitored/completed at the dictates/directions/instructions of the higher/other authorities, who had no jurisdiction in the matter." 91. The facts necessary for adjudication of these grounds of appeal are as follows. The entire sequence of events commencing from the reopening of the assessment to the conclusion of the assessment proceedings needs to be looked into. We may mention here that we will make a frequent reference to the name of one Mr. D.C.. Agarwal, who is the Addl Director of Income-tax (Investigation), New Delhi. A reference to the record of proceedings before the AO is also inevitable. The sequence of events is supported by the record of proceedings in the assessment before the AO. In appreciating the rival contentions regarding these grounds of appeal, it is also necessary to take note of two aspects viz., (a) there was settlement petition filed before the Settlement Commission by Mr. J.K. Jain relating to the seizure effected by CBI and the developments in the assessment proceedings were to be kept informed to higher authorities for proper representation before the Settlement Commission; (b) There was a public interest litigation that was filed in the Hon'ble Supreme Court seeking directions that all persons who may be found involved in the seizure effected by CBI of the diaries be dealt with in accordance with law by all Government agencies concerned.

This petition was filed in 1993 and the Hon'ble Supreme Court had passed orders dt. 30th Jan., 1996 directing that all Government machinery shall conduct enquiries in accordance with law and keep the Supreme Court informed on such progress.

92. The assessment was reopened by issue of notice under Section 148 on 30th March, 1995, after recording detailed reasons. On 5th April, 1995, the AO was informed that Mr. Agarwal was to visit Bhilai and an action taken report was to be prepared, On 5th April, 1995, the AO also issued summons to B.R. Jain (brother of S.K. Jain) under Section 131 of the Act. It appears that B.R. Jain on medical grounds could not attend in response to summons. The AO however recorded his

statement on 7th April, 1995 at his residence. On 7th April, 1995 itself a copy of the notice under Section 148 addressed to S.K. Jain, N.K. Jain, Poonam Jain was given to D.C. Agarwal for service on these people at Delhi. This shows that D.C. Agarwal was at Bhilai on 6th April, 1995 and 7th April, 1995. On 18th April, 1995, the AO has recorded the fact that there was phone call message three times from D.C. Agarwal and a reference to discussion with higher authorities on a proposal to effect a provisional attachment under Section 281B be made to protect the interest of the Revenue. The AO thereafter has moved for a proposal to the CIT, Jabalpur, for effecting provisional attachment on 19th April, 1995 and obtained an approval from him on 25th April, 1995. There is a record of proceedings on 18th May, 1995 that notice under Section 148 was served on the assessee through DDIT (Inv.), New Delhi, on 10th April, 1995. The assessee filed his return of income on 6th June, 1995 under protest. The assessee in a note appended to the return demanded copy of reasons recorded, denied connection with the seized documents and also challenged the initiation of reassessment proceedings. On 20th Dec., 1995, the AO records the fact that he had proceeded to New Delhi as per telephone message received from D.C. Agarwal, to take possession of the seized material and discuss the case with higher authorities viz., DIT/DGIT, Delhi. Between 6th June, 1995 and 8th Jan., 1996, there has been no progress in the proceedings before the AO at Bhilai.

93. There were however some developments that took place in New Delhi, regarding the case pertaining to the assessee.

(a) The DDIT (Inv.) had issued summons to the assessee under Section 131(1) of the Act. The assessee however sought protection (under Article 20(3) of the Constitution of India) from interrogation on the ground that any statement made by him would tend to incriminate him in the pending criminal proceedings arising out of the seizure of the diaries vide his letter filed on 9th April, 1995.

(b) The DDIT (Inv.) New Delhi, examined Smt. Rachana Jain (member of the family of the assessee) on 20th April, 1995, Shri Pawan Jain on 21st April, 1995, Mr. K.N. Dutta (an employee of BECO) on 24th April, 1995, Mr. Daniel P. Ramball (an employee of BECO) on 25th April, 1995, Mr. Mukul Jain and Mr. P. Ghosal

(employees of BECO) on 26th April, 1995, Mr. D.K. Guha and H.P. Guha Ray on 27th April, 1995, (employee of BECO) Mr. Pawan Jain on 28th April, 1995 (relative of S.K. Jain) and Mr. S.S. Sandhu on 1st May, 1995 (third party).

(c) On 15th May, 1995, the DDIT (Inv.), New Delhi, addressed a letter to the assessee calling for explanation with regard to the cash, IVP and foreign currency recovered by the CBI from Mr. J.K. Jain which was stated by him before the FERA authorities to belong to S.K. Jain and called upon the assessee to show-cause as to why the sums credited in the diary be not treated as cash credits and if unexplained be not added under Section 68 of the Act and also show-cause as to why the expenditure recorded in the diary be not treated as unexplained and added as income under Section 69C of the Act.

(d) On 15th May, 1995, Veenu Jain and Sh. Pramod Jain were examined by DDIT (Inv.), New Delhi. On the same date, a letter was sent to the assessee seeking clarification regarding modus operandi of sale of scrap and a letter, dt. 17th May, 1995 seeking clarification as to the source of money credited in the account books seized on 3rd May, 1991. The assessee again sought protection under Article 20(3) of the Constitution and did not take any stand.

(e) There are correspondence between the DDIT (Inv.) between 13th June, 1995 to 30th Oct., 1995. The DDIT (Inv.) in the correspondence was again seeking explanation, clarification relating to the seized material.

(f) On 30th Oct., 1995, the Asstt. DIT (Inv.), New Delhi, issued summons to the assessee and assessee sought time for attendance in response thereto.

(g) On 27th Nov., 1995, the Addl. DIT (Inv.), New Delhi, issued a letter to the assessee in which there is a reference to the various documents seized, statement recorded by the DDIT (Inv.) and his conclusion that the diary belongs to the assessee and that entries therein were made by J.K. Jain at the instructions of the assessee and that the figures written therein were to be deciphered as one in lakhs and an opportunity was given to the assessee to explain the transactions and show-cause against addition being made under Section 68/69C. (h) Similar letters quantifying the proposed additions were sent by Agarwal to the assessee

on 11th Dec., 1995.

94. From now on, the focus shifted to the AO at Bhilai. On 20th Dec., 1995, the AO proceeded to New Delhi on instructions from Mr. Agarwal and took possession of seized material and also discussed the case with higher authorities. This is evident as already stated from the record of the proceedings before the AO. On 8th Jan., 1996 the AO issued notice under Sections 142(1) and 143(2) of the Act along with a questionnaire dt. 20th Dec., 1995 and forwarded the same to D.C. Agarwal at Delhi for service on the assessee at his Delhi address.

There is a reference in the record of proceedings of the AO that the same is being forwarded as discussed with him at Delhi during the AO's visit to Delhi. There are some reference to communication between AO and Mr. Agarwal between 17th Jan., 1996 to 30th Jan., 1995 (sic-1996).

These communications are not very material but these references in the record of proceedings would go to show that Mr. Agarwal was kept informed about the progress of the case at every material point of time. We will only refer to some of the important record of proceedings. On 15th Feb., 1996, the AO recorded the fact that Mr.

Agarwal had informed him that the case is to be proceeded with and assessment is to be framed as early as possible. The assessee had filed before the AO dt. 5th Feb., 1996, a reply in the assessment proceedings and this is forwarded by the AO to Agarwal. On 27th Feb., 1996, there is a reference in the record of proceedings that a draft reply to the assessee's reply dt. 5th Feb., 1996 was received from D.C. Agarwal and a reply is being sent by the AO on the basis of such draft. The record of proceedings before the AO from 5th Feb., 1996 to the date of his passing order of assessment reads as follows : "5th Feb., 1996 : In response to statutory notice Shri G.C. Jain, authorised attorney, appeared and filed a letter dt. 5th Feb., 1996 from the assessee, the contents of which have been discussed with him.

6th Feb., 1996 : Received a telephonic message from Shri D.C. Agarwal, Addl. DIT (Delhi), regarding the proceedings, who has since been appraised of the

same. He desired to have the copy of reply of the 'a', to be sent by fax for perusal, the same is therefore sent to him vide letter F. No. DCIT (Ad...) BHI/reply/1995-96 dt. 6th Feb., 1996.

6th Feb., 1996 : Shri D.C. Agarwal telephonically confirmed of having received the above, and instructed in the matter that a suitable reply to 'a's letter be sent to him for the perusal of higher authorities and the assessee be given one more opportunity of being heard in the matter.

15th Feb., 1996 : The Hon'ble CIT who had been to Delhi in connection with meeting with DG for discussing the strategy of the settlement case instructed me at Jabalpur that the case is not required to be further proceeded with till further instructions.

23rd Feb., 1996 : Shri D.C. Agarwal, Addl. DIT, Delhi, informed that the case is to be proceeded with and assessment is to be framed as early as possible. He opined that there appears to be some communication gap in the message conveyed by Hon'ble CIT, Jabalpur.

27th Feb., 1996 : Had a telephonic discussion with Hon'ble CIT who also communicated that the assessments for income-tax and wealth-tax are to be completed. Only the assessments under the gift-tax are to be kept pending. Accordingly a detailed reply to assessee's letter dt. 5th Feb., 1996 is issued on the basis of draft letter received from Shri D.C. Agarwal, through CIT, Jabalpur through fax.

27th Feb., 1996 : A sealed cover addressed to Shri D.C. Agarwal, Addl. DIT was handed over to Shri H.L. Vaddadi, ITI for delivering the same by speed post at Raipur head post office. The sealed cover contains the replies to Shri S.K. Jain's letter (reply to notice) dt. 5th Feb., 1996 along with acknowledgement slip which has been duly sealed and signed.

28th Feb., 1996 : Shri H.L. Vaddadi, ITI informed that the sealed envelope containing the above has been delivered to HPO for sending it to Addl. DIT, Shri Agarwal, by speed post vide Ack. No. 5358 dt.

28th Feb., 1996 which is placed on record.

29th Feb., 1996 : Shri D.C. Agarwal, Addl. DIT, informed that he had not received the above till 6.00 p.m., who was informed by the undersigned that the delivery of the dak could be effected only by tomorrow by 12 noon. He desired to have a set of the contents of the envelope to be sent by fax which has been so transmitted to him.

1st March, 1996 : Tried to contact Shri D.C. Agarwal on his telephone No. 7527513 but there was no response. This was just done to have the confirmation of having received the sealed envelope as above. At about 4.30 p.m. the Hon'ble DG, Shri G.P. Garg had a telephonic talk with undersigned who wanted to know about the delivery of the above material and its mode, who has been informed of the facts narrated hereinabove. He instructed to get in touch with Shri D.C. Agarwal in this regard immediately, accordingly telephonically contacted and at the other end, Shri C.L. Meena, Inspector informed that he had taken delivery of the said sealed envelope from the concerned post office who has been informed to deliver the same to Shri D.C. Agarwal at his residential address and also send a word to the Hon'ble D.G. in this regard.

4th March, 1996 : Shri D.C. Agarwal, Addl. DIT (Inv.) telephonically informed that letter addressed to the assessee bearing F. No: DCIT (Assmt.) BHI/S-777/95-96/dt. 27th Feb., 1996 has been served upon the assessee at 1.30 a.m. today itself and further conveyed the DG's instructions to draft the assessment order under Section 143(3) r/w Section 147 presuming that the assessee would not come with any explanation required from him, so far as the assessment of his income is concerned.

8th March, 1996 : Shri G.C. Jain, CA, authorised attorney of the assessee appeared and filed two letters from the assessee which are dt. 7th March, 1996 and 8th March, 1996. Through these letters, the assessee raised certain legal contentions insofar as the assessment proceedings in his case are concerned, and requested for time of at least one month. The contents of the letters were discussed with Shri Jain in general, who also requested that the assessee may be granted time requested for the detailed legal contentions given in the letters. Shri

G.C. Jain pointed out that the assessee was accused in as many as 24 criminal cases, list of which has been made out and filed along with the letters as also he has been served upon 8 show-cause notices by the Enforcement Directorate on account of contravention of Sections 8, 9 and 14 of FERA. 9th March, 1996 : Shri D.C. Agarwal, Addl. DIT (Inv.) telephonically contacted at his residence number and appraised of the contents of the letters filed by the assessee on 8th March, 1996. He communicated that the copies of these letters be forwarded to him by fax.

11th March, 1996 : As desired, the copies of assessee's reply have been transmitted through fax to the Directorate of Inspection (Inv.) along with the covering letter dt. 10th March, 1996.

20th March, 1996 : Shri D.C. Agarwal, Addl. DIT (Inv.), Delhi, telephonically informed that the case cannot be further prolonged on the basis of contentions raised by the assessee in his letters dt.

7th March, 1996 and 8th March, 1996. He further communicated that the undersigned should camp at Delhi for the completion of the assessment orders, so that the assessment orders along with the demand notice, challan, etc. be served upon the assessee in the first week of April, 1996 as desired by the DG (Inv.), since the Hon'ble Supreme Court has posted the case for hearing on 9th April, 1996. It has been explained to him that in view of the other time barring assessments pending in this range, it is very difficult for the undersigned to camp at Delhi from 25th as suggested by him.

22nd March, 1996 : The Hon'ble CIT, Jabalpur, telephonically directed that I have to proceed to Delhi on 28th March, 1996, as he has received the message from higher authorities in Delhi and Bhopal to that effect. He further directed that I should report on 29th March, 1996 in the Investigation Directorate and carry out the work of drafting of assessment orders in the case of Shri S.K. Jain on holidays, i.e., 30th March, 1996, 31st March, 1996 and 1st April, 1996, which are required to be drafted with the guidance of DI, DG and Addl. DIT as they would approve the assessment orders to be framed. In this connection, the CIT, Jabalpur, also directed that there is no need of the undersigned in attending the proceedings

before the Hon'ble Settlement Commission in Bombay on 3rd and 4th April, 1996 which were decided to be attended earlier.

25th March, 1996 : The assessee's authorised attorney, Shri G.C. Jain, CA appeared and filed letter dt. 25th March, 1996 from the assessee in which also the facts and circumstances of the case were reiterated and requested for further time meanwhile further opportunities in accordance with the principles of natural justice as per directions contained in Hon'ble Supreme Court's judgment in Dhirajlal Girdhanlal's case. Copy of this letter along with covering letter of even date has been forwarded to Shri D.C. Agarwal, Addl.

DIT (Inv.), Delhi, and to the CIT, Jabalpur, by fax.

26th March, 1996 : Shri D.C. Agarwal, Addl. DIT (Inv.) informed telephonically that he had received assessee's letter dt. 25th March, 1996 and expressed his opinion that the assessment has to be framed, as the assessee has not raised any new point than what was raised earlier. However, he instructed that suitable reply to the assessee be sent rejecting the request for prolonging the assessment proceedings by meeting out his various contentions.

27th March, 1996 : As communicated, a letter to the assessee, Shri S.K. Jain issued whereby his applications dt. 7th March, 1996, 8th March, 1996 and 25th March, 1996 have been turned down. It has been communicated to him in para 3 of the letter that he may have the inspection of the original diary MR-71/91 by making a request to the Special Court of Shri v. B. Gupta at Delhi. The contents of the letter have also been read over to Shri D.C. Agarwal, Addl. DIT (Inv.), Delhi, over telephone as desired by him.

4th April, 1996 : The assessee filed letter dt. 2nd April, 1996, wherein by and large the contents of the letters filed earlier, i.e., on 7th, 8th and 25th March, 1996, have been reiterated.

8th April, 1996 : Proceeded to Delhi for finalising the assessment order as per directions of the Hon'ble DI/DG, New Delhi.

147. Copy of the order along with demand notice & challan, etc. have been handed over to Shri D.C. Agarwal for affecting the service upon the assessee.

95. A draft assessment order was prepared in this case and copies of the same for the asst. yrs. 1988-89 and 1992-93 are placed at pp. 925 to 960 of the assessee's paper book. This draft assessment order copy was available on the records of the AO and the assessee has obtained a copy and filed it before us. According to the learned counsel for the assessee, in the draft assessment order there has been a reference to the enquiries conducted by the DDIT (Inv.) at New Delhi whereas in the fair order of assessment served on the parties there is no reference to such enquiries. This, according to the learned counsel for the assessee, is for the reason that the Revenue realised that the enquiries conducted by the DDIT (Inv.) were illegal and no credence or reliance could be placed on the same by the AO.⁹⁶ The learned counsel for the assessee made a detailed reference to the above sequence of events and submitted that the same established beyond doubt that the DDIT (Inv.) and other higher authorities continued to monitor the case and were giving instructions to the AO on the manner in which he was to conduct and complete the assessment proceedings. According to him, the DDIT (Inv.) continued to record statements of various persons and issued questionnaires/letters/summons to the assessee while the AO was a mere spectator to the whole proceedings. The record of proceedings according to him clearly reveals that every letter/reply filed by the assessee was promptly sent to the higher officers at Delhi and their instructions were awaited before taking any action. Even a request for adjournment was forwarded to the higher authorities and instructions were given by the higher authorities on the course of action to be adopted by the AO. The progress of the case was forwarded to the AO and the AO even records the fact that he is proceeding to Delhi to finalise the order of assessment. According to the learned counsel for the assessee, the presence of a draft assessment order on the file of the AO and the variation between the draft assessment order and final order of assessment clearly brings out the fact that the order of assessment was not framed by the AO on his own. According to him, the irresistible conclusion that one can reach on perusal of the record of proceedings as well as the sequence of events between the time the assessment was reopened and completed, is that the order of assessment was in fact

finalised/drafted by the DDIT (Inv.) Delhi and/or other higher authorities and the AO, was a mere signatory to the order of assessment. Alternatively, it was contended that the order of assessment, even if presumed to have been made by the AO, was so made by him at the directions/dictates of the higher authorities, which is illegal and consequently the impugned assessment is a nullity.

97. It was contended by the learned counsel for the assessee that when certain powers are conferred under the Act on a quasi-judicial authority, the said authority must act independently, without being influenced by the advice/instruction/direction of any other authority.

It was submitted that under the scheme of the Act, the powers to assess/reassess the income of the assessee have been specifically conferred on the AO, which must be completed after independent application of mind, without being influenced by the instructions/directions of any other authority. The Courts have consistently held that proceedings concluded on the advice/instructions/direction of any other authority are illegal and void ab initio. The learned counsel placed reliance on the following decisions :State of U.P. v. Maharaja Dharamander Prasad Singh 98. The learned standing counsel in reply submitted that the apprehension/contention of the assessee that the assessment was completed by the AO without application of mind at the dictates and directions of the superior authorities is absolutely without any basis.

According to him, whatever communication was addressed to the AO was to be appreciated in the light of the decision of the Hon'ble Supreme Court in the case of Vineet Narain & Ors. v. Union of India and Anr. WP (Crl.) Nos. 340-343 of 1993. It was submitted by him that the Hon'ble Supreme Court in the aforesaid writ petition had observed that consequent to seizure of diaries from J.K. Jain by the CBI there were accusation against many persons who were bureaucrats and politicians and therefore, had directed that all Government agencies, entrusted with performing their duty should act in accordance with law irrespective of the position and status of that person and conduct and complete and investigate into every accusation, expeditiously. This order was passed on 30th Jan., 1996 though the writ petition was filed as early as 1993. The Supreme Court had also called for submission of

reports regarding the progress achieved in the matter of investigation and emphasised that no time should be lost in completing the process of investigation. It was under these circumstances that there was some communication between the AO and the higher officers and none of the officers concerned had exceeded their jurisdiction or powers vested in them under the IT Act, 1961. It was submitted by him that examination of various persons by the DDIT (Inv.) was well within his powers under Section 131(1A) of the Act. The assessee had properties within the jurisdiction of the DDIT (Inv.), New Delhi, and had also business interest within his jurisdiction and, therefore, it cannot be said that the DDIT (Inv.) in any manner influenced the decision of the AO. The DDIT (Inv.) was bound to give a progress of the investigation to the Hon'ble Supreme Court and it was in this process that the DDIT (Inv.), New Delhi, conducted the necessary enquiry. It was further submitted by him that the information that was obtained was merely passed on by the DDIT (Inv.) to the AO and the AO after applying his mind to the facts of the case and the evidence available on record came to an independent conclusion and determined the taxable income. It was also submitted that enough opportunity was given to the assessee to explain his stand after confronting all the relevant material but the assessee did not choose to avail of such opportunity. The learned standing counsel distinguished the case laws relied upon by the learned counsel for the assessee. In conclusion, it was submitted by him that there is nothing on record to show that the AO did not act independently or acted only at the behest of his superiors or under their directions or dictates in framing the order of assessment.

99. We have considered the rival submissions. The question whether the AO acted independently or at the behest of his superiors or at the directions or dictates is essentially a question of fact. The law is well settled that when certain powers are conferred under the Act on a quasi-judicial authority, the said authority must act independently, without being influenced by the advice/instruction/direction of any other authority. Under the scheme of the Act, the powers to assess/reassess the income of the assessee have been specifically conferred on the AO, which must be completed after independent application of mind, without being influenced by the instructions/directions of any other authority. The Courts have consistently held that proceedings concluded on the advice/instructions/direction of any other authority are illegal and void ab initio. We

may at this stage refer to the commentaries of eminent author H.W.R. Wade, in his book *Administrative Law* (5th Edn.) p. 329 under the heading Retention of discretion by Administrative Authorities and subheading Surrender, Abdication, Dictation : "Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the Courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them." The author further explains the permissible guidelines under the heading "Permissible Guidelines" at p. 530 : "Clearly these rules ought not to be carried to the length of preventing one Government department from consulting another, or of preventing Government agencies from acting in accordance with Government policy. There must always be a difference between seeking advice and then genuinely exercising one's own discretion, on the one hand, and on the other hand, acting obediently or automatically under some one else's advice or directions." 100. In *S.B. Adityan and Ors, v. ITO* (1964) 52 ITR 453 (Mad), the Hon'ble High Court had an occasion to deal with a case where an ITO relied on the opinion of the Board on the question of decision on the status of an assessee as to whether it was a trust or not. The Court held as follows : "Without mincing matters we may straightaway say that the impugned order cannot stand. A worse specimen of a quasi-judicial order would be hard to find. Certiorari lies to quash the proceedings of a statutory authority which has erred in failing to conform to the statute. It, of course, tries to set aside an order of the authority, which makes no secret of the fact that the order emanated from another quarter and was not the result of its deliberations.

Extraneous influence in passing quasi-judicial orders vitiates them.

If such a thing is manifest on the face of the record, the Court cannot stand idly by; its plain duty is to quash it. To listen to both sides fairly, to act in accordance with

law and within the bounds of its jurisdiction and to reach an honest conclusion are the basic principles from which no judicial Tribunal can depart. The intended purpose of writs is to direct observance of these principles in instances where they are overlooked or flouted." 101. In the case of *Sirpur Paper Mills Ltd. v. CWT* (1970) 77 ITR 6 (SC), the Hon'ble Supreme Court in the context of revisional powers to be exercised by the CWT on the ground that order of the AO was erroneous and prejudicial to the interest of the Revenue held as follows : "The power conferred by Section 25 is not administrative it is quasi-judicial. The expression 'may make such inquiry and pass such order thereon' does not confer any absolute discretion on the CWT. In exercise of the power the CWT must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party, and decide the dispute according to procedure consistent with the principles of natural justice; he cannot permit his judgment to be influenced by matters not disclosed to the assessee, nor by dictation of another authority. Section 13 of the WT Act provides that all officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board. These instruction may control the exercise of the power of the officer of the Department in matters administrative but not quasi-judicial. The proviso to Section 13 is somewhat obscure in its import. It enacts that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the AAC in the exercise of his appellate functions. It does not, however, imply that the Board may give any directions or instructions to the WTO or to the CWT in exercise of his quasi-judicial function." 102. Under the IT Act, 1961, the AO has the power to assess or reassess income of a person over whom he has jurisdiction by virtue of the provisions of the Act. In making an assessment, the AO has to afford opportunity of hearing and letting in evidence to the assessee and has to take into account all relevant material which he has gathered and, thereafter, make an order in writing assessing the total income and determine the sum payable by the assessee or refund due to the assessee on the basis of such assessment. This is clear from the provisions of Section 143(3) of the Act. It is implicit in these provisions that while making an assessment, the AO is expected to act independently and without being influenced by his superiors. He is not expected to act under their dictates. The discretion conferred on the AO by the Act

should not be abdicated, surrendered or be exercised at the dictates of others.

103. In the present case, a search was conducted by the CBI on 3rd May, 1991 at the residential premises of Mr. J.K. Jain at G-36, Saket, New Delhi, to work out an information received while investigating RC Case No. 5(S)/1991 SIU(B)/CBI/New Delhi. In course of the search, they recovered among other things certain diaries. These diaries contained details of receipts and payments. The figures were in codes and the name of the persons recorded therein as recipients were bureaucrats, politicians, etc. The case of the CBI was that the payments in huge sums were made to politicians and officials of Government and public sector undertaking by procuring these monies through Hawala channels by the Jain brothers who had acted as middlemen in the award of certain big projects in the power sector of the Government of India to different bidders. That these payments were illegal gratification other than legal remuneration from the Jains as a reward for giving them and the companies they own and manage, various contracts. The CBI registered cases against the Jain brothers as well as the persons whose names appeared in those diaries as recipients under the Prevention of Corruption Act, Foreign Exchange Regulation Act, etc. These are matters, which are subject-matter of criminal prosecution against the assessee and his brothers. The IT Department in exercise of its powers under Section 132A of the Act, called for these documents and material seized from the CBI. The CBI had handed over copies of the documents and some of the materials seized to the IT Department for the purpose of assessing income, if any, in the hands of the assessee or other persons. Since the CBI, New Delhi had carried out the search, the DDIT (Inv.), New Delhi, made a requisition in terms of Section 132A and such requisition was issued by the DDIT (Inv.), New Delhi. Consequent to such requisition, the CBI handed over the material to the DDIT (Inv.), New Delhi on 18th Jan., 1995. The DDIT (Inv.), New Delhi, on taking delivery of the seized documents and material, by virtue of the provisions of Section 132A(3) was in the position of an authorised officer who had conducted a search and had seized the documents and materials in the course of search. The assessee was being assessed at Bhilai and, therefore, the DDIT (Inv.), New Delhi, in his capacity as authorised officer had duly forwarded the same to the AO at Bhilai on 20th March, 1995 as required by the provisions of Section 132(9A) of the Act. The AO after having come into

possession of information in the form of documents and material seized by the CBI on its receipt on 24th March, 1995 had recorded reasons for reopening on 30th March, 1995 and issued notices under Section 148 of the Act. On issue of notice under Section 148 of the Act, the AO had assumed jurisdiction over the case of the assessee. Thereafter, the question of assessment of income and the nature of enquiries to be conducted and evidence to be gathered and the manner of conducting enquiries all lies in the exclusive domain of the AO. By virtue of the provisions of Section 132(9A), the DDIT (Inv.), New Delhi, ceased to have any powers as an authorised officer over the assessee on or after 20th March, 1995 when the documents and seized material were sent to the AO or at any rate from 24th March, 1995 when the same is received by the AO.¹⁰⁴ We shall now examine the manner in which the enquiries were conducted by the AO from the time the assessments were reopened, the role played by the DDIT (Inv.), New Delhi, in the present case and also the manner in which the assessments were framed. We have already referred to the sequence of events as well as the record of proceedings before the AO. We shall however make a reference to some of them which has a bearing on the decision to be rendered on these grounds of appeal. A contention was put forth by the learned counsel for the assessee in the course of arguments that the entire correspondence that transpired between the AO and his higher authorities in connection with the present assessment should be produced before the Tribunal to verify if there had been any dictates or command by the higher authorities in the manner in which the AO was to complete the assessment. We directed the Revenue authorities to file copies of such letters. The same have since been produced before us and we had the benefit of going through these correspondence. It was stated by the learned standing counsel for the Revenue that except the documents produced before us, there is no other correspondence between the AO and the higher authorities that transpired between the reopening of the assessment and the completion of the assessment. We shall also make a reference to some of these correspondence and our findings and conclusions on the validity of the order passed by the AO: (a) The AO after recording reasons for reopening issued notices to the assessee and the same were served through the DDIT (Inv.), New Delhi, on 10th April, 1995. The service of notice through DDIT (Inv.), New Delhi in, our view, is not something unusual

and nothing adverse can be said about this action.

(b) The return of income was filed by the assessee on 6th June, 1995. Thereafter, the AO did not do anything till 20th Dec., 1995.

In the meantime, the DDIT (Inv.), New Delhi issued summons to several persons viz., Rachna Jain, Sh. Pawan Jain, Pramod Jain, Veenu Jain, etc., (family members of the Jain brothers), K.N. Dutta, Daniel P. Ramball, Mukul Jain, P. Ghosal, D.K. Guha, H.P. Guha Ray, S.S. Sandhu (all are employees of Jain brothers). One significant fact to be noted in all these statements is that the same has been recorded not as one pertaining to the case of the assessee. We may mention here that the DDIT (Inv.), New Delhi, has powers to examine any person without there being any proceedings pending before him by virtue of the provisions of Section 131(1A) of the Act. But such examination can be only with regard to a contemplated action under Section 132 which is in loose expression referred to as "pre-search enquiries". We may also state here that the nature of enquiries clearly point out to the fact that the DDIT (Inv.), New Delhi, was conducting an enquiry with reference to the pending case of the assessee before the AO at Bhilai and there is nothing to indicate that the same was with regard to any pre-search enquiries.

(c) On 20th Dec., 1995, the AO proceeded to Delhi on receipt of telephonic message of the DDIT (Inv.), New Delhi. The record of proceedings before the AO clearly states that the visit is for the purpose of discussing the case with higher authorities viz., DIT/Dy.

CIT, Delhi. What transpired during the visit of the AO to Delhi is revealed through a correspondence, which is in the form of a report about the progress of the case by the AO to the CIT, Jabalpur. This letter is dt. 30th Jan., 1996 and is a very important piece of communication, which throws light on the issue in controversy. The same reads as follows : Sub :--Monitoring of the assessment by Hon'ble CIT in the case of Shri S.K. Jain under income-tax, wealth-tax & gift-tax--Deliberation of the conference with Hon'ble DG (Inv.), Delhi on 22nd Dec., 1995--Report--Regarding--As directed by the higher authorities of the Directorate of Investigation, Delhi, as conveyed through Shri D.C. Agarwal, Addl. DIT (Inv.), I had been to the

Directorate from 21st Dec., 1995 to 29th Dec., 1995 in connection with the taking over of the seized material and other documents collected during the investigation by the Addl. DIT (Inv.). On 21st Dec., 1995 at 3.30 P.M., I had a conference with the DIT along with Shri D.C. Agarwal to discuss the case of Shri S.K. Jain wherein the DIT had instructed me to go through the material available with the Addl. DIT (Inv.) and segregate the same as pertaining to Shri S.K. Jain and BEC Ltd., etc. and take up the photocopies of the same. This was carried out on 21st and 22nd Dec., 1995.

Another conference was held on 22nd Dec., 1995 from 4.30 P.M. to 7.00 P.M. with the Hon'ble DG (Inv.) which was attended by Shri P.K. Kashyap, DIT (Inv.), Shri D.C. Agarwal, Addl. DIT (Inv.), Shri P.C. Chhotary, Addl. Director and myself. The strategy in the Jam group of cases was discussed during the conference, keeping in view the co-ordination with other investigation agencies like CBI, FERA, etc.

It was decided during the course of discussion that for the time being the cases initiated under the GT Act were not required to be proceeded with, as the same would otherwise weaken the case of CBI where they have filed charge sheet against Jains and other bureaucrats under the Prevention of Corruption Act and IPC. At the same time it was decided that the cases under income-tax and wealth-tax, particularly that of Shri S.K. Jain were required to be proceeded with vigorously in the light of Supreme Court's hearings which are taking place frequently. For this purpose, the AO was required to prepare the statutory notices along with detailed questionnaire under Sections 142(1) and 143(2) of the IT Act, 1961 and under Section 16(2) of WT Act, 1957, and after getting the same approved by the DIT/DG the same was required to be served upon Shri S.K. Jain in Delhi allowing him time of a fortnight. The spade work for preparation of notices was completed in the directorate itself where various issues involved and investigated into were incorporated in detail including the detailed reasons for establishing the fact that the figures noted in the diary and allied documents were in the code of 'lakhs'. The rough sketch of the questionnaire was gone through by the DIT(Inv.) who instructed that the questionnaire should be prepared separately for all the assessment years by recapitulating the facts and reasons as incorporated in the notices issued by the Addl. DIT (Inv.), Delhi to the concerned

assessee. After returning from Delhi, the said exercise was carried out and the notices were prepared both under income-tax and wealth tax and submitted to the DIT on 8th Jan., 1996 and 9th Jan., 1996, so that the service could be effected on or before 10th Jan., 1996, on which date, the Hon'ble Supreme Court had fixed the case for hearing.

They notices issued for asst. yrs. 1988-89 to 1992-93 under Sections 142(1) and 143(2) of IT Act, 1961 along with detailed questionnaire as also statutory notice under Section 16(2) along with detailed questionnaire under the WT Act, 1957 have been kept in the paper book prepared for submission to the Hon'ble Settlement Commission, a copy of which has already been submitted to you.

Presently the hearing of the case, both under income-tax and wealth-tax has been fixed on 5th Feb., 1996. As transpired in the conference with Hon'ble DG these assessments are required to be completed expeditiously as far as possible by the end of February, 1996. However, the same would depend on the assessee's response to these notices. In this regard, I may mention that presently the evidences collected in the form of testimonies of various witnesses are utilised by the AO as it is, as decided in the conference, but in case the assessee demands cross-examination, the said exercise would be required to be carried out here also, which may likely delay the proceedings further. (underlining, italicized in print, by us) Further progress in the matter shall be communicated from time to time and on concluding the assessment proceedings, draft orders shall be submitted for CIT's kind approval.

It is evident from this letter that the statutory notice as well as the questionnaire to be sent were all prepared at Delhi at the instructions of the DDIT (Inv.), New Delhi. To what extent the AO applied his mind and was influenced by the dictates of his superior is a matter of inference. The subsequent conduct of proceedings by the AO and the ultimate order of assessment framed by the AO would throw some light on the inference to be drawn which will be discussed in the following paras.

(d) On 8th Jan., 1996, the AO issued statutory notices under Section 142(1) and 143(2) of the Act along with a detailed questionnaire dt.

26th Dec., 1995. The hearing of the case was to take place on 25th Jan., 1996. The notices for the hearing along with questionnaire were sent to DDIT (Inv.), New Delhi, informing the AO that the notices could not be served for want of approval by DIT and since the time fixed for enquiry was also short, the same needs to be updated extending the time to be allowed to assessee. We may mention here that there is no necessity for approval of the statutory notice by the DIT. As already observed, the AO was expected to act independently and his seeking advice at every stage of the proceedings from his higher authorities only shows that he did not act independently in framing the assessment.

(e) Fresh notice of hearing fixing the case on 5th Feb., 1996 was sent to the assessee. On 5th Feb., 1996, the assessee appeared through his counsel and filed a letter raising several objections, pleading ignorance about the diary, seeking some documents and clarifications.

(f) On 6th Feb., 1996, the AO forwarded the reply filed by the assessee to DDIT (Inv.), New Delhi who on the same day informed the AO telephonically that a suitable reply to be sent to assessee be prepared and sent to the higher authorities for perusal. The telephonic message is further to the effect that the assessee should be given one more opportunity of being heard in the matter.

(g) The CIT, Jabalpur, thereafter informed the AO on 15th Feb., 1996 not to proceed further in the matter until further instructions. But however, the DDIT (Inv.), New Delhi informed the AO on 23rd Feb., 1996 that the case is to be progressed fast and the assessment is to be completed as early as possible and that there was a communication gap in the message sent by the CIT, Jabalpur, to the AO. This is also confirmed by the CIT, Jabalpur through his telephonic communication dt. 27th Feb., 1996 with the AO. (h) On 27th Feb., 1996, the AO had sent a draft reply to the assessee's letter dt. 5th Feb., 1996 and this reply is served through the DDIT (Inv.), New Delhi, on 4th March, 1996. This reply is again based on a draft reply which the DDIT (Inv.), New Delhi, had sent to the assessee through fax through CIT, Jabalpur.

(i) On 4th March, 1996, -the DDIT (Inv.), New Delhi, informed the AO about the reply dt. 27th Feb., 1996 having been served on the assessee and also conveyed

the instructions of the DG, New Delhi, to proceed to draft assessment order presuming that the assessee could not come with any explanation required from him so far as the assessment of his income is concerned.

(j) On 8th March, 1996, the counsel for the assessee appeared before the AC) and filed two letters dt. 7th March, 1996 and 8th March, 1996. The assessee in these replies had demanded copies of seized documents, production of the original seized documents, right of cross-examination of the deponents of various statements recorded by the DDIT (Inv.), New Delhi. The assessee also pointed out that he is facing criminal prosecution in respect of the very same diaries and any reply by him would tend to incriminate him in the pending criminal prosecution. The assessee sought protection under Art.

20(3) of the Constitution of India and pleaded for keeping the proceedings in abeyance.

(k) The contents of this letter are reported by the AO to the DDIT (Inv.), New Delhi, on 8th March, 1996 itself and a copy of the same is forwarded by fax on 11th March, 1996 as desired by the DDIT (Inv.), New Delhi. A letter dt. 10th March, 1996 is addressed by the AO to the DDIT (Inv.), New Delhi, and the same reads as follows : Sub : Forwarding of the assessee's reply in response to notices issued under income-tax and wealth tax Acts--Reg.

In connection with the telephone talk I had with you yesterday the 9th March, 1996 on the captioned matter and as desired by you I am forwarding the copies of the assessee's reply filed by him on 8th March, 1996 in response to this office letter F. No. DCIT (Assmt.)/BHI/S-777/1995-96 dt. 27th Feb., 1996.

2. As usual, I am forwarding the sample of the copies of reply for asst. yr. 1992-93 for income-tax and for asst. yr. 1991-92 under the wealth-tax, since the remaining replies are exactly on the same lines. The assessee has filed in each case two letters one dt. 7th of March, 1996 and another dt. 8th of March, 1996. The contents of which are basically similar in nature except some changes here and there. The letter dt. 7th March, 1996 mentions the assessee's viewpoint in generality and appears to have been prepared in haste just to seek the

adjournment of the case. The letter dt. 8th March, 1996 brings out some specific legal objections based on the authorities cited therein. In this letter, following three points have been made out for seeking the adjournment of one month's time : That the assessee be supplied with or allowed to have an access to the original documents on the basis of which the assessment is proposed to be made; The assessee requested for allowing him to cross-examine the various witnesses on the testimony of which the inferences in the matter of making the assessment have been drawn; It is emphasised upon by the assessee that the criminal cases which he is facing as per the list appended with the reply must take precedence over the civil proceeding, i.e., assessment proceedings under income-tax & wealth-tax.

Under these circumstances, I solicit the valuable guidance of the higher authorities viz., DIT/DG (Inv.) in the matter so that any legal infirmity in the assessment order be properly taken care of.

3. I may mention that I have drafted the basic skeleton of the order which could only be concluded after meeting out the various legal contentions raised by the assessee in his reply referred to above.

On the basis of aforementioned facts I am of the opinion that the assessee may be allowed to get one more opportunity and by adjourning the case by one month as requested for by him. Further proceedings shall be taken after hearing from you which may kindly be expedited at your end. (underlining, italicized in print, by us) On 20th March, 1996, the DDIT (Inv.), New Delhi, informed the AO that the case cannot be prolonged further and directed the AO to camp at Delhi for completion of the assessment orders and ensure that the demand notice is served on the assessee by April, 1996. The DDIT (Inv.), New Delhi, also informs the AO about the case coming up for hearing on 9th April, 1996 before the Hon'ble Supreme Court. We may mention here that the Hon'ble Supreme Court in a pending public interest litigation had passed orders on 30th Jan., '1996 wherein it had directed that all Government agencies must expedite their action in the cases arising out of the seizure of diaries by the CBI The reference made is probably to the progress to be shown to the Hon'ble Supreme Court in the matter of completing

assessments against the assessee. The AO informed the DDIT (Inv.), New Delhi, that it is not possible for him to camp at Delhi from 25th March, 1996 as suggested by him because of time barring assessments to be completed by him in his range.

(i) On 22nd March, 1996, the CIT, Jabalpur, directed the AO telephonically to proceed to Delhi on 28th March, 1996 for completing the assessments. The instruction by the CIT, Jabalpur, is further to the effect that the AO should report before the Directorate of Investigation on 29th March, 1996 and carry out the work of drafting of assessment orders in the case of the assessee with the guidance of the DI, DG and Addl. DIT and they would approve the assessment orders to be framed.

(j) On 25th March, 1996, the assessee had again written a letter to the AO pleading for opportunity of hearing. The AO in turn informed the DDIT (Inv.), New Delhi about the request for adjournment. The DDIT (Inv.), New Delhi in turn informed the AO to send a reply to the assessee but however proceed with the work of framing the assessment. The AO had sent a reply as suggested by the DDIT (Inv.), New Delhi, refusing adjournment.

(k) The AO proceeded to Delhi for framing the assessment order as per directions of the DI, DG, New Delhi.

105. It is clear from the above sequence of events that the AO at no point of time acted independently. In fact it was the DDIT (Inv.), New Delhi, who was monitoring the proceedings from New Delhi and the AO acted merely at his dictates. We have already referred to the letter dt. 30th Jan., 1996 by the AO to the CIT, Jabalpur, informing about the progress of the case in which he has clearly stated that he is acting as per the dictates of his superior and as discussed in the meeting with his superiors. These facts are further fortified by the manner in which the order of assessment has been framed. The AO has proceeded to determine the taxable income on the lines as were indicated by the DDIT (Inv.), New Delhi, in its letters dt. 27th Nov., 1995 and 11th Dec., 1995 to the assessee. It is relevant to point out that the DDIT (Inv.), New Delhi, had issued letters dt. 27th Nov., 1995 and 11th Dec., 1995 calling for explanation from the assessee on the basis of the seized documents as well as the statements recorded by him at New Delhi and proposing

to determine the income of the assessee. He was not competent to do this as we have already said that the AO having reopened the assessment was the only person who could take legal cognizance of all the seized material for the purpose of making an assessment. The AO placed his reliance on the statements of the various witnesses who had been examined by the DDIT (Inv.), New Delhi, between the period 30th March, 1995 to 15th May, 1995, while framing the order of assessment.

The questionnaire dt. 17th Jan., 1996 sent by the AO along with the notice under Sections 142(1) and 143(2) were all approved by the DDIT (Inv.), DI/DG, New Delhi, prior to their being sent to the assessee.

The contents of the questionnaire are on similar lines as that of the letter dt. 27th Nov., 1995 sent by the DDIT (Inv.), New Delhi to the assessee. As already stated the order of assessment is on identical lines with that of the questionnaire sent by the AO to the assessee.

The striking similarity between these documents clearly go to suggest that it was the DDIT (Inv.), New Delhi who had either drafted the order of assessee or the AO had done so at the dictates and directions of the DDIT (Inv.), New Delhi. It cannot be said to be a coincidence. At every stage of the assessment proceedings, viz., issuing of notices to the assessee, considering the replies of the assessee, request for adjournment, contents of the replies to be sent by the AO to the assessee were at the directions and dictates of the higher authorities.

The AO concluded the assessment proceedings at the direction and dictates of his superior. This is clear from his letter dt. 10th March, 1996 wherein he expressed his opinion that on the basis of the assessee's letter dt. 8th March, 1996 in the assessment proceedings he was of the opinion that one month's time should be allowed to the assessee. The AO however concluded the proceedings on 25th March, 1996 at the dictates of his superior. This is clear from the telephonic message received by the AO from the CIT, Jabalpur asking the AO to proceed to New Delhi for framing the order of the assessment.

106. The learned standing counsel vehemently contended that there was independent application of mind by the AO before framing the order of assessment. He placed strong reliance on the order of the Hon'ble Supreme Court dt. 30th Jan., 1996 in the case of Vineet Narain and Ors.

v. Union of India and Anr. wherein the Hon'ble Supreme Court had directed Government agencies to fairly, properly and fully investigate into every accusation against every person and take the logical final action in accordance with law. According to him the DDIT (Inv.), New Delhi and higher authorities were merely monitoring the proceedings and at no stage attempted to interfere with his independence. According to him, a distinction has to be made between a superior exercising his power of superintendence and control over his subordinates on the one hand and giving dictates or instructions on the other. We do not think that the superior authorities merely exercised their power of superintendence or control over their subordinates. The evidence on record clearly suggests that the AO did not act independently but was merely acting on the dictates of his superior. There can be no better case of abdication of powers than the present one. Even the letter dt.

30th Jan., 1996 by the AO to the CIT, Jabalpur, reporting the progress of events clearly mentions about the manner in which the material seized was to be used in completing the assessment which was decided in the conference between the AO and the DDIT (Inv.), New Delhi, before completion of the assessment proceedings. The assessment proceedings before the AO proceeded on a predetermined course and the AO was merely carrying out what has already been decided by his superiors.

107. The direct as well as circumstantial evidence clearly establish that the impugned assessments were finalised/drafted by the DDIT (Inv.), New Delhi and or other higher authorities and the AO, merely signed the same or at any rate the same were drafted by the AO at the directions/dictates of the higher authorities. In any event, the order of assessment has to be held as nullity in the eye of law. We refrain ourselves from making any elaborate reference to several judicial pronouncements on the validity of an order of assessment framed at the dictates

and directions of a superior as the law in this regard is well settled. We have no hesitation in holding that the impugned assessments are bad in law for the reason that the same were monitored/ completed at the dictates/directions/instructions of the higher/other authorities, who had no jurisdiction in the matter. The 8th and 10th grounds of appeal of the assessee are allowed and orders of assessment in all the assessment years are annulled.

108. We shall now consider the plea of the assessee that reopening was without sanction of CIT and therefore, not valid. This ground is relevant only for asst. yr. 1988-89. This is sought to be raised as an additional ground No. 1 in ITA No. 552/Nag/1997. The same reads as follows : "That, on the facts and in the circumstances of the case, the reopening of assessment for the asst. yr. 1988-89 without obtaining the sanction of the CIT is bad in law and void ab initio." 109. The additional ground sought to be raised being a legal ground is permitted to be raised and taken up for adjudication.

Prior to amendment of Section 151 w.e.f. 1st April, 1989, the section stood as follows : "(1) No notice shall be issued under Section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the AO that it is a fit case for the issue of such notice.

(2) No notice shall be issued under Section 148 after the expiry of four years from the end of the relevant assessment year, unless the Chief CIT or CIT is satisfied on the reasons recorded by the AO that it is a fit case for the issue of such notice." After its amendment w.e.f. 1st April, 1989, Section 151 reads as follows : 151 Sanction for issue of notice.

(1) In a case where an assessment under Sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued under Section 148 by an AO, who is below the rank of Asstt. CIT, a or Dy. CIT unless the Jt. CIT is satisfied on the reasons recorded by such AO that it is a fit case for the issue of such notice : Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief CIT or CIT is satisfied, on the reasons recorded by the AO aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under Sub-section (1), no notice shall be issued under Section 148 by an AO, who is below the rank of Dy. CIT, after the expiry of four years from the end of the relevant assessment year, unless the Jt. CIT is satisfied, on the reasons recorded by such AO, that it is a fit case for the issue of such notice.

110. In the present case, the end of the relevant assessment year is 1st April, 1989. The original assessments were completed under Section 143(3) of the Act. A period of 4 years from this date would be 31st March, 1993. The notice for reopening the assessment was issued on 30th March, 1995. The reopening was therefore beyond the period of 4 years from the end of the assessment year. If the old law was to be applied then the satisfaction of the Chief CIT or CIT on the basis of the reasons recorded that it is a fit case has to be obtained. If the new law were to be applied then there is no necessity for obtaining of such sanction. We may clarify that the proviso to Section 151(1) as per the new law will not apply since in the present case the reopening was done by the Dy. CIT and it is only when an officer below the rank of Dy. CIT that a satisfaction of the Chief CIT or CIT was to be obtained. The question therefore is as to whether the new law will apply for reopening in the present case or whether the old law (i.e., the law prevailing at the relevant point of time viz., the assessment year) should apply. This question had already arisen for consideration in many cases and there are conflicting judicial opinion on this point.

111. We shall first refer to the decisions which were relied upon by the learned counsel for the assessee which are to the effect that the reopening of assessment is a substantive right and, therefore, the reopening has to be in accordance with the law that was prevailing during the relevant assessment year.

In *Entee Builders v. Dy. CIT* (2003) 78 TTJ (Lucknow) 952, the Tribunal, Lucknow Bench, has held as follows : At the outset, it may be pointed out that so far as the asst. yr.

1988-89 is concerned, the old provisions shall be applicable. In the case of *K.M. Sharma v. ITO* (2002) 254 ITR 772 (SC), the Hon'ble Supreme Court of India while considering the amendment made to Sub-section (1) of Section 150 of IT Act,

1961, which became effective from 1st April, 1989, has held that the amended provisions shall be applicable prospectively. According to the Hon'ble Supreme Court of India, the provisions of fiscal statute, more particularly one regulating the period of limitation, must receive a strict construction. The relevant observations of the Hon'ble Court are being reproduced below : "On a proper construction of the provisions of Section 150(1) and the effect of its operation from 1st April, 1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1st April, 1989, for assessments which have already become final due to the bar of limitation prior to 1st April, 1989. The taxing provision imposing a liability is governed by the normal presumption that it is not retrospective and the settled principle of law is that the law to be applied is that which is in force in the assessment year, unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the authorities to effect the finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion therefore, is that Sub-section (1) of Section 150, as amended w.e.f. 1st April, 1989, does not enable the authorities to reopen assessments which have become final due to bar of limitation prior to 1st April, 1989, and this position is applicable equally to reassessments proposed on the basis of orders passed under the Act or under any other law." 112. In the case of Ranchi Handloom Emporium v. CIT and Anr. (1999) 235 ITR 604 (Pat), the Hon'ble Patna High Court has held that amendment to Section 147 w.e.f. 1st April, 1989, will not be applicable to asst. yr.

1988-89. The following observations of the Hon'ble Court are being reproduced below : "submission that the present case would be governed by the amended provisions of Section 147 of the Act was completely misconceived.

Having regard to the fact that the amended provisions, as substituted by the Direct Tax Laws (Amendment) Act, 1987, came into force from 1st April, 1989, and the present case relates to the asst. yr. 1988-89, the relevant accounting year being 9th July, 1986 to 27th June, 1987, it would be the unamended provisions which would govern the case." (i) The Hon'ble Rajasthan High Court in the case of

Chandi Ram v. ITO and Anr. (1997) 225 ITR 611 (Raj) has held as follows : "No one has vested right in procedural law and whenever a change is made with regard to procedure, it is retrospective in nature. In a matter of reassessment proceedings under the IT Act the change has been brought with regard to circumstances and limitation as well. If the limitation has already expired, then the amended law would not revive the matters where the limitation is already expired by taking into consideration the amended provisions of law on the ground that the limitation is extended. The provisions of amended Act, therefore, would be applicable only in those cases where the limitation under the old law has not expired. The provisions of assessment are meant for determination of the correct liability of tax in accordance with law which should be on the basis of correct income and if there is any escapement, then the ITO has power to reopen the matter. The repealed section refers to the 'information' on the basis of which the reassessment proceedings could have been initiated. The information with regard to correct state of law by way of judgment of the apex Court is also an information on the basis of which the action could have been taken under the repealed section. Now, the ITO can reassess for any reason, therefore, the amended section cannot be considered to be affecting any right of the assessee. The circular, issued by the CBDT, though is having no binding effect on the Court, but the view which has been taken cannot be considered to be contrary to law. In the case of the assessee, the power could have been exercised under the repealed section as well as the amended section. The matter with regard to the applicability of the repealed section is merely an academic argument; however, in view of the fact that the power of reopening was existing in respect of escaped assessment prior to 1st April, 1989, therefore, it cannot be said that any new right has been acquired by the ITO or the said amendment has effected any vested right of the assessee. The object of reassessment is to assess the correct income and is a matter of procedure. The provisions of Section 148, therefore, have to be considered as procedural in nature. A change in the procedure may be by way of limitation or otherwise does not affect the vested right and as such the ITO was competent to invoke the provisions after 1st April, 1989 in accordance with the amended law, in respect of previous year which have not become time-barred." (ii) The Hon'ble Punjab & Haryana High Court in the case of Steel Strips Ltd. v. Asstt.

CIT (1995) 211 ITR 1021 (P&H) has held as follows : "Notice of reassessment having been issued, extended period of limitation which came into force before expiry of limitation under old law, is not barred by limitation. At the outset, it may be stated that the period of eight years from the conclusion of the asst. yrs. 1981-82 and 1982-83) had not expired when the amending Act came into force w.e.f. 1st April, 1989, which extended the period of eight years to ten years. That being the position, the amending Act having come into force before expiry of the period prescribed under the old Act, the notices issued could not be challenged as being time-barred and without jurisdiction." 114. The decisions relied by the learned counsel for the assessee deal with the question of limitation. The right, which an assessee gets by time running for making an assessment against him, was a substantive right and the same cannot be said to be procedural right. As far as the present case is concerned, we are of the view that the satisfaction of the CIT on the basis of the reasons recorded by the AO that income has escaped assessment is not a substantive right but a procedural one. The decision of the Hon'ble Rajasthan High Court can be more appropriately applied to the facts of the present case. We, therefore, hold that approval of the CIT was not necessary in the present case. The additional ground of appeal is, therefore, dismissed.

115. The remaining grounds, original as well as additional, raised by the assessee, which are common in his appeals for all the years under consideration, read as under : 9. That the CIT(A) erred on facts and in law, in not holding that the impugned assessment is bad in law and void ab initio for the reason that the assessment was completed without giving reasonable opportunity of being heard to the appellant in violation of the principles of natural justice.

11. That the CIT(A) erred on facts and in law in not holding that the impugned assessment was vitiated in law for the reason that the assessment was based on suspicion, surmises and conjectures and was not based on any evidence or materials.

12. That the CIT(A) erred on facts and in law in not holding that the impugned assessment was vitiated in law since the AO had relied on ex parte statements recorded behind the back of the appellant without affording opportunity of cross-

examination.

13. That the CIT(A) erred on facts and in law in not holding that the ex parte statements of deponents used against the appellant without affording opportunity of cross-examination, had to be excluded from consideration.

14. That the CIT(A) erred in holding that the opportunity of cross-examination was made available to the appellant insofar as the statement of Shri J.K. Jain was recorded in the presence of the counsel of the appellant and the appellant failed to invoke the right of cross-examination.

15. That the CIT(A) erred on facts and in law in confirming the addition of Rs. 43,50,000 made under Section 68 of the Act.

16. That the CIT(A) erred on facts and in law in upholding the finding of the AO that the diary recovered from the premises of the third party and written in the handwriting of the third party belonged to the appellant.

17. That the CIT(A) erred on facts and in law in wrongly placing the onus on the appellant to prove that the entries recorded in the said diary did not belong to the appellant, not appreciating that the appellant had denied that the diary or the entries contained therein belonged to the appellant.

18. That the CIT(A) erred on facts and in law in confirming the aforesaid additions made by the AO by applying the provisions of Sections 68 and 69C of the Act without appreciating that the same is not based on evidence and material on record, position of income/net wealth of the appellant, etc.

19. That the CIT(A) erred on facts and in law in confirming the additions made by the AO on the basis of material/document/evidence without appreciating that the said material/document/evidence did not reflect any undisclosed income of the appellant.

20. That the CIT(A) erred on facts and in law in upholding the inclusion of the said amount deemed to be the income of the appellant under Sections 68 and 69C of the Act without appreciating that the alleged income had neither accrued nor

arisen not received by the appellant.

21. That the CIT(A) erred on facts and in law in confirming the arbitrary, huge and legally untenable additions on the basis of a diary allegedly seized by the CBI without appreciating that (b) the said diary did not reflect any undisclosed income of the appellant.

22. That the CIT(A) erred on facts and in law in confirming the additions made by the AO without appreciating that the appellant, having limited and known sources of income, could not have earned such imaginary income.

23. That the AO erred on facts and in law in placing onus on the appellant and holding that the appellant had not offered any explanation, without appreciating that the appellant was entitled to immunity/protection under Art. 20(3) of the Constitution of India.

24. That the AO erred on facts and in law in charging interest under Sections 234A/234B and 234C of the Act.

2.1 That on the facts and in the circumstances of the case, the entire proceedings before the Dy. Director of IT (Inv.), New Delhi, are null and void.

2.2 That on the facts and in the circumstances of the case, the Dy.

Director of IT (Inv.), New Delhi, erred in law in conducting proceedings in the instant case when the said officer had no jurisdiction in the matter.

2.3 That the Dy. Director of IT (Inv.), New Delhi, acted in excess of authority and beyond jurisdiction in handing over the material requisitioned from CBI to the AO beyond the period of 15 days stipulated under Section 132A(3) r/w Section 132(9A) of the Act.

2.4 That on the facts and in the circumstances of the case, the Dy.

Director of IT (Inv.), New Delhi, erred in assuming jurisdiction to record the statements of witness under Section 131 of the Act.

2.5 That, on the facts and in the circumstances of the case, the statements of witness recorded results of enquiries conducted by the Dy. Director of IT (Inv.), New Delhi, who did not have valid jurisdiction in the matter, cannot be relied upon and have to be excluded from consideration.

116. Although elaborate submissions have been made on all the aforesaid grounds by the learned representatives of both the sides, keeping in view our decision rendered on ground Nos. 8 and 10 in the preceding paragraphs of this order annulling the assessments completed for all the years under consideration, we do not deem it necessary or expedient to decide the same, which have been rendered merely of academic nature, on merit.

117. ITA No. 585/Nag/1997 is an appeal by the Revenue against the order dt. 25th July, 1997 of learned CIT(A)-I, Raipur, relating to asst. yr.

1988-89. The grounds of appeal of the Revenue read as follows : 1. On the facts and in the circumstances of the case, the learned CIT(A) has erred in deleting the interest under Section 139(8) charged at Rs. 1,13,860.

2. On the facts and in the circumstances of the case, the learned CIT(A) has erred in deleting the interest under Section 217 charged at Rs. 27,61,160.

118. At the time of hearing of this appeal, the learned counsel for the assessee fairly conceded that in view of the statutory provisions prevailing at the relevant point of time, the relief given by the CIT(A) was not proper. However, as a result of our decision rendered in the assessee's appeal annulling the assessment for asst. yr. 1988-89, this appeal by the Revenue has become infructuous. Accordingly the same is dismissed.

119. In the result, all the appeals of the assessee are partly allowed whereas the appeal by the Revenue is dismissed.

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