

Note on Reopening

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S.no.	Name of Case	Forum	Citation	Date of order & Appeal no.	Ratio in Brief
1.	M/s Pelican Portfolio Services Pvt. Ltd.	Hon'ble Bombay High Court		o/d- 26.10.2016 & Writ Petition no. 2470/2016	Refer note – 1
2.	Sabharwal Properties Industries Pvt. Ltd.	Hon'ble Delhi High Court		o/d- 18.02.2016 & W.P.(C) 8994/2014	Refer note – 2
3.	Independent Media P. Ltd.	Hon'ble Delhi High Court		o/d- 19.11.2015 & ITA 108/2015	Refer note – 3
4.	H.R. Mehta	Hon'ble Bombay High Court	387 ITR 561	O/d- 30.06.2016 & ITA no. 58/2001	Refer note – 4
5.	SVP Builders (India) Limited	Hon'ble Delhi High Court		O/d- 15.12.2015 & ITA 871/2015	Refer note – 5
6.	Fortune Technocomps (P) Ltd.	Hon'ble Delhi High Court		O/d- 13.05.2016 & ITA 313/2016	Refer note – 6
7.	Girish Bansal	Hon'ble		O/d- 28.04.2016	Refer note

		Delhi High Court		& ITA 136/2004	– 7
8.	Indu Lata Rangwala	Hon'ble Delhi High Court	384 ITR 337		Refer note – 8
9.	Asharam Ashram	Hon'ble High Court of Gujarat at Ahmedabad	386 ITR 222	Special Civil Application no. 4774/2016	Refer note – 9
10.	Jayesh Govindbhai Balar	Hon'ble High Court of Gujarat at Ahmedabad		O/d- 13.06.2016	Refer note – 10
11.	M/s Emgeeyar Pictures P. Ltd.	ITAT Chennai		O/d- 11.03.2016 & ITA no. 992/Mds/2015	Refer note – 11
12.	Soignee R. Kothari	Hon'ble Bombay High Court	386 ITR 466	O/d- 05.04.2016 & W.P. (L) no. 3172/2015	Refer note – 12
13.	General Electoral Trust	Hon'ble Bombay High Court		O/d- 20.07.2016 & W.P.- 1155/2016	Refer note – 13
14.	Shree Sidhnath Enterprise	Hon'ble High Court of Gujarat at Ahmedabad		O/d- 28.03.2016 & Special Civil Application no. 19694/2015	Refer note – 14

15.	Sampatraj Dharmichand Jain	Hon'ble High Court of Gujarat at Ahmedabad		O/d- 27.06.2016 & Special Civil Application no. 4646/2016	Refer note – 15
16.	Aksar Wire Products (P) Ltd.	ITAT Delhi		O/d- 11.12.2015 & ITA no. 1167/Del/2015	Refer note – 16
17.	Coperion Ideal Private Limited	Hon'ble Delhi High Court		O/d- 09.10.2015 & ITA 557/2015	Refer note – 17
18.	M/s Rustagi Engineering Udyog Pvt. Ltd.	Hon'ble Delhi High Court		O/d- 24.02.2016 & W.P.(C) 1289/1999	Refer note – 18
19.	VIP Growth Fund Pvt. Ltd.	Hon'ble Delhi High Court		O/d- 17.03.2016 & W.P.(C) 9299/2014	Refer note – 19
20.	Dr. Ajit Gupta	Hon'ble Delhi High Court		O/d- 03.03.2016 & W.P.(C) 924/2014	Refer note – 20
21.	Sri Paduchuri Jeevan	ITAT Hyderabad		O/d- 19.08.2016 & ITA no. 452/Hyd/2015	Refer note – 21
22.	Kohinoor Hatcheries Pvt.Ltd.	Hon'ble T&AP High Court		O/d- 16.08.2016 & W.P.no. 2148/2015	Refer note – 22
23.	M/s Quality	Hon'ble		O/d- 13.07.2016	Refer note

	Care India limited	T&AP High Court		& ITTA no 261/2015	– 23
24.	Jayanth Murthy	ITAT Ahmedabad		O/d- 20.05.2016 & ITA no. 870 & 1234/Ahd/ 14	Refer note – 24
25.	R.S. Builders & Engineers Ltd.	ITAT Chandigarh		O/d- 10/08/2016 & ITA no. 280/Chd/2016	Refer note – 25
26.	Dyaneshwar Govind Kalbhor	ITAT Pune		O/d- 05.08.2016 & ITA no.2405/PN/2012	Refer note – 26
27.	Agya Ram	Hon'ble Delhi High Court	386 ITR 545	O/d- 01.08.2016	Refer note – 27
28.	Deep Recycling Industries	Hon'ble High Court of Gujarat at Ahmedabad		O/d- 02.08.2016 & Special Civil Application no. 3611/2013	Refer note – 28
29.	CVM Jewels Pvt. Ltd.	Hon'ble High Court of Gujarat at Ahmedabad		O/d- 02.08.2016 & Special Civil Application no. 9024/2016	Refer note – 29
30.	Amrik Singh	ITAT Amritsar	159 ITD 329	O/d - 11.05.2016	Refer note - 30
31.	Brij Kishor Kochar	ITAT Delhi		O/d- 26.08.2016 & ITA no.	Refer note - 31

				3826/Del/2013	
32.	Oil & Natural Gas Corporation Limited	Hon'ble Supreme Court of India		O/d- 04.09.2014 & Civil Appeal no 3415/2007	Refer note – 32
33.	Shri Jawahar Lal Oswal	Hon'ble Punjab & Haryana High Court	382 ITR 453	O/d- 29.01.2016 & ITA no. 49/1999	Refer note – 33
34.	Noorul Islam Educational Trust	Hon'ble Supreme Court of India		O/d- 21.10.2016 & SLP no. 13968/2015	Refer note – 34
35.	Doosan Heavy Industries & Construction Co.	Hon'ble Bombay High Court		O/d- 04.10.2016 & ITA no. 670/2014	Refer note – 35
36.	KSS Petron Private Limited	Hon'ble Bombay High Court		O/d- 03.10.2016 & ITA no. 224/2014	Refer note – 36
37.	Daiwa Portfolio Advisory (I) Pvt. Ltd.	Hon'ble Bombay High Court		O/d- 28.09.2016 & W.P. no. 2214/2016	Refer note – 37
38.	Shri Pratik Suryakant Shah	ITAT Ahmedabad		O/d- 21.10.2016 & ITA no. 810/Ahd/2015	Refer note - 38

39.	Shri Satnam Singh	ITAT Chandigarh		O/d- 26.09.2016 & ITA no. 144/Chd/2016	Refer note – 39
40.	Akhilesh Aggarwal	Delhi ITAT		O/d- 22.02.2016 & ITA 4099/Del/2013	Refer note – 40
41.	Amaya Infrastructure	Hon'ble Bombay High Court		O/d- 20.04.2016	Refer note – 41
42.	Circular no. 8/2016	CBDT			Refer note – 42
43.	G.K. Consultanta ltd.	Hon'ble Delhi High Court		O/d- 24.05.2016 & ITA 86/2015	Refer note – 43
44.	Tirupati Infra Projects	Delhi ITAT		O/d- 17.05.2016 & ITA no. 3316/Del/2015	Refer note – 44
45.	Light Carts Pvt. Ltd.	Delhi ITAT		O/d- 10.12.2015	Refer note – 45
46.	G & G Pharma India Ltd.	Hon'ble Delhi High Court	384 ITR 147	O/d-08.10.2015 & ITA 545/2015	Application of mind and reasons.

NOTES

NOTE 1: Reopening on basis of client code modification, Prima facie held to be invalid.

NOTE 2: a) Reasons cannot be improved.

b) Must speak for them themselves.

NOTE 3: AO must apply independent mind to form reasons.

NOTE 4: Held AO under duty to supply third party statement and offer cross examination even though assessee has not asked for.

a) Held this requirement is to be met at the threshold.

b) If above is not followed proceedings will become void-ab-initio and coram non judice.

NOTE 5: (Section-68) Cash Credit Addition, Share Application money, Held addition cannot be made unless there exist evidence of rerouting of money.

NOTE 6: Section- 271(1)(c) held once the assessment order of the AO in quantum proceedings significantly altered by CITA, very basis of penalty proceedings rendered nonexistent. **(Calcutta High Court) 116 ITR 416 followed.**

NOTE 7: Burden lies on revenue to prove a receipt lies within taxation provision.

NOTE 8: a) No fresh tangible material required after section 143(1).

b) Fresh tangible material required outside the records, required after section 143(3) within 4 years or after 4 years.

NOTE 9: AO under duty to drop the reopening once assessee points out that reasons recorded are erroneous. (Formulae of GKN Drive Shaft highlighted.)(259 ITR 19)

NOTE 10: a) Merely on basis of AIR information stating difference between returned income and purchase of properties held to be vague and presumptive, invalid for reopening.

b) For Capital Gains cases AO to prima facie state in reason that sales transaction invited capital gains.

NOTE 11: a) On casual observation reopening u/s 150 (after expiry of time u/s149) is held to be impermissible i.e. specific finding on direction is must.

b) Any direction after expiry of limitation u/s 149 cannot clothe the AO to reopen the time barred proceedings u/s150.

NOTE 12: Reopening on the basis of H.S.B.C., Geneva Bank Account, held to be valid when assessee conduct was not forthcoming as assessee did not cooperated with IT department by obtaining the bank statements.

NOTE 13: a) Held non filing on return of income and not obtaining of PAN does not **ipso facto** gives jurisdiction to reopened an assessment.

b) It was observed all receipts are not income and power u/s 133(B) was reminded.

c) No prejudice to the assessee no ground for justification of reopening.

NOTE 14: a) When cash was deposited in bank account of assessee and cheques was issued in lieu thereof to the beneficiaries of cheque discounting held unless revenue unearthed any material for rerouting of the money to the assessee after cheque issuance, said cash deposited cannot be said to be undisclosed income of the assessee.

b) Under survey u/s 133A focus must be on incriminating material and concealed income and survey party cannot call for information in relation to material already available on record.

NOTE 15: For verification of debit and credit entries in a bank account, with reference to books of accounts.

Reopening u/s 148 is impermissible.

NOTE 16: a) When AO brought no material to show Victory Software Pvt. Ltd. is an nonexistent and a fictitious entity, merely because AO believed that said company is forming part of S.K. Jain Group, and summons issued were received back with remarks refused. No ground for reopening the case and making addition u/s 68. It was emphasized by Tribunal that AO did not issue any summon to alleged mediator.

b) Also it was emphasized AO failed to produce sufficient material that assessee received accommodation entry from S.K. Jain Group.

NOTE 17: Applying Multiplex Trading case (378 ITR 351) that in cases of reopening after 4 years lapse condition of failure of disclosure must be concluded with certain level of certainty.

NOTE 18: Notice u/s148 on non existing company held void-ab-initio and reasons cannot be based on reason to suspect.

NOTE 19: MCA database showing companies in defunct mode is held to be vague because of lack of preciseness.

NOTE 20: Reopening made on factually erroneous basis that assessee has changed the method of accounting is unsustainable.

NOTE 21: Reopening after expiry of 4 years after original assessment vide proviso section – 147, in context of sale of shares through Goldstar Finvest Pvt. Ltd. in Demat account of Karvy share Broking Pvt. Ltd., held to be bad in law, as assessee truly disclosed all the fact.

NOTE 22: a) Hon'ble Supreme Court decision in Chabbil Das Agarwal distinguished.

b) Held that an officer who deliberately or by negligence omitting to form an opinion despite being made aware of material facts, held reopening is not the right remedy and only possible remedy is revision u/s 263 by CIT.

NOTE 23: when there is processing of return twice, once after search and seizure operation refused under reopening provisions held to be impermissible.

NOTE 24: Amendment in section – 263 by Finance Act 2015, will hold good for revision orders passed on or after 01st June 2015 (Prospective in nature).

NOTE 25: Reopening quashed when reasons were based on return filed for earlier period and AO added surrendered amount in survey to earlier year returned income for comparing it with current year returned income, which was positive and in excess of surrendered amount, reasons held to be invalid (Punjab and Haryana High Court in Kin Pharma case distinguished).

NOTE 26: a) Notice issued u/s 148 to non existing HUF is void-ab-initio.

b) 143(2) Notice contrary to statutory fiat on basis of return filed in individual capacity which is non est in HUF case, consequential 143(2) is vitiated in law.

c) Reasons to believe is expected to the qua the quantum of income that has escaped assessment.

d) Merely referring to sale proceeds without considering cost of acquisition of property to visualize resultant capital gains, action of AO marred on this count also.

NOTE 27: By using the word camouflage and sham does not relieve AO from his obligation of explaining why he came to the said conclusion. (reopening quashed)

NOTE 28: a) Merely because AO feels penalty u/s 269 SS / 271(D) would be imposable cannot justify prime requirement of reopening that income chargeable to tax head escaped assessment.

b) Reopening cannot be made for mere scrutiny and verification which is roving and fishing enquiry.

NOTE 29: When assessee made some sale which is forming part of assessee's total income and even if AO belief said sale is bogus because person to whom sale is made already expired before sale being made cannot justify reopening action.

NOTE 30: a) Letter of enquiry without pendency of proceedings is invalid in the eyes of law and assessee is not obliged to respond to this invalid and non est letter of enquiry.

- b) Cash deposits in bank cannot constitute material to belief that income has escaped assessment

NOTE 31: Reopening for understatement of purchase and sale consideration on basis of so called seized material without factual and documentary support held to be invalid (**Delhi High Court 305 ITR 245**).

NOTE 32: 1) Fundamental Policy of Indian Law explained consisting of three ingredients;

- a) Judicial Approach
- b) Application of mind and Audi Alteram Partem.
- c) Perversity and irrationality.

Held non application of mind is a defect that is fatal to any adjudication.

2) Application of mind is demonstrated by;

- i) Disclosure of mind.
- ii) Recording reasons in support of decision.

NOTE 33: a) In deeming provision initial onus lies upon the revenue to raise a prima facie doubt on basis of credible material.

b) If any ambiguity or If's and But's in material collected by the AO must necessarily be read in favor of assessee, especially when question is under deeming provision of taxation.

c) Inferences and presumptions cannot be raised to the status of substantial evidence.

d) Deeming provision requires inferences on basis of tangible material.

NOTE 34: U/s 127(2)(a) when transfer is made between two AO's with different CCIT, positive state of mind and agreement is must, without which transfer will be without authority of law.

NOTE 35: “Mere description as a “supplier” in a suit by the assessee against the insurance company claiming an insurance claim for loss of equipment, when the assessee insured the equipment jointly with the purchaser, can possibly have no connection with the escapement of any income arising out of sale of the equipment.”

NOTE 36: “8 We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters.”

NOTE 37: Share premium alleged to be excessive to intrinsic value of shares cannot be reason to believe to income escaping assessment without describing intrinsic value of shares, when Bombay High Court in **368 ITR 1** in Vodafone case held share premium to be capital receipt.

NOTE 38: Penny stock case based on Mukesh Choksi Statement, Company involved talent Info Ltd. share purchased from Mahasagar Securities Pvt. Ltd. No case of revenue that purchase consideration flown back to assessee, no case that sale consideration returned back in cash, no case that shares are still lying with assessee, no case assessee received extra amount over and above declared sale consideration, assessment based upon Mukesh Choksi statement without its confrontation and cross examination in light of (SC) Andaman Timber Industries decision assessment order liable to be quashed.

NOTE 39: “Since on the basis of unsigned agreement, no liability could be attached to the assessee and it is not admissible in evidence against the assessee, therefore, there is no valid reason recorded by the AO for the purpose reopening of the assessment in the matter. There is also no basis for making any addition on merit on the basis of photocopy of unsigned agreement.”

NOTE 40: Address in Pan database cannot decide the jurisdiction of Id. AO

NOTE 41: Challenge to reopening in writ not possible after participation.

NOTE 42: Audit objection reopening curtailed No remedial action in action audit objection not accepted.

NOTE 43: Reopening to assess protectively amount in hands of assessee not permissible in entry operator matter.

NOTE 44: Section 263 CIT revision quashed (where issue was inquiry on share capital inquiry). S.K. Jain Group case.

NOTE 45: Mere information conveyed by DIT does not constitute to be a tangible material to re-assess the assessee company without any independent enquiry or application of mind.

A	Amritsar ITAT- SMC Bench decision in case of sh. Amrik Singh order dated 11/05/2016 (159 ITD/329)
B	Delhi ITAT – SMC Bench decision in case of Vinod Maheshwari order dated 09/09/2016
C	Delhi ITAT – SMC Bench decision in case of Rahul Bhandari order dated 08/09/2016
D	Delhi ITAT – SMC Bench decision in case of Praveen Kumar Jain order dated 22/01/2016
E	Ahmedabad ITAT – SMC Bench decision in case of Mariyam Ismail Rajwani
F	Delhi ITAT – SMC decision in case of Munni Devi order dated 15/09/2016
G	Lucknow ITAT Bench decision in case of Shri Gyan Prakash Motwani order dated 31/08/2016
H	Hon’ble Gujarat High Court decision in case of Sampatraj Dharmichand Jain order dated 27/06/2016
I	Hon’ble Gujarat High Court decision in case of Jayesh Govindbhai Balar order dated 13/06/2016

Extract of Delhi ITAT Bench decision in case of Munnidevi order dated 15/09/2016

12. After going through the reasons recorded by the ITO, Ward-2, Rewari, I am of the view that there is no nexus between the prima facie inference arrived in the reasons recorded and information; the information was restricted to cash deposits in bank account but there was no material much less tangible, credible, cogent and relevant material to form a reason to believe that cash deposits represented income of the assessee; that even the communication dated 24.1.2012 could not be made a basis to assume jurisdiction in view of the fact that such an enquiry letter is an illegal enquiry letter and thus cannot be relied upon; that the proceedings initiated are based on surmises, conjectures and suspicion and therefore, the same are without jurisdiction; that the reasons recorded are highly vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income and there are merely presumption in nature; that it is a case of mechanical action on the part of the AO as there is non-application of mind much less independent application of mind so as to show that he formed an opinion based on any material that such deposits represented income. Keeping in view of the facts and circumstances of the present case and the case law applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. My view is supported by the following judgments/decisions:-

A. Bir Bahadur Singh Sijawali reported in 68 SOT 197 (Del) wherein it has been held as under:-

"Section 68, read with sections 147 and 148, of the Income-tax Act, 1961 - Cash credits (Bank deposit) - Assessment year 2008- 09 - Assessee deposited certain sum in his saving bank account but no return of income was filed by him - Assessing Officer issued notice under section 148 on ground that there was an escapement of income - Whether where Assessing Officer proceeded on fallacious assumption that bank deposits constituted undisclosed income and overlooked fact that source of deposit need not necessarily be income of assessee, reassessment proceedings "was to be set aside - Held. yes [Paras 8 & 10. [In favour of assessee]

B. Amrik Singh vs ITO reported in 159 ITD 329 (Asr)
wherein it has been held as under and the decision of Bir Bahadur Singh Sijawali (Supra) has been followed in this case.

"44. It is this question which takes us back to the applicability/non applicability of the decision in 'Bir Bahadur Singh Sijwali (supra). The ratio thereof has not at all been disputed by the Department. In fact, the only dispute which has been raked up is the applicability or otherwise thereof to the facts of the present case, in view of the position that the initiation of the assessment proceedings U/S 147 in the present case stands preceded by the issuance of the alleged enquiry

letter by the ITO. This dispute has been dealt with in detail in the foregoing paragraphs.

45. In 'Bir Bahadur Singh Sijwali' (supra), it has been held that where the AO issued a notice U/S 148 on the ground that there was, fin escapement of income and the belief regarding such escapement of income was formed on the fallacious assumption of the AO that bank deposits constituted undisclosed income, overlooking the fact that the source of the deposits need not necessarily be the income of the assessee, the reassessment proceedings cannot be sustained. In the present case, similarly, the basis of initiation of the assessment proceedings U/S 147 was the information with the Department, of the deposits made by the assessee in his bank account.

46. 'Bir Bahadur Singh Sijwali' (supra), makes reference to 'Hindusan Lever Ltd. vs. R.B. Wadkar'. 26R TTR 332 (Born.), to hold that the reasons recorded for reopening the assessment are to be examined on a standalone basis and nothing can be added to the reasons. It was also observed that the reasons must point out to an income escaping assessment and not merely need of an enquiry which may result in detection of an income escaping assessment. It was observed that it is necessary that there must be something which indicates, even if it does not establish, the escapement of income from assessment; that it is only on that basis that the AO can form a prima-facie belief that an income has escaped assessment; that merely because some further investigations have not been

carried out, which, if made, could have led to detection of an income escaping assessment, this cannot be reason enough to hold the view that the income has escaped assessment; and that there has to be some kind of cause and effect of relationship between the reasons recorded and the income escaping assessment. The observations of the Hon'ble Supreme Court in the case of 'ITO vs. Lakhmani Mewal Das', 103 ITR 437 (SC), were reproduced. as under: "the reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the Court cannot go into sufficiency or adequacy of the material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

47. It was further 'Observed as follows: "8. Let us, in the light of this legal position, revert to the facts of the case before us. All that the reasons recorded for reopening indicate is that

cash deposits aggregating to Rs.10,24,100/- have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee. As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. The answer, in our humble understanding, is in negative. The Assessing Officer has opined that an income of Rs.10,24,100/- has escaped assessment of income because the assessee has Rs.10,24,100/- in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be,

unless there is a reason to believe, rather than suspect, that an income has escapement assessment."

48. The Tribunal concluded thus: "but then in the case before us the only reason for reassessment proceedings was the fact of deposit of bank account which by itself does not lead to income being taxed in the hands of the assessee. Learned Departmental Representative has referred to several other judicial precedents in support of the proposition that at the stage of initiation of reassessment proceedings, all that is to be seen is existence, rather than adequacy, of the material to come to the conclusion that income has escaped assessment. There cannot be any, and there is no, doubt on the correctness of this proposition but then, as we have elaborately explained earlier in this order, the material must indicate income escaping assessment rather than desirability of further probe in the matter which may or may not lead to income escaping the assessment, in our humble understanding, cannot be drawn."

49. Now, in keeping with 'Bir Bahadur Singh Sijwali' (supra), this "information cannot form a valid basis for initiating assessment proceedings under section 147 of the LT. Act. As observed in 'Bir Bahadur Singh Sijwali' (supra), the mere fact that the deposits had been made in the bank account does not indicate that these deposits constitute income which has escaped assessment. 50. Thus, it was a mere suspicion of the AO, that prompted him to initiate assessment proceedings under section 147, which is neither countenanced, nor

sustainable in law. Too, the AO proceeded on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee. That being so, in keeping with 'Bir Bahadur Singh Sijwali' (supra), the reasons recorded to initiate assessment proceedings under section 147 of the Act and all proceedings pursuant thereto, culminating in the impugned order, are cancelled. Ground No.2 is, accordingly, accepted."

C. Apex Court judgment in the case of Parimisetti Setharamamma vs. CIT reported in 57 ITR 532 has held as under:-

"By sections 3 and 4 the Act imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. The appellant admitted that she had received jewellery and diverse sums of money from Sita Devi and she claimed that these were gifts made out of love and affection. The case of the appellant was that the receipts did not fall within the taxing provision: it was not her case that being income the receipts were exempt from taxation because of a

statutory provision. It was therefore for the department to establish that these receipts were chargeable to tax."

D. ITAT, Delhi Bench decision in case of Praveen Kumar Jain v ITO in ITA No. 1331/D/2015 for Assessment year 2006-07 dated 22.1.2015 wherein it has been held as under:-

"12. Thus it is clear that the basic requirement for reopening of assessment that the AO must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment was found to be missing when the AO proceed to reopen the assessment which is in nature of a post mortem exercise after the event of reopening of the assessment. Therefore the reopening of the assessment was found to be invalid as it does not satisfy the requirement of law that prior to the reopening of the assessment the AO has to apply his mind to the material and conclude that he has reason to believe that income of the assessee has escaped assessment. Applying the above proposition of law it leaves no doubt in the mind that in the case on hand the AO has reopened the assessment mechanically without application of mind to conclude that the said amount of Rs.6 lac deposit in the bank account of the assessee constitutes the income of the assessee and the same has escaped assessment. The decision relied upon by the ld DR is not applicable in the facts of the present case because in the said case not only the accommodation entry were found by the investigation wing but the modus operandi

was also detected and therefore it was found that the AO was having the sufficient material and information to form the believe that the income assessable to tax has escaped assessment. In view of the facts and circumstances as well as the decisions relied upon by the AR, the reopening is in the case of the assessee is not valid and the same is quashed. Since the reopening of the assessment held to be invalid therefore other grounds of the appeal become infructuous."

E. Amrik Singh vs ITO reported in 159 ITD 329 (Asr)
wherein it has been held as under:-

"17. Thus, to reiterate, with effect from 01.07.1995, the condition that some proceeding must be pending is no longer applicable. Under the earlier provisions of section 133(6), the prescribed Authorities had the power to call for any information from any person which would be useful for, or relevant to, any proceeding under the Act. The amendment in subsection (6) empowers the prescribed Authorities to call for information for the purpose of any inquiry under the Act even in cases where no proceeding is pending. However, an Income Tax Authority below the rank of Director or Commissioner can exercise the said power in respect of an inquiry only with the prior approval of the Director or the Commissioner.

18. In the present case, the enquiry letter dated 13.03 .2008 was issued by the Income Tax Officer, i.e., an Officer below the rank of the Income Tax Authorities referred to in the

second proviso to section 133(6). Thus, in keeping with the said second proviso to section 133(6), prior approval was required to be obtained from the competent Authority before exercising power under section 133(6).

19. There is nothing on record to suggest that any such prior approval was obtained herein. The letter, per se, also does not make mention of any such approval. Hence, the power exercised by the ITO, without compliance with the second proviso to section 133(6), would tantamount to an illegal exercise of power.

20. However, be that as it may, this is not detrimental to the cause of the Department. In the present case, the ITO did not merely ask for information from the assessee. This takes the case out of the ken of section 133(6), as shall presently be seen."