IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2314 OF 2015

Nivi Trading Limited }
A company incorporated under }
the Companies Act, 1956 having }
its office at 4th floor, Ready Money }
Terrace, 167, Dr. A. B. Road; }
Mumbai – 400 018 } Petitioner

versus

1. Union of India }
through the Secretary, }
Government of India, }
Ministry of Finance, }
New Delhi – 110 001 }
}
2. The Income-tax Officer – 7(1)-1 }
Room No. - 670, 2nd floor, }
Aayakar Bhavan, M. K. Road, }
Mumbai 400 020 } Respondents

Mr. Percy Pardiwalla-Senior Advocate with Mr.Jas Sanghavi i/b. M/s. PDS Legal for the Petitioner.

Mr. Vimal Gupta-Senior Advocate with Mr.Sham V. Walve for the Respondents.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.
DATED :- APRIL 7, 2015

ORAL JUDGMENT:- (Per S.C.Dharmadhikari, J.)

On the earlier occasion, we had heard both sides extensively and referred to the pleadings. The matter was placed today for passing orders.

2) Rule. Respondents waive service. Since extensive arguments were canvassed and pleadings are complete, that by consent of both sides, we make the Rule returnable forthwith.

3) By this Writ Petition under Article 226 of the Constitution of India, the Petitioner prays for issuance of writ of certiorari or any other appropriate writ, order or direction calling for the records of the Petitioner's case pertaining to the notice dated 24th January, 2014 issued by Respondent No. 2 invoking section 148 of the Income Tax Act, 1961 (for short the "IT Act") and the order dated 21st January, 2015 (Annexure 'B') and, further relief is that upon scrutiny thereof, this Court should quash and set aside the same.

4) The other relief is that the Respondents be restrained and prohibited from proceeding in furtherance of this notice and the impugned order and reassessing the alleged income escaping assessment.

5) We are required to refer to very few facts to appreciate the arguments of both sides. The Petitioner is a private limited company having its registered office at the address mentioned in the cause title. For the assessment year 2010-11, return of income was filed on 15th September, 2010 declaring a business loss of Rs.1,61,793/- under

section 28 of the IT Act and booking loss amounting to Rs.1,22,95,221/- under section 115JB of the IT Act.

6) The relevant and material aspect of this return is that in it Rs. 1,21,33,429/- was shown as book value of the shares transferred by way of gift. The case of the Petitioner was that in terms of memorandum of association of the Petitioner, it gifted 9,39,980 equity shares of United Phosphorus Limited and 93,400 shares of Uniphos Enterprises Limited. Both being companies, in which public are substantially interested. These shares were transferred to one M/s. Nerka Chemicals Private Limited. There was a transfer agreement dated 26th February, 2010. The book value of the said shares was Rs.1,21,33,429/-. As a consequence of the gift, this sum was debited to the Profit and Loss Account for the year ended 31st March, 2010. However, the Petitioner's case is that the book value of these shares was added back to the total income and not claimed as deduction while computing the income chargeable under the head “profits and gains from business or profession”. The Petitioner is relying upon point No.23 of column 'A' of Schedule “BP” at page 13 of the return of income. This return was initially processed under section 143(1) of the IT Act. The Assessing Officer accepted the loss computed by the Petitioner in the return. There was a communication dated 24th February, 2011.

However, no regular assessment order was made under section 143(3) of the IT Act. Subsequently, on 28th January, 2014, a notice under section 148 of the IT Act proposing to reassess the income of the Petitioner, for the assessment year 2010-11, was issued alleging that income has escaped assessment within the meaning of section 147 of the IT Act.

7) The Petitioner addressed a letter on 3rd February, 2014 requesting the second Respondent to provide the reasons recorded and which led to the issuance of the notice. On 22nd April, 2014, a communication was addressed by the second Respondent to the Petitioner, under which, the reasons were communicated. Annexure 'G' is a copy of this letter. The claim of the Petitioner is that no opportunity to raise objections came to be provided and a notice under section 143(2) of the IT Act dated 2nd May, 2014, calling upon the Petitioner to furnish information and attend the office of the second Respondent, was issued.

8) The Petitioner filed detailed objections and pointed out that the income accrued to it as a consequence of the gift cannot be termed as transfer within the meaning of section 47(iii) of the IT Act. The Petitioner objected to the reopening of the assessment by pointing out that there has been no understatement of the income nor there is any

claim of excessive loss, deduction by which it can be alleged that there is an income which is chargeable to tax escaping assessment. In the circumstances, it prayed that the proceedings be dropped. The Petitioner submitted that without these objections being dealt with, a notice under section 142(1) of the IT Act dated 20th November, 2014 was issued, calling upon the Petitioner to submit books of account and other documents. That is in support of the return of income. Some information was also called for.

9) Subsequently on 21st January, 2015, the impugned order came to be passed rejecting the objections.

10) Mr. Pardiwalla-learned Senior Counsel appearing for the Petitioner submits that the Respondents could not have invoked this power of reopening the assessment on a mere change of opinion. Apart from that, he invited our attention to the contents of the notice and submits that the notice does not indicate any reasons and for the belief that income chargeable to tax for assessment year 2010-11 has escaped assessment within the meaning of section 147 of the IT Act. Mr.Pardiwalla would submit that the purported reasons, copy of which is at page 89 of the paper book, are nothing but a reiteration of the position emerging from the return. It is clear from the reasons supplied that the return of income filed by the Assessee for the assessment year

2009-10 was verified. In that, long term capital gains from investment in shares amounting to Rs.1,54,81,620/- and dividend income of Rs.9,74,420/- was disclosed. However, for the assessment year 2010-11, the Assessee has shown long term capital gain of Rs.33,48,191/- and dividend income of Rs.14,44,763/-. It also showed a sum of Rs.1,21,33,429/- as gift. Mr. Pardiwalla states that this is nothing but reiteration of the figures and the statements made in the return of income. Mr. Pardiwalla then submits that the Department/Revenue proceeded on the footing that the Assessee had gifted these shares without any consideration. All that the reasons supplied indicate is that the Revenue wants to verify this fact and in terms of section 47(iii) of the IT Act. It also wants to verify whether the value of these shares has been computed on the market rate as on the date of such transfer. Mr. Pardiwalla submits that this cannot be termed as reasons for the belief and enabling reopening of the assessment. A mere communication and asking for some clarification so also proposing verification of what has been already supplied and is on record cannot be enough to resort to the powers under section 147 of the IT Act. Mr. Pardiwalla submits that the principal condition for invoking section 147 of the IT Act is that during the assessment year in question income chargeable to tax has escaped assessment. This principal condition is not satisfied and it is apparent from reading of these reasons. If the Respondents failed to

indicate as to how acceptance of the assessee's version on the gift without any consideration, results in any income chargeable to tax escaping assessment, then, they could not have resorted to the above power. There is no reason to believe that any income chargeable to tax has escaped assessment for the Respondents themselves refer to section 47(iii) of the IT Act. In the circumstances, the attempt of the Revenue should not be sustained.

11) Mr. Pardiwalla places strong reliance upon two Division Bench Judgments of this Court in the case of *Commissioner of Income Tax vs. Smt. Maniben Valji Shah* reported in **(2006) 283 ITR 453** and *Prashant S. Joshi and Anr. vs. Income Tax Officer* reported in **(2010) 324 ITR 154**. Our attention is also invited to an order passed in **Writ Petition No. 11911 of 2013** on 25th March, 2014. In such circumstances, Mr. Pardiwalla would submit that the Writ Petition be allowed, as the issuance of notice is not in accordance with law. The notice is *ex-facie* bad in law and the proceedings are wholly without jurisdiction. The Petitioner there should not be forced to go through the process and await the outcome of reassessment. Mr. Pardiwalla would submit that once the principal condition is not satisfied, then, at the threshold the notice be quashed.

12) On the other hand, Mr. Vimal Gupta-learned Senior Counsel appearing for the Department/Respondents would submit that there is no merit in this Writ Petition. In the affidavit in reply as also prior thereto in the communications referred in the Writ Petition, it has been pointed out that no regular assessment order was made under section 143(3) of the IT Act. Intimation issued under section 143(1) cannot be treated as an order of assessment. Once the intimation was received from the Assistant Commissioner of Income Tax, Central Circle 38, Mumbai by letter dated 19th December, 2003 that the Petitioner had transferred 10,33,380 shares, whose market value on the date of transfer was 14,86,85,700/-, without consideration to M/s. Nerka Chemicals Ltd. by way of a transfer deed dated 26th February, 2010, then, the balance sheet of the Petitioner was scrutinised. On scrutiny and perusal thereof and which is of the year ended 31st March, 2009 and 31st March, 2010, it was noticed that the long term investment of M/s. Nivi Trading Limited had reduced. The Assessee debited an amount of Rs.1,21,33,429/- as gift in its profit and loss account. Thus, these facts cumulatively prove that the Assessee has transferred the capital asset without any consideration and hence avoided the resultant capital gains culminating in escapement of income. Thereafter, the procedural formalities and of obtaining approval, recording of satisfaction were completed and the assessment was reopened. In

response to this notice under section 148 of the IT Act, the Petitioner, by its letter dated 3rd February, 2014, requested the Assessing Officer to treat the original return of income filed as a return of income filed under section 147 of the IT Act and also made a request to the Assessing Officer to provide the reasons for reopening the assessment.

13) Mr. Gupta would therefore submit that the objections raised by the Petitioner to the reopening could not have been accepted and have been rightly rejected or disallowed. The so called gift made by the Petitioner is nothing but a transaction for the purpose of avoiding the capital gains tax. It is common ground that the transferee M/s. Nerka Chemicals Private Limited is also a private limited company. Thus, this transfer was nothing but avoiding paying a tax on the income which is chargeable as such. That is why the assessment was reopened.

14) Mr. Gupta relied strongly upon the language of section 147 and prior thereto the provisions of sections 142 and 143 to submit that once there has been no assessment in this case, then, the question of the same being reopened really does not arise. Without prejudice and in the alternative, it is submitted that the income chargeable to tax has escaped assessment and that is a factor on which the belief is based. The reasons supplied fully disclose as to how the income chargeable to tax shall also be deemed to be escaping assessment. In this case, a

return of income was furnished by the Assessee but no assessment has been made and it is noticed by the Assessing Officer that the Assessee has understated the income. Therefore, the reopening of the assessment was fully permissible. Mr. Gupta therefore justified the issuance of notice and by relying upon the law laid down by the Hon'ble Supreme Court in the case of *Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* reported in **(2007) 291 ITR 500**. He would therefore submit that the Writ Petition be dismissed, as the Petitioner can appear before the Assessing Officer; produce the requisite material and in the event adverse order is passed, challenge it in accordance with law. At this stage, this Court should not interfere.

15) With the assistance of the learned Senior Counsel appearing for both sides, we have perused the Writ Petition, the relevant Annexures and the decisions brought to our notice.

16) In the Judgment of the Hon'ble Supreme Court, which has been relied upon by Mr. Gupta [*Rajesh Jhaveri Stock Brokers Pvt. Ltd.* (supra)], the Hon'ble Supreme Court was concerned with a case where a private limited company filed its return of income for assessment year 2001-02. That was filed on 30th October, 2001 declaring loss at a certain figure. The return was processed under section 143(1) of the IT Act and the loss returned was accepted. A notice under section 148 of

the IT Act was issued on the ground that claim of bad debts as expenditure was not acceptable. The return of income was filed under protest declaring a loss at the same figure as in the original return by the Assessee. He sought for the copy of the reasons recorded and they were supplied to the Assessee in November, 2004. The Assessee raised various objections, both on jurisdiction and the merits of the reasons recorded. These objections were disposed of and because they were rejected that the notice under section 148 of the IT Act was challenged by the Assessee before the Gujarat High Court. The said Writ Petition was allowed by a Division Bench of that High Court and that is why the Revenue approached the Hon'ble Supreme Court in Appeal.

17) The argument of both sides and the reliance upon case law have been noted in the Judgment of the Hon'ble Supreme Court up to paragraph 8. In para 9, section 143(1) as stood before and after amendment with effect from June 1, 1999 and sections 147 and 148 (after amendment) of the IT Act have been reproduced together with the *Explanations*. In paras 12 and 13, the Hon'ble Supreme Court has held as under:-

> "12 What were permissible under the first proviso to section 143(1)(a) to be adjusted were, (i) only apparent arithmetical error in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction, allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return and similarly (iii) those claims

which were on the basis of the information available in the return, prima facie inadmissible, were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The Assessing Officer had no authority to make adjustments or adjudicate upon any debatable issues. In other words, the Assessing Officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief.

13 One thing further to be noticed is that intimation under section 143(1)(a) is given without prejudice to the provisions of section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under section 156, that did not per se preclude the right of the Assessing Officer to proceed under section 143(2). That right is preserved and is not taken away. Between the period from April 1, 1989, and March 31, 1998, the second proviso to section 143(1)(a), required that where adjustments were made under the first proviso to section 143(1)(a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from April 1, 1998, the second proviso to section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till June 1, 1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between April 1, 1998, and May 31, 1999, sending of an intimation under section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerged. While making an assessment, the Assessing Officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the Assessing Officer. The reason is that under section 143(1)(a) no opportunity is granted to the assessee and the Assessing Officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under section 143(1)(a) indicates that the Assessing Officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the *Explanation* to section 143 by the Finance (No. 2) Act of 1991 with effect from October 1, 1991, and subsequently with effect from June 1, 1994, by the Finance Act, 1994, and ultimately omitted with effect from June 1, 1999, by the *Explanation* as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under section 143(1)(a) was

deemed to be an order for the purposes of section 246 between June 1, 1994 and May 31, 1999, and under section 264 between October 1, 1991, and May 31, 1999. It is to be noted that the expressions "intimation" and "assessment order" have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes "the computation of income", sometimes "the determination of the amount of tax payable" and sometimes "the whole procedure laid down in the Act for imposing liability upon the tax payer". In the scheme of things, as noted above, the intimation under section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimize the Departmental work to scrutinize each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D. K. Jain J.) in *Apogee International Limited v. Union of India* [1996] 220 ITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under section 143(1)(a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise."

18) The Hon'ble Supreme Court thus held that section 147 authorises and permits the Assessing Officer to assess or reassess the income chargeable to tax, if he has reason to believe that income

chargeable to tax has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. Thus, at that stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issuance of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. The substantive satisfaction in that case of the Assessing Officer was therefore wrongly interfered with by the Gujarat High Court is the view taken by the Hon'ble Supreme Court. All these legal principles are undisputed. They go to show, as Mr. Gupta emphasises, that there should be a reason to believe that in the relevant assessment year income chargeable to tax has escaped assessment. We are of the view that in the present case, the reasons recorded fall short of this test.

19) There is no dispute that a return of income was filed by the Petitioner/Assessee. The return of income so filed could have been

subjected to verification and scrutiny and in terms of the applicable law and sections in the Income Tax Act, 1961 itself. However, if this notice has been issued in the present case and on the footing that the income chargeable to tax has escaped assessment during the course of the assessment proceedings, then, we would not go by the stand taken by the Revenue and on affidavit and reiterated by Mr. Gupta. It is too late now to urge that there was no assessment and therefore no question arises of reopening thereof. In the light of the language of the notice itself, it would not be proper for us and to permit the Revenue to raise such a plea. The notice impugned in this case reads as under:-

"**NOTICE UNDER SECTION 148 OF THE INCOME TAX ACT, 1961**

No. ITO 7(1)(1)/148/2013-14

Office of the
Income Tax Officer, Ward 7(1)(1),
Room No. 670, Aayakar Bhavan,
M.K.Road, Mumbai – 400020
Date 24.01.2014

To,
The Principal Officer,
M/s. Nivi Trading Ltd.
4th Floor, Ready Money Terrace,
167, Dr. A. B. Road,
Mumbai – 400018.

PAN: AAACN2703L

Whereas I have reason to believe that your income in respect of which you are assessable chargeable to tax for the A. Y. 2010-2011 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your Income in respect of which you are assessable for the said assessment year.

(TANVI S SAVANT)
Income Tax Officer 7(1)(1), Mumbai."

20) When this was objected to by the Petitioner/Assessee and sought the reasons, what the Petitioner was provided with are the reasons and which read as under:-

> "**Reasons for reopening u/s. 147 in the case of**
> **M/S. NIVI TRADING LTD. A. Y. 2010-11**
>
> It is verified from the Return of Income filed by the assessee for A. Y. 2009-10 that it had shown LTCG from investments in shares amounting to Rs.1,54,81,620/- and had shown dividend of Rs.9,74,420/-. During the A. Y. 2010-11, assessee had shown LTCG of Rs.33,48,191/- and dividend income of Rs.14,44,763/- and shown Rs.1,21,33,429/- as gift. Hence, it is seen that assessee had gifted these shares without any consideration. This fact needs to be verified as per section 47(iii) of the I. T. Act. Also it has to be verified whether the value of these shares have been computed on the market rate as on the date of such transfer.
>
> Hence, I have reason to believe that income chargeable to tax amounting to Rs.1,21,33,429/- as per provision u/s. 147 of the Act has escaped assessment in this case for A. Y. 2010-11.
>
> Issue Notice u/s. 148 of the I. T. Act.
>
> Dated: 24/01/2014
>
> **(TANVI S. SAVANT)**
> **Income-Tax Officer 7(1)(1),**
> **Mumbai.**"

21) In the light of this factual position, it would not be proper for us to permit the Revenue to take a contrary stand. We are of the opinion that in the present case, the contents of the notice as reproduced above and the reasons recorded, the objections and the order rejecting them are enough to turn down the first submission of Mr. Gupta.

22) Insofar as the second aspect is concerned and which has really arisen for our determination and consideration, we find that the return of income was filed. There was a processing and verification thereof. In the return of income and on the own showing of the Respondents, on its verification, the long term capital gains and dividend income in the sum came to be disclosed and equally another sum (Rs.1,21,33,429/-) as gift. The Revenue proceeds on the footing that these shares were gifted without consideration. It is this fact which it wants to verify and particularly whether the value of these shares has been computed on the market value. The Petitioner objected to this and pointed out that all the material facts were disclosed truly and fully. All the amounts, as reflecting in the return, were set out and with the explanations. This is nothing but a version given by the Petitioner that no income accrued or has arisen from the transfer of shares since that has been made voluntarily and without any consideration. The Assessee pointed out in its objections and on merits that the voluntary transfer of shares without any consideration would qualify as gift and it would be treated as exempt transfer. It relied upon clause (iii) of section 47 of the IT Act. Apart therefrom and without in any manner giving up its challenge to the jurisdiction of the Assessing Officer, it pointed out that there is no understatement of income or claim of loss, deduction allowance in the return of income. Thus, there is no question

of any income chargeable to tax escaping assessment. More so, when the amount of Rs.1,21,33,429/- had been added back while computing the total income. It is this stand of the Petitioner and which to our mind would fall within the parameters of the principles and emerging from a reading of the Judgment of this Court. In the case of *Smt. Maniben Valji Shah* (supra) this Court emphasised that the important words in section 147 of the IT Act are "has reason to believe" and they are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. While the Court cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which he is required to entertain the belief before he can issue notice under section 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on the facts and law could reasonably entertain the belief, then, the exercise undertaken by the Income Tax Officer can be interfered with.

23) In the said case as well the notice was issued under the said provision for reopening of the assessment because the return of income showed certain income declared. However, a capital gain of the assessee revealed purchase of a flat, for which no details were filed along with the details of income, namely, the purchase agreement, source of funds and therefore, in absence thereof, the assessment was proposed to be reopened. It is in that regard that this Court has held as under:-

> "..... Having heard Shri Desai, learned senior counsel for the appellant, as well as Shri Bhujale, learned counsel for the respondent, it is an admitted position that the assessee had invested a sum of Rs.2,50,000 for the purpose of purchasing the flat and what was sought to be investigated was the source of income. A bare perusal of the aforesaid notice dated October 10, 1991, clearly indicates that the officer was wanting to know the details with regard to the source of funds with regard to purchase of the said flat for a sum of Rs.2,50,000/-. Obviously in the above, there is no question of the Assessing Officer having any basis to reasonably entertain the belief that any part of the income of the assessee had escaped assessment and that such escapement was by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts. ....."

24) Thus, if more details are sought or some verification is proposed that cannot be a substitute for the reasons and which led the Assessing Officer to believe that an income chargeable to tax has escaped assessment.

25) We are not in agreement with Mr. Gupta because the clear language of section 147 of the IT Act reveals that if the Assessing Officer

has reason to believe that any income has escaped assessment, then, he can resort to such power. While it is true, as Mr. Gupta argued, that sub-section (1) of section 148 of the IT Act enables issuance of notice before the assessment, reassessment or re-computation under section 147 of the IT Act, but that is dealing with the service of the notice. The principal condition for issuance of notice is to be found in section 147 of the IT Act and that is on the reason to belief that any income chargeable to tax has escaped assessment for any assessment year, then, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be. In the present case, the Respondents do not state that any income chargeable to tax has escaped assessment. All that the Revenue desires is verification of certain details and pertaining to the gift. That is not founded on the belief that any income which is chargeable to tax has escaped assessment and hence, such verification is necessary. That belief is not recorded and which alone would enable the Assessing Officer to proceed. Thus, the reasons must be founded on the satisfaction of the Assessing Officer that income chargeable to tax has escaped assessment. Once that is not to be found, then, we are not

in a position to sustain the impugned notice. Having reproduced the same and contents thereof being clear, it is not possible to agree with Mr. Gupta that this Court should not interfere at the threshold. We find additionally that in the affidavit in reply the Revenue has stated that the concept of gift prevails between two individual persons out of love and affection, which does not prevail in the case of companies. In the case of companies, the financial transaction exists to earn profit and the transaction of the so called gift made by the Assessee is only for the purpose of avoiding capital gains tax.

26) This is a stand taken in the affidavit in reply but what we find is that the gift without any consideration and as noted in the reasons recorded and supplied has not been termed as one which attracts any tax or which is chargeable to tax and therefore there is any income which has escaped assessment. In other words, the amount of Rs.1,21,33,429/- shown as gift has not been termed as an income and which is chargeable to tax and which has escaped assessment. All that is required from the Assessee is a verification and in terms of section 47(iii) of the IT Act and for enabling it, the Assessee was called upon to appear before the Assessing Officer. Thus, it is for verification of the value of these shares and whether the computation is on the market rate on the date of such transfer. This, to our mind, would not in any

manner enable the Revenue/Respondents to resort to section 147 of the IT Act. In the view that we have taken above, it is not necessary to refer to other Judgments relied upon by Mr. Pardiwalla and which also reiterate the settled principle that the reasons ought to be recorded on the date of the issuance of the notice and which must disclose the requisite satisfaction. The reasons as recorded cannot then be substituted or supplemented by filing an affidavit in the Court. Thus, additional reasons cannot be supplied and on affidavit. We are of the view that it is not necessary to refer to this principle any further in the facts and circumstances of the present case.

27) As a result of the above discussion, this Writ Petition succeeds. Rule is made absolute in terms of prayer clause (a). The notice under section 148(1) is quashed and set aside. There would be no order as to costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**