IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.4749/Del./2019
Assessment Year 2010-2011

M/s. Charbhuja Marmo (India) Pvt. Ltd., New Delhi – 110 015. PAN AADCC5143L C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110 085.	vs	The Principal Commissioner of Income Tax – 2, Room No.394, C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Ms. Nidhi Srivastava, CIT-DR

Date of Hearing :	17.12.2019
Date of Pronouncement :	31.12.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Pr. Commissioner of Income Tax-2, New Delhi, Dated 22.03.2019 for the A.Y. 2010-2011 under section 263 of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that the assessee company filed original return of income declaring income of Rs.5,34,420/- which was processed under section 143(1) of the I.T. Act, 1961. Thereafter, a notice under section 148 was issued on 23.03.2016 calling upon the assessee to file its return of income after recording reasons under section 147 and obtaining necessary approval under section 151 as statutorily required. In response to the statutory notice and questionnaire issued by the A.O, the assessee appeared from time to time before the A.O. and filed the requisite details which were examined and taken on record. The oral submissions of the assessee were also considered. The A.O. after examining the detailed evidences filed by assessee, accepted the return of income vide Order under section 147/143(3) Dated 05.12.2016.

3. The Pr. CIT, however, on examination of the record found that re-assessment order to be erroneous and prejudicial to the interests of Revenue because in the year

under consideration assessee has received share capital / share premium of Rs.70 lakhs from five parties and all these companies are managed and controlled by Shri S.K. Jain and Shri Virendra Jain who were entry operators and running dummy companies. The Pr. CIT, therefore, issued show cause notice under section 263 of the I.T. Act, 1961, calling for explanation of the assessee.

3.1. The assessee filed written submissions before the Ld. Pr. CIT which is reproduced in the impugned order in which it is explained that assessee filed necessary documents to prove the genuineness of the transaction entered into respect of the share application money which were provided to the A.O. along with supporting documents. The assessee produced all the documentary evidences and there is no failure on the part of the assessee to disclose fully and truly all necessary facts for assessment. Since A.O. has accepted the genuineness of the transaction after examining the documentary evidences and material on record, therefore, it is not a fit case of proceeding under section 263 of the I.T. Act, 1961. The Ld. Pr. CIT, however,

did not accept the contention of assessee and noted that during the course of search in the case of Shri S.K. Jain and Shri Virendra Jain various incriminating documents were found. The A.O. considered the appraisal report, but, did not examine the relevant seized material even though the entries in the seized material showed that assessee company was also one of the beneficial of accommodation entries given by these persons. The Ld. Pr. CIT, therefore, held that A.O. passed the re-assessment order without verification of the seized material. The re-assessment order was set-aside and A.O. was directed to frame the assessment afresh by conducting proper inquiries about the source of investment, by affording reasonable opportunity of being heard to the assessee.

4. In the present appeal, the assessee challenged the Order under section 263 of the I.T. Act on several grounds. Learned Counsel for the Assessee initially submitted that Ld. Pr. CIT has no jurisdiction to upset the re-assessment order under section 263 of the I.T. Act because the reopening of the assessment itself was invalid

and bad in law and liable to be quashed. He has submitted that reasons recorded are based on borrowed satisfaction and without independent application of mind which is verifiable from the fact that on number of places in the reasons recorded it is mentioned that same is based on mere Investigation Wing appraisal report without anything more brought on record in the reasons and further vague description used in the reasons to address the transaction in question by saying that share capital/premium/loan has escaped assessment vitiates that so purported belief and even details of information received, if any, are no way narrated or described in the reasons recorded even --- filing details etc are missing in the reasons. Since reopening of the assessment itself is invalid under section 147 of the I.T. Act, therefore, same is liable to be quashed and as such in collateral proceedings under section 263 of the I.T. Act, the Ld. Pr. CIT would not assume valid jurisdiction. He has also submitted that approval granted by Addl. CIT and Pr. CIT are invalid and bad in law. Learned Counsel for the Assessee, therefore, submitted that proceedings under

section 147 are invalid and bad in law. In support of his contention he has relied upon several decisions, copies of which are filed in the paper book.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has recorded the reasons after going through the appraisal report and the documents, therefore, reopening of the assessment is justified. The Ld. D.R. also submitted that the Ld. Pr. CIT on going through the record correctly found it to be an assessment erroneous as well as prejudicial to the interests of the Revenue because A.O. has not examined the seized material found during the course of search.

6. We have considered the rival submissions. It is well settled Law that since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. It is also well settled Law that validity of the re-assessment proceedings are to be judged on the basis of the reasons recorded for reopening of the assessment. It is also settled Law that while granting sanction under section 151 of the

I.T. Act to the reasons and reopening of the assessment, the Competent Authority should apply their mind and could not grant sanction/approval in a mechanical manner. In this case the A.O. while reopening the assessment has recorded the following reasons for re-assessment under section 147/148 of the I.T. Act, copy of which is filed at PB-3 of the paper book which reads as under :

"ANNEXURE-A

Reasons recorded for initiating proceedings u/s. 147 of the I.T. Act, 1961 in the case of M/s. Charbhuja Marmo India Pvt. Ltd., PAN AADCC5143L for A.Y. 2010-11.

A search *and seizure operation u/s 132 of I.T. Act, 1961 was conducted at the business and residential premises of S.K. Jain group of companies, including Shri S.K. Jain & Shri Virendra Jain and considerable incrementing evidence in form of documents/material was seized. During the course of post search investigation, it emerged that Shri S.K. Jain and Shri Virendra Jain were engaged in the business of*

providing accommodation entries in lieu of cash to a large number of beneficiaries through numerous dummy companies, floated and controlled by them. In fact, it was unearthed that Shri S.K. Jain and Shri Virendra Jain were providing accommodation entries through more than 100 companies/proprietary concerns/ partnership firms. Modus operandi of such bogus companies, as discussed in the report, is briefly prescribed as follows :

"Cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Shri S.K.Jain and Shri Virendra Jain through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Shri S.K. Jain and Shri Virendra Jain."

In this way, the reserves & surplus and the capital account of specific set of companies are enhanced with the help of the unexplained cash received by S.K. Jain and Shri Virendra Jain, which routed to these companies through their dummy firms/companies. Once the funds were of these companies have been enhanced sufficiently, accommodation entries through RTGS/ Cheques in the shape of the share capital, share premium, capital gains or loan as per the specific requirement of the recipient clients were provided them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed."

As per the report, the assessee company M/s Charbhuja Marmo India Pvt. Ltd. had obtained the following accommodation entries in the form of Share application/Share premium/loan during the F.Y. 2009-10 relevant to A.Y. 2010-2011 :-

From	*To*	*Bank*	*Cheque No.*	*Cheque Date*	*Amount*	*Through*	*Annexure No.*	*Page No.*
Zenith Holdings Ltd.,	*Charbhuja Marmo India Pvt. Ltd.,*	*AXIS*	*310520*	*02.09.2009*	*10,00,000/-*	*Prem Gupta*	*A-20*	*41*
Victory Software Pvt. Ltd.,	*Charbhuja Marmo India Pvt. Ltd.,*	*AXIS*	*310921*	*02.09.2009*	*20,00,000/-*	*Prem Gupta*	*A-20*	*41*
Humtum Marketing Pvt. Ltd.,	*Charbhuja Marmo India Pvt. Ltd.,*	*AXIS*	*310802*	*02.09.2009*	*10,00,000/-*	*Prem Gupta*	*A-20*	*41*
Sheesh Capital Services Pvt. Ltd.,	*Charbhuja Marmo India Pvt. Ltd.,*	*AXIS*	*310338*	*09.10.2009*	*15,00,000/-*	*Prem Gupta*	*A-18*	*Back page 38*
Apporva Leasing Finance & Investment Pvt. Ltd.,	*Charbhuja Marmo India Pvt. Ltd.,*	*AXIS*	*353409*	*09.10.2009*	*15,00,000/-*	*Prem Gupta*	*A-18*	*Back page 38*

In the appraisal report of Sh. Surendra Kumar Jain Group prepared by the unit of Investigation wing, it has been established that Sh. Surendra Kumar Jain and Sh. Virendra Jain are known entry providers and are the actual controllers of more than 100 companies/ proprietary firms/partnership firms. They control these entities through various persons by appointing them as directors/partners/proprietors apart from nominating them as authorized signatories for maintaining the bank accounts of these entities but in fact all these persons act only as their stooges.

In view of the above mentioned facts, it is clear that the undisclosed income of these beneficiary company which has been introduced by them in the form of share capital/premium/loan has escaped taxation because the assessee has not disclosed fully and truly all material facts before the A.O resulting In under assessment of income of Rs. 70,00,000/-. Hence, I have reasons to believe that income of Rs. 70,00,000/- as per table in preceding, paragraphs has escaped assessment in the case of assessee relevant to AY 2010-11, within the meaning of Section 147 of the I.T. Act."

6.1. In this case the Addl. Commissioner of Income Tax and Pr. CIT-2, New Delhi have granted approval to the reopening of the assessment vide Order Dated 15.03.2016, copy of which is filed at page-2 of the paper book. The same reads as under :

"Dated : 15.03.2016

Sd/- K. Jayant)
Income Tax Officer
Ward 6(1), New Delhi.

Whether the Addl. Commissioner, Range-6, New Delhi is satisfied on the reasons recorded by the I.T.O. that it is a fit case for issue of notice under section 148.

Yes
Sd/- Dev Saran Singh
Addl. Commissioner of Income Tax, Range-6,
New Delhi.

Whether the Pr. Commissioner of Income Tax, Delhi-2, New Delhi is satisfied on the reasons recorded by the I.T.O. that it is a fit case for issue of notice under section 148.

Yes
Sd/- P.K. Gupta,
Pr. Commissioner of Income Tax, Delhi-2,
New Delhi."

6.2. The ITAT, Delhi Bench in the case of M/s. Supersonic Technologies Pvt. Ltd., Delhi vs. PCIT-8, New Delhi reported in 69 ITR 585 (Delhi) in the proceedings under section 263 of the I.T. Act held that "since re-assessment proceedings are invalid and bad in Law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. The Order of the Tribunal is reproduced as under :

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI PRASHANT MAHARISHI, A.M.

ITA.No.2269/Del./2017
Assessment Year 2007-2008

M/s. Supersonic Technologies Pvt. Ltd., A-104, Panchal Complex, Chand Vihar, IP Extension, Delhi – 110 092. PAN AAICS6245A	*vs.*	*The PCIT-8, New Delhi.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Ved Jain, Advocate & Shri Ashish Chadha, C.A.*
For Revenue :	*Shri S.S.Rana, CIT-D.R.*

ITA.No.2857/Del./2017
Assessment Year 2007-2008

M/s. SPJ Hotels Private Limited, New Delhi-110017 PAN AAKCS7722C C/o. Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110 085.	*vs.*	*The PCIT-8, Room No.297, Central Revenue Building, IP Estate, New Delhi.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Kapil Goel, Advocate.*
For Revenue :	*Shri S.S.Rana, CIT-D.R.*

ITA.No.2527/Del./2017
Assessment Year 2007-2008

M/s. Shiv Sai Infrastructure (P) Ltd., New Delhi-110048. PAN AAJCS5095B C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 110049.	*vs.*	*The PCIT, Delhi-8, New Delhi.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Ashwani Taneja & Shri Somil Agarwal, Advocates*
For Revenue :	*Shri S.S.Rana, CIT-D.R.*

ITA.No.3301/Del./2017
Assessment Year 2009-2010

M/s. Superior Buildwell Private Limited, A-43, Allahabad Bank, CGHS Apartments, Mayur Vihar, Phase-III, Chilla Regulator, Delhi.PAN AALCS9413R	*vs.*	*The PCIT-8, New Delhi.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Ved Jain, Advocate & Shri Ashish Chaddha, C.A.*
For Revenue :	*Shri S.S.Rana, CIT-D.R.*

Date of Hearing :	*15, 16 & 25.10.2018*
Date of Pronouncement :	*10.12.2018*

ORDER

PER BHAVNESH SAINI, J.M.

This Order shall dispose of all the appeals filed by different Assessees challenging the Orders under section 263 of the I.T. Act, 1961. Since issue is common in all the appeals, therefore, all appeals were heard together and are decided through this common consolidated Order.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

ITA.No.2269/Del./2017 – M/s. Supersonic Technologies Pvt. Ltd., Delhi.

3. The facts of the case are that original return of Income in this case was filed on 20.10.2007 at NIL income. The notice under section 148 of the Income Tax Act, was issued on 25.03.2014 after recording the reasons and taking prior approval from the competent authorities. The assessee in response to the statutory notice vide letter dated 10.04.2014 submitting therein that the original return filed may please be treated as return filed in response to the notice under section 148 of the I.T. Act and also requested to provide reasons recorded, which were duly provided to it. The

assessee also filled its objections which were disposed off. The A.O. issued statutory notice which were complied by the assessee and filed details as called for. The A.O. after discussing the case with the assessee, accepted the returned income and completed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, on Dated 30.06.2014.

3.1. The Ld. Pr. CIT on examining the assessment record noticed that though the assessment was reopened under section 148 of the I.T. Act on the allegation of accommodation entry taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department, some of the A.O's did not examine the seized material in the form of cash book and books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain during the course of search. The Investigation Wing, Delhi, forwarded the hard copy of appraisal report to the then Commissioner, Delhi-III, which was received by him on 15.03.2013, the relevant seized material (containing many thousands of pages) was scanned and sent to the

Commissioner of Income Tax in soft copy. However, while completing the assessment under section 147 r.w.s. 143 of the I.T. Act, though the A.O. referred the appraisal report but did not look into the relevant seized material in soft copy. This was one of the case where the A.O. did not examine the seized material. Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 27.01.2017 which is reproduced in the impugned order. In the show cause notice it is stated that the case was reopened on the allegation of accommodation entry of Rs.22 lakhs on account of share application/capital received from M/s. Pelican Finance and Leasing Ltd., M/s. Singhal Securities Pvt. Ltd., M/s. Hillridge Investments Ltd and M/s. S.R. Cables Pvt. Ltd., a concern of S.K. Jain group of cases. Search and seizure operation was carried out on 14.09.2010 at the premises of Shri Surender Jain and Shri Virender Jain. During the course of search, cash book and bank books of the concerns managed by Shri S.K. Jain group wherein detailed of day-to-day receipts in cash and cheque from/to different persons/firms/companies have been recorded, were seized.

On perusal of the re-assessment order, it is noticed that while passing the said order, the A.O. has failed to consider the relevant seized material pertaining to the assessee-company which is mentioned in the Order. It is noted in the notice under section 263 that the amounts received by assessee-company were accommodation entry in lieu of cash given by the assessee-company through Shri Manoj Bansal. The relevant copies of the seized material relating to the assessee-company were given along with show cause notice or during the proceedings under section 263 of the I.T. Act. The assessee-company submitted that the A.O. has considered the seized material not only at the time of re-assessment but also at the time of recording reasons for re-assessment. The Learned Counsel for the Assessee referred to the reasons recorded by the A.O. wherein there is a mention of accommodation entries provided by the group of Shri S.K. Jain who had floated hundreds of bogus companies to provide accommodation entries in lieu of cash.

3.2. The assessee-company also submitted that during the course of assessment proceedings, assessee-company

was asked to furnish income tax returns, confirmations, financials and bank statements, which were duly complied with by the assessee-company. The assessee-company has proved the creditworthiness of the Investors before A.O. Independent notices were issued under section 133(6) of the I.T. Act to the Investor companies by the A.O. The facts were examined based on information provided by the assessee-company. The proceedings under section 263 would amount to the consideration of material which has already been considered by the A.O. during the assessment proceedings under section 147 read with section 143 of the I.T. Act, and if in case the documents are not available in the files of A.O, then, there is also no scope of revision under section 263 of the I.T. Act. The A.O. has not issued notice under section 143(2) of the I.T. Act during the re-assessment proceedings. The assessee relied upon several decisions in support of the contention that revision proceedings under section 263 may be dropped.

3.3. The Ld. Pr. CIT considering the submissions of the assessee and material on record noted in his findings that

the seized papers contains various accommodation entries were provided by such companies to various beneficiaries. The appraisal report was forwarded by the Investigation Wing in the month of March, 2013 to then CIT-III, Delhi in hard copy. The seized material contained many thousand pages. The seized material contained consolidated day-to-day cash transactions of all such shell companies wherein the opening and closing balances of cash has been mentioned. During the course of search, the entry in the cash book was admitted to be cash and bank balances. The cash is shown as received against the names of many intermediaries. Against the name of some intermediatery cheques have been shown as issued by such companies to various beneficiaries. The details of cheques such as cheque number, name of the bank and date, name of the issuer company and the name of beneficiary is mentioned in these details. It is, therefore, clear that even though the appraisal report has summarized the transactions of the cheques given by the shell companies to the various beneficiaries through intermediaries in the tabular form, the details of cash

received from such intermediaries were not tabulated due to voluminous data of day-to-day cash transactions appearing in the seized material. Therefore, all the relevant seized material found from the premises of Shri S.K. Jain group was forwarded to the Commissioner in soft copy after scanning. The assessee-company is also shown as beneficiary as evident from the scanned copy of the seized material. Against these entries, the name of assessee-company and the name of Shri Manoj Bansal (Mediator) is mentioned. All the cheques were found to be credited in the bank account of the assessee-company. Several scanned copies are attached from pages 9 to 19 of the impugned order. From pages 20 to 26 of the impugned order, summary of the appraisal report, year-wise details of accommodation entries provided by Shri S.K. Jain group to various beneficiary companies were tabulated for the charge of CIT-8. The A.O. has made mentioned details/table as the basis for reopening of the assessment which is clear from the reasons recorded for issue of notice under section 148 of the I.T. Act. From the entry No.230, the name of the assessee-company an amount

of Rs.22 lakhs have been mentioned. It would shows that A.O. did not verify or examine the seized material relating to the assessee. The Ld. Pr. CIT also noted that as there is no statutory notice under section 143(2) prescribed in the Act and only non-statutory notice is prescribed, the purpose of which is to intimate the assessee that the case has been selected for scrutiny and the notices issued on dated 11.06.2014 and 19.06.2014 clearly proves that the case of the assessee has been selected for scrutiny, such show cause notices are nothing but notice under section 143(2). of the I.T. Act. It is also noted by the Ld. Pr. CIT that even though no formal notice under section 143(2) was issued by the A.O, in the letters dated 11.06.2014 and 19.06.2014 it was specifically mentioned that in the absence of the requisite details the assessment would be completed under section 144 of the I.T. Act. The A.O. has not examined this issue in the light of seized material. Therefore, re-assessment order was found to be erroneous in so far as prejudicial to the interests of the Revenue because A.O. failed to look into the seized material. The Order was set aside and restored to the

file of A.O. with a direction to examine the seized material and confront the same to the assessee and pass the order in accordance with law.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. Learned Counsel for the Assessee submitted that in this case the value of the share was Rs.10/- with premium of Rs.50/- per share. No business was there in this year. However, assessee proved the identity of the Investors, their creditworthiness and genuineness of the transaction in the matter, therefore, no addition can be made on the ground that shares were issued at excess premium. He has relied upon the decision of Hon'ble Madhya Pradesh High Court in the case of Pr. CIT-(1), Indore vs. Chain House International (P.) Ltd., (2018) 98 taxmann.com 47 (M.P). He has submitted that no cash was appearing against the name of the assessee in the seized paper and that all the papers after scanning were attached in the impugned order and did not relate to the assessee. He has submitted that admittedly no notice under section 143(2) have been issued for completion of the re-

assessment proceedings, therefore, re-assessment order dated 30.06.2014 is illegal and bad in law. He has submitted that in proceedings under section 263 of the I.T. Act only valid re-assessment order can be revised which should be erroneous and prejudicial to the interests of the Revenue. It is not necessary to record all the facts and findings in the re-assessment order. Ld. Pr. CIT cannot sit over the Order of the re-assessment passed by the A.O. The A.O. has taken one of the possible views as per law. Therefore, the re-assessment order cannot be revised under section 263 of the I.T. Act. There is a difference between lack of enquiry and inadequate enquiry. PB-11 is reasons recorded under sections 147/148 of the I.T. Act in which it is mentioned that information/documents in the form of CD, appraisal report along with relevant details has been received from the O/o. CIT-III, New Delhi, Dated 28.03.2013 that the assessee has received and is a beneficiary of accommodation entries provided by the group of Shri Surendra Kumar Jain, Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain and Shri Vaibhav Jain. The accommodation entries have been

provided to various assessees who were re-routing their unaccounted cash through these accommodation entries. Therefore, all the relevant details were before A.O. at the time of reopening of the assessment. PB-17 to 24 are the information called by the A.O. from all Investor Companies under section 133(6) of the I.T. Act at re-assessment stage. PB-25 is objections filed by assessee for reopening of the assessment under section 148. PB 26-27 is queries raised by the A.O. at re-assessment stage along with documents of Investor companies. PB-35 is details of share applicant companies filed. PB-36 is objection decided under section 148 by the A.O. PB-37 to 139 are replies with documents filed by Investor Companies directly to the A.O. under section 133(6) of the I.T. Act. If the CD is not considered by the A.O. at the time of re-assessment order as per notice under section 263 of the I.T. Act, the re-assessment order is bad in law. Learned Counsel for the Assessee relied upon the Order of ITAT, Delhi Bench in the case of M/s. NKG Infrastructure Ltd., New Delhi vs. Pr. CIT, Circle-3, New Delhi in ITA.No.3825 to 3827/Del./2018, Dated 05.09.2018, in which the issue was

validity of proceedings under section 147/148 of the I.T. Act. The assessee submitted before the Tribunal that assessment order in this case is barred by limitation is non-est in the eye of Law. Therefore, the Pr. CIT cannot assume jurisdiction under section 263 of the I.T. Act to revise such assessment order which is non-est in the eye of Law and being barred by limitation. The Tribunal held that the Order which is barred by limitation cannot be revised under section 263 of the I.T. Act by the Pr. CIT. The appraisal report was based on CD and if same is not considered by the A.O, it is non-application of mind by the A.O. to initiate re-assessment proceedings under section 148 of the I.T. Act. Learned Counsel for the Assessee also relied upon decision of the Hon'ble Delhi High Court in the case of Director of Income Tax vs. Society for Worldwide Interbank Financial Telecommunication (2010) 323 ITR 249 (Del.) in which it was held that "notice under section 143(2) was simultaneously issued on filing of the return of income, therefore, it is bad in law and invalid". Learned Counsel for the Assessee relied upon decision of Hon'ble Supreme Court in the case of ACIT & Another vs.

M/s. Hotel Blue Moon in Civil Appeal No.1198 of 2010 arising out of SLP (C) No.22973 of 2007, Dated 02.02.2010 in which it was held that "issue of notice under section 143(2) is mandatory". Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., (2011) 332 ITR 167 (Del.) in which it was held that "if the ITO acting in accordance with Law, makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the Order should have been written more elaborately." Learned Counsel for the Assessee also relied upon decision of Hon'ble Delhi High Court in the case of ITO vs. D.G. Housing Projects Ltd., (2012) 343 ITR 329 (Del.) in which it was held that "the A.O. is both Investigator and Adjudicator. If the A.O. fails to conduct enquiry, he commits error and the word 'erroneous' includes failure to make the enquiry. In cases, where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the Order/Inquiry made is erroneous. An Order is not erroneous and prejudicial to the interests of Revenue, unless the CIT

hold and records reasons why it is erroneous." Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of CIT vs. New Delhi Television Ltd., (2014) 360 ITR 44 (Del.) in which it was held that "once the claim was considered and examined by the A.O, Commissioner cannot set aside the Order without recording contrary finding. This will be contrary to Section 263 of the I.T. Act." The CIT did not make any investigation by examining the Investors. He has relied upon the Order of ITAT, Delhi Bench in the case of Tirupati Infraprojects Pvt. Ltd., vs. Pr. CIT, Central-II, New Delhi 2016-(5)-TMI-1290-ITAT-Delhi. He has also relied upon the Judgment of Hon'ble Delhi High Court in the case of Globus Infocom Ltd., vs. CIT-IV, Delhi (2014) 369 ITR 14 (Del.). Learned Counsel for the Assessee has also relied upon the Judgment of Hon'ble Delhi High Court in the case of Pr. CIT-8 vs. Shri Jai Shiv Shankar Traders Pvt. Ltd., 2015-(10)-TMI-1765-Delhi-High Court in which it was held that "no notice under section 143(2) of the I.T. Act was issued to the assessee after 16.12.2010, the date on which the assessee informed the A.O. that the return

originally filed should be treated as return filed pursuant to the notice under section 148 of the I.T. Act. Therefore, the same is fatal to the Order of re-assessment." He has submitted that assessee produced sufficient evidences before A.O. to prove identity of the Investors, their creditworthiness and genuineness of the transaction in the matter. Therefore, A.O. in the re-assessment order correctly accepted the explanation of assessee. In support of the said contention, the Learned Counsel for the Assessee relied upon decisions of Hon'ble Delhi High Court in the case of Pr. CIT vs. Softline Creations P. Ltd., (2016) 387 ITR 636 (Del.) and CIT vs. Fair Finvest Ltd., (2013) 357 ITR 146 (Del.). Learned Counsel for the Assessee, therefore, submitted that since re-assessment order was bad in law because no notice under section 143(2) have been issued to the assessee and that assessee produced sufficient evidences to prove the conditions of Section 68 of the I.T. Act, therefore, revision proceedings under section 263 of the I.T. Act in such circumstances is wholly unjustified.

5. On the other hand, the Ld. D.R. relied upon Order of the Ld. Pr. CIT. He has submitted that appraisal report was sent to the A.O. Pr. CIT noted that creditworthiness was not considered by the A.O. PB-11 is reasons recorded under section 148 of the I.T. Act which is the statement of the A.O. The disputed question cannot be raised for the first time before the Tribunal. The Ld. D.R. relied upon decision of Hon'ble Delhi High Court in the case of Ashok Chaddha vs. CIT (2011) 337 ITR 399 (Del.). The Ld. D.R. relied upon Order of ITAT, Delhi Bench in the case of M/s. Surya Jyoti Software Pvt. Ltd., vs. Pr. CIT, New Delhi vide ITA.No.2158/Del./2017, Dated 25.10.2017 reported in 2017-TIOL-1775-ITAT-DEL in which the Tribunal noted that "assessee-company has raised the issue of no notice has been issued under section 143(2) or served upon assessee during the course of re-assessment proceedings. The Tribunal noted that assessee has neither challenged this issue after passing of the re-assessment order nor has raised this issue before Pr. CIT during the course of revisionary proceedings under section 263 of the I.T. Act. The assessee has raised several legal

issues/objections before Pr. CIT challenging the validity of the re-assessment proceedings. Even before the Tribunal at the time of filing of the appeal, this issue has neither been raised in the grounds nor has any additional ground been raised so that Department could have got the opportunity to object or respond to such a plea after verifying the record in this regard. Therefore, request of Counsel for Assessee was rejected. It is also noted that the impugned order demonstrated that the issue was neither enquired into nor was verified by the A.O." The Ld. D.R. similarly relied upon decision of ITAT, Delhi Bench in the case of Surya Financial Services Ltd., vs. PCIT vide ITA.No.2915/Del./2017, Dated 08.01.2018 reported in 2018-TIOL-74-ITAT-Del. The Ld. D.R. also relied upon decision of ITAT, Delhi Bench in the case of Shankar Tradex Pvt. Ltd., Delhi vs. Pr. CIT-8, New Delhi, vide ITA.No.2999/Del.2017 Dated 16.04.2018 in which similar issue was decided against the assessee. The Ld. D.R. submitted that A.O. has not taken into consideration the material seized during search in the case of Shri S.K. Jain. Therefore, Explanation-2 to Section 263 of the I.T. Act is

applicable in this case. The Ld. D.R. relied upon decision of Hon'ble Supreme Court in the case of Deniel Merchants P. Ltd., vs. ITO & Another in SLP (C) No.23976/2017 Dated 29.11.2017 in which SLP have been dismissed where A.O. did not make any proper enquiry while making the assessment and accepting the explanation of assessee in so far as receipt of share application money is concerned. The Ld. D.R. also relied upon decision of Hon'ble Supreme Court in the case of Rajmandir Estates (P.) Ltd., vs. PCIT (2017) 245 Taxman 127 (SC) and other decisions also on the same proposition that if A.O. did not make any enquiry on the issue, the proceedings under section 263 could be initiated. The Ld. D.R. submitted that no objection was raised before A.O. regarding the issues raised in the present appeal. The Ld. D.R. relied upon decision of Hon'ble Delhi High Court in the case of MAF Academy Pvt. Ltd., 361 ITR 258 and Navodya Castle Pvt. Ltd., 367 ITR 306 which is confirmed by the Hon'ble Supreme Court as well.

6. We have considered the rival submissions and perused the material available on record. The assessee filed

original return of income on 20.10.2007. The A.O. issued notice under section 148 of the I.T. Act on 25.03.2014 after recording the reasons for reopening of the assessment. The copy of reasons recorded under sections 147/148 are filed at page 11 of the paper book. In the reasons the A.O. has mentioned that information/documents in the form of CD appraisal report along with relevant details have been received from the O/o. CIT-3, New Delhi that the assessee has received accommodation entries provided by Shri S.K. Jain group of cases for a sum of Rs.22 lakhs. The A.O. accordingly formed an opinion that income of Rs.22 lakhs chargeable to tax has escaped assessment in the assessment year under appeal. The assessee in response to the said notice filed reply dated 10.04.2014 submitting therein that original return filed may be treated as return filed in response to the notice issued under section 148 of the I.T. Act and requested for copy of the reasons which were supplied and objections of the assessee have been disposed of separately. The A.O. in the re-assessment order did not mention if he has issued any notice under section 143(2) of the I.T. Act upon

assessee before completion of the assessment. This issue was raised before Ld. Pr. CIT in the proceedings under section 263 of the I.T. Act that A.O. has not issued notice under section 143(2) of the I.T. Act at re-assessment proceedings. The Ld. Pr. CIT mentioned in the impugned order that assessee was intimated by notices dated 11.06.2014 and 19.06.2014 that in the absence of requisite details assessment would be completed under section 144 of the I.T. Act. The Ld. Pr. CIT treated the same notices as notice issued under section 143(2) of the I.T. Act. The Ld. Pr. CIT, however, admitted that no formal notice under section 143(2) have been issued to the assessee before completion of the re-assessment proceedings. The Hon'ble Delhi High Court in the case of CIT vs. CPR Capital Services Ltd., (2011) 330 ITR 43 (Del.) held as under :

> *"The Tribunal held that no notice under section 143(2) of the Income-tax Act, 1961 was prepared and served upon the assessee. On appeal:*
>
> *Held, dismissing the appeal, that mere noting in the order sheet would not suffice and the copy of the notice*

issued under section 143(2) of the Act was not available on record. Since the Department had failed to produce the copy the notice under section 143(2) of the Act there was no option but to agree with the findings of the Tribunal that no such notice was prepared and served upon the assessee. In the absence of this mandatory requirement of issuing statutory notice under section 143(2) of the Act, the Tribunal had rightly quashed the assessment as null and void."

6.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Silverline (2016) 383 ITR 455 (Del.) held that "Order of re-assessment cannot be passed without notice under section 143(2) of the I.T. Act. The jurisdictional error cannot be cured by Section 292BB of the I.T. Act". It is, well settled Law that before passing the re-assessment order, A.O. shall have to prepare and serve notice upon assessee under section 143(2) of the I.T. Act. The Ld. Pr. CIT, however, observed that "no formal notice under section 143(2) have been issued to the assessee". Therefore, these facts clearly show that before

framing the re-assessment order under sections 147/148 of the I.T. Act, no notice under section 143(2) have been prepared, issued and served upon the assessee. Therefore, re-assessment order is illegal, invalid and bad in law and is liable to be set aside. It is well settled Law that assessee can challenge the validity of the re-assessment proceedings in the collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T. Act. We rely upon the Order of ITAT, Mumbai Bench in the case of Westlife Development Ltd., vs. PCIT 49 ITR (Tribu.) 406 in which it was held "allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus, the assessee could be permitted to challenge the validity of the Order passed under section 263 on the ground that the assessment order was non-est." Since the re-assessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. On this

ground itself the proceedings under section 263 of the I.T. Act are bad in law and liable to be quashed. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In view of the above, the remaining plea of the assessee are not required to be adjudicated. However, we may briefly note that A.O. examined entire seized material at the time of recording reasons and re-assessment stage. The assessee produced sufficient evidences at the re-assessment proceedings to prove the identity of the creditors, their creditworthiness and genuineness of the transaction. The A.O. also made direct enquiry by issuing summons under section 133(6) of the I.T. Act to the Investors who have also replied directly to the A.O. Therefore, A.O. rightly accepted the credits as genuine. In view of the above finding, there is no need to give a finding in detail on merits. In view of the above, we allow the appeal of assessee.

7. In the result, ITA.No.2269/Del./2017 of the Assessee is allowed.

ITA.No.2857/Del./2017 – M/s. SPJ Hotels Pvt. Ltd., New Delhi

8. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 22.03.2017, for the A.Y. 2007-2008 under section 263 of the I.T. Act, 1961.

9. Briefly the facts of the case are that in this case similar information about entry operators and their beneficiaries of Delhi was received from the O/o. DIT, (Inv.)-II, Delhi, along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries, the Addl. DIT, Unit-VI of Investigation in his report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It was revealed from the list that the assessee-company viz., M/s. SPJ Hotels Private Limited during the previous year relevant to the assessment year under appeal had taken accommodation entries from M/s. Hillridge Investments Ltd.,

and M/s. Vogue Leasing & Finance Private Limited in a sum of Rs.5 lakhs each on 28.03.2017. The A.O. reopened the assessment under section 148 of the I.T. Act. Notice under section 148 was issued on 25.03.2014 after recording the reasons and taking prior approval of the Competent Authority. In response thereto, assessee submitted a letter stating therein that it was incorporated on 05.03.2007 and filed first return of income for A.Y. 2008-2009 for the period from 05.03.2007 to 31.03.2008 declaring NIL income. It was, therefore, submitted that NIL return may be treated as return having been filed for A.Y. 2007-2008 under appeal. The assessee asked for copy of reasons for reopening of the assessment. The assessee attended the proceedings before A.O. time to time and filed details of share capital received from 04 parties in a sum of Rs.5 lakhs each i.e., (1) M/s. Hillridge Investments Ltd., (2) M/s. Vogue Leasing & Finance Private Limited (3) M/s. Pelicon Finance & Leasing Limited, and (4) M/s. Pitambara Securities Pvt. Ltd., A.O. disposed of the objections of the assessee. It is noted in the reasons that he has reason to believe that income chargeable to tax in a

sum of Rs.10 lakhs on account of accommodation entries has escaped assessment. The A.O. after considering the evidences and material on record made the addition of Rs.20 lakhs in respect of four corporate entities under section 68 of the I.T. Act and made further addition of Rs.40,000/- on account of commission expenses for taking accommodation entries. The re-assessment order under sections 144/148 Dated 18.03.2015 was passed accordingly.

10. The Ld. Pr. CIT considered the aforesaid re-assessment order to be erroneous and prejudicial to the interests of the Revenue and noted that Investigation Wing has forwarded hard copy of appraisal report to show that assessee received accommodation entries. However, A.O. has taken it at Rs.10 lakhs only as against Rs.1 crore. Show cause notice under section 263 of the I.T. Act was issued stating therein that assessee has received Rs.50 lakhs each as accommodation entries from Hillridge Investments Ltd., and M/s. Vogue Leasing & Finance Private Limited. Explanation of assessee was called for because the assessment order was erroneous in so far as it is prejudicial

to the interests of the Revenue because the A.O. has not examined the seized material and has failed to tax the amount of Rs.1 crore as unexplained credit in the books of account of the assessee. The assessee filed reply in which it was briefly explained that the A.O. in the reasons for reopening of the assessment recorded that there is escapement of income of Rs.10 lakhs. Therefore, entire proceedings are based on non-application of mind by the A.O. The assessee requested for cross-examination to the statement of Shri S.K. Jain. The Pr. CIT noted that correct amount of accommodation entries from both these companies are Rs.50 lakhs each instead of Rs.5 lakhs. The Ld. Pr. CIT also noted that A.O. failed to consider the seized material found during the course of search in the case of Shri S.K. Jain, therefore, A.O. passed the re-assessment order without proper verification and enquiries. Therefore, re-assessment order was set aside and A.O. was directed to pass the order afresh as per law.

11. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred

to PB-1 which is reasons recorded for reopening of the assessment in which A.O. found that income of Rs.10 lakhs has escaped assessment. However, the Ld. Pr. CIT noted that amount is Rs.50 lakhs each in both the cases, therefore, escapement of income is of Rs.1 crore. He has, therefore, submitted that reasons recorded for reopening of the assessment are invalid, incorrect and non-existing. Therefore, re-assessment order is invalid and bad in law. He has submitted that A.O. considered the seized material on record and that it is a non-application of mind by the A.O. to frame re-assessment order. In support of this contention, he has relied upon the Judgments of Hon'ble Delhi High Court in the case of CIT vs. Suren International (2013) 357 ITR 24 (Del.), Judgment of Delhi High Court in the case of PCIT vs. RMG Polyvinyl (I) Ltd., (2017) 396 ITR 5 (Del.) and Judgment of Delhi High Court in the case of SNG Developers Ltd., (2018) 404 ITR 312 (Del.). He has submitted that since re-assessment order was invalid and bad in law, therefore, same cannot be revised under section 263 of the I.T. Act. No cross-examination have been allowed to the statement of Shri

S.K. Jain, therefore, re-assessment order is bad in law and cannot be reviewed. He has, therefore, submitted that proceedings under section 263 of the I.T. Act may be quashed.

12. On the other hand, Ld. D.R. relied upon the Order of the Ld. Pr. CIT and submitted that figure in the reasons is wrongly mentioned. He has filed written submissions and relied upon some Judgments as relied in case of Supersonic Technologies Pvt. Ltd., (supra). Therefore, Ld. Pr. CIT rightly considered re-assessment order to be erroneous and prejudicial to the interests of the Revenue.

13. We have considered the rival submissions and perused the material available on record. It is well settled Law that validity of re-assessment proceedings is to be judged with reference to the reasons recorded under sections 147/148 of the I.T. Act. In the present case, A.O. has recorded reasons for reopening of the assessment on 25.03.2014, copy of which is filed at page-1 of paper book. Same reads as under :

"Reasons for issue of notice u/s 148 of the I.T.Act, 1961 in the case of M/s. SPJ Hotels (PV Limited, PAN AAKCS7722C for the A.Y. 2007-08 - Reg.

25.03.2014 : Information about entry operators and their beneficiaries of Delhi has been received from the office of the DIT .(Inv.)-II, New Delhi vide letter F. No. DlT(Inv)-148/2011-12/7539 dated 21,03.2012 and F. No. DIT (Inv)-II/U/s 148/ 2012-13/196 dated 12.03.2013 along with detailed report giving working of entry operators with a list of beneficiaries. After making inquiries, the Addl. Directorate of Income Tax, Unit - VI of Investigation, in his report has established large amount of tax evasion in the transactions between entry operators and the beneficiaries. It is revealed from the list that the assessee company M/s. SPJ Hotels (P) Limited (termed as beneficiary) during the previous year 2006-2007 relevant to Assessment. Year 2007-2008 had taken accommodation entries totaling Rs.l0,00,000/- from the persons/parties (termed as entry operators). These entries have been investigated by the Investigation Wing and found to be given

as accommodation entries from entities operated and controlled by Surender Kumar Jain. The details of which are mentioned below :

Beneficiary's Name	*Amount (Rs.)*	*Entry Provider*	*Cheque/ P.O.No.*	*Dated*
M/s. SPJ Hotels (P) Limited	*5,00,000/-*	*M/s. Hillridge Investments Limited.*	*011048*	*28.03.2007*
M/s. SPJ Hotels (P) Limited	*5,00,000/-*	*M/s. Vogue Leasing & Finance (P) Limited*	*011047*	*28.03.2007*

I have very carefully considered the aforesaid piece of information and the modus operandi of the entry operator Surender Kumar Jain and its controlled entities. I find that the quantum of amount of such entries received by the assessee company M/s. SPJ Hotels (P) Limited as per details mentioned above is Rs.10,00,000/- . These accommodation entries taken by M/s. SPJ Hotels (P) Limited are earlier identified and examined by the Investigation Wing to establish that all these entry providing entities were tools in Surender Kumar Jain business of providing accommodation entries in lieu of cash/cheques through which he had drawn a long

trail of bank transaction to impart a color of genuineness on these transactions.

In view of facts stated herein above, I am of the considered opinion & belief that the assessee company managed the above said transactions of accommodation entries out of its income from undisclosed sources. In this case, as per records available, the assessee has not filed its return of income for the A.Y. 2007-08. In view of above, I have reason to believe that income of Rs.10,00,000/- has escaped assessment within the meanings of the provisions of Section 147 of the Income Tax Act, 1961. Therefore, a notice u/s. 148 of the Income Tax Act, 1961 is required to be issued to the assessee company to assess the income escaped as stated hereinabove. As the period to reopen the case exceeds four years and as per records no scrutiny assessment has been done in this case for the A.Y. 2007-08, approval from the Addl. Commissioner of Income Tax, Range-9, New Delhi has been obtained vide letter dated 25.03.2014 to issue notice u/s.148, as per the provisions of Section 151(2) of the I.T. Act.

Therefore issue notice u/s. 148 of the I.T. Act.

Sd/-Virender Kumar Rathee

ITO, Ward 9(2), New Delhi."

13.1. In the aforesaid reasons for reopening of the assessment, it is mentioned that assessee company received share capital on account of accommodation entries of Rs.5 lakhs each from M/s. Hillridge Investment Pvt. Ltd., and M/s. Vogue Leasing & Finance Pvt. Ltd., based on information and seized material received from Investigation Wing. However, the assessee explained before A.O. that amount in question is Rs.20 lakhs from four parties. The A.O. in the re-assessment order made addition of Rs.20 lakhs on account of unexplained credit on account of accommodation entries received from four parties and also made addition of Rs.40,000/- on account of Commission paid to entry operators. On the basis of the same material, the Pr. CIT initiated the proceedings under section 263 of the I.T. Act on the reasons that amount in question is not Rs.10 lakhs received from these two companies, but, it is Rs.50 lakhs each i.e., Rs.1 crore. Thus, the facts mentioned in the reasons for reopening of the assessment are incorrect and non-

existent. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 (P & H) held as under :

> *"Held (i) that the Tribunal was right in cancelling the reassessment as both the grounds on which the reassessment notice was issued were not found to exist, and, therefore, the Income-tax Officer did not get jurisdiction to make a reassessment."*

13.2. Since the facts are totally different as A.O. had reason to believe that Rs.10 lakhs has escaped assessment on account of Rs.5 lakhs received from two companies referred to above, which was ultimately found to be incorrect and non-existent, therefore, there may not be any application of mind on the part of the A.O. to proceed to initiate the re-assessment proceedings. There is no other material available on record except the information received from the Investigation Wing. The A.O. on the basis of the information and material received from Investigation Wing has recorded reasons for reopening of the assessment which was ultimately found to be incorrect and non-existent. It is well

settled law that when no new material other than examined by the A.O originally found on record for the purpose of initiating the re-assessment proceedings, the proceedings under section 148 of the I.T. Act would be invalid and bad in law. We rely upon decision of Delhi High Court in the case of Atul Kumar Swamy 362 ITR 693, Consulting Engineers Services India Pvt. Ltd., 378 ITR 318, Nestle India Ltd., 384 ITR 334 and Priyadesh Gupta 385 ITR 452. The Hon'ble Delhi High Court in the case of SNG Developers Ltd., 404 ITR 312 held that when A.O. initiated the re-assessment proceedings without application of mind, such proceedings would be invalid. A.O. in the present case has failed to verify the information received from Investigation Wing. Therefore, it is non-application of mind on the part of the A.O. to record correct facts in the reasons for reopening of the assessment. In such circumstances, the re-assessment order could not be treated as valid and in accordance with law. Since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. Following the reasons for decision

in the case of M/s. Supersonic Technologies Pvt. Ltd., (supra), we set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same.

14. In the result, ITA.No.2857/Del./2017 of the Assessee is allowed.

ITA.No.2527/Del./2017 – M/s. Shiv Sai Infrastructure (P) Ltd., New Delhi.

15. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 24.03.2017, for the A.Y. 2007-2008 under section 263 of the I.T. Act, 1961.

16. The facts of the case are that notice under section 148, dated 28.03.2014 was issued to the assessee after recording the reasons and obtaining approval of CIT-3, New Delhi. In compliance to the notice under section 148, the assessee has furnished return on 01.05.2014. The assessee stated before A.O. that the income declared in the ITR under section 148 remain the same as declared in the original return of income filed under section 139 of the I.T. Act Dated

30.10.2007. It was further stated that income of Rs.33,79,596/- as declared in the return of income under section 139 has been accepted and assessed to tax under section 143(3) vide Order dated 27.11.2009. The A.O. after considering the material on record and summons issued under section 131(1) of the I.T. Act and notice under section 133(6) and other material on record, accepted the return of income and passed the re-assessment order under section 143(3) r.w.s. 147 of the I.T. Act, Dated 30.03.2015.

17. The Ld. Pr. CIT found the said re-assessment order to be erroneous in so far as it is prejudicial to the interests of the Revenue. It is noted that assessment was reopened under section 148 on the allegation of accommodation entries taken from Shri S.K. Jain group of concerns who were searched on 14.09.2010 by the Investigation Wing of the Income Tax Department. Some of the Assessing Officers did not examine the seized material in the form of cash book and the books containing the details of cheques issued by such concerns seized from the premises of Shri S.K. Jain. Notice under section 263 of the I.T. Act was issued to the assessee which

is reproduced in the impugned order in which it is noted that case was reopened on the basis of the allegation of accommodation entry on account of share capital/share premium/share application money from M/s. Hillridge Investments Ltd., and M/s. Vogue Leasing & Finance Pvt. Ltd., concerns of Shri S.K. Jain group of cases. The A.O. accepted the return of income on the basis of confirmations from the said investors. The evidences found during the course of search in the case of Shri S.K. Jain group of cases have not been examined by the A.O. Reply of the assessee was called for in which the assessee explained that the A.O. after examining the entire details and documentary evidences on record and making direct/independent enquiry from both the Investors under sections 131(1) and 133(6) of the I.T. Act, completed the assessment proceedings. The assessee filed all the documentary evidences before A.O. i.e., confirmation letters from both the Investors, copy of their bank accounts, copy of ITR, copy of PAN, copy of audited balance sheet, copy of Master Data taken from Official website of MCA and assessment order under section 153C/153A in the case of

M/s. Hillridge Investments Ltd., The seized papers are only rough papers and no details have been mentioned therein. The Ld. Pr. CIT however, did not accept the contention of assessee and noted that seized documents recovered during the course of search in the case of Shri S.K. Jain group of cases have not been examined and considered by the A.O. while framing the re-assessment order. The Ld. Pr. CIT also noted that verification of the seized documents shows the amount in question is Rs.2.20 crores but as per the details given in the notice under section 263 of the I.T. Act, the amount is mentioned as Rs.2.90 crores. The contention of the assessee that the seized material did not belong to the assessee was rejected. The re-assessment order was set aside and restored to the A.O. for passing the order afresh as per law.

18. The assessee in the present appeal has challenged the Order under section 263 of the IT. Act. The assessee also moved an application for admission of the following additional ground.

"That having regard to the facts and circumstances of the case, Ld. CIT ought not to have revised re-assessment order under section 147/143(3) as the said re-assessment order was void and bad in law due to illegal assumption of jurisdiction."

18.1. The Learned Counsel for the Assessee submitted that additional ground is legal in nature and no fresh facts are to be investigated. The additional ground goes to the root of the matter and therefore, prayed that the same may be admitted for disposal of the appeal. Learned Counsel for the Assessee relied upon the decision of Hon'ble Supreme Court in the case of NTPC Limited vs. CIT (1998) 229 ITR 383 (SC) and CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) and decision of Hon'ble Punjab & Haryana High Court in the case of VMT Spinning Co. Ltd., vs. CIT, Ludhiana and another (2016) 389 ITR 326 (P & H).

19. On the other hand, Learned D.R. objected to the admission of additional ground of appeal.

20. Considering the facts of the case, we are of the view that additional ground is legal in nature and goes to the root of the matter. Therefore the same shall have to be admitted for the purpose of disposal of the appeal. We, accordingly, admit the additional ground of appeal. Learned Counsel for the Assessee contended that re-assessment order in this case under section 143(3)/147 is invalid and bad in law and as such, the same could not be revised under section 263 of the I.T. Act. He has submitted that in fact said issue can be raised in collateral proceedings as is held in the following judicial decisions.

(i) Classic Flour & Food Processing P. Ltd., vs. CIT, Kolkata ITA.No.764-766/Kol./2014, Dated 05.04.2017 of ITAT Kolkata Bench.

(ii) Krishan Kumar Saraf vs. CIT (2016) 46 ITR 387 (ITAT) (Delhi Bench).

(iii) Westlife Development Ltd., vs. Pr. CIT (2016) 49 ITR 406 (ITAT) (Mumbai Bench).

20.1. Learned Counsel for the Assessee referred to several documents in the paper book in support of the contention that entire documentary evidences were filed before A.O. at the original assessment stage as well as in the

re-assessment proceedings to prove genuineness of the share capital money received from the Investors. PB-45 is confirmation of M/s. Hillridge Invesment Ltd. PB-46 is bank statement. PB-49 is ITR of M/s. Hillridge Invesment Ltd. PB-50 to 53 are Confirmation, Bank statement and ITR of M/s. Vogue Leasing & Finance Pvt. Ltd. PB-307 is order sheet of the A.O. All documentary evidences were filed before A.O. in both the proceedings. PB-68 is copy of the reasons recorded under section 148 of the I.T. Act in which the amount of Rs.2.90 crores as accommodation entries have been mentioned instead of Rs.2.20 crores. PB-60 is notice under section 148 Dated 28.03.2014. PB-57 is original assessment order under section 143(3) Dated 27.11.2009. He has, therefore, submitted that re-assessment done after four years and in the reasons as well as in the notice under section 148 of the I.T. Act, 1961, the A.O. has not mentioned anything if there was any failure on the part of the assessee to disclose fully and truly all material facts at every stage for the purpose of assessment and re-assessment. The assessee declared share application money received from two parties.

However, in the reasons name of none of parties have been mentioned. In the original assessment proceedings an amount of Rs.2.20 crores have been mentioned. Therefore, in the reasons the facts have been wrongly mentioned. All the facts available on record were considered in the re-assessment proceedings, therefore, no new material has been brought on record for reopening of the assessment. All incorrect and non-existing facts have been mentioned in the reasons for reopening of the assessment. The amount in question is also wrongly mentioned in the reasons. In the books of account of assessee, assessee has shown to have received share application money from two Investors in a sum of Rs.2.20 crores and not Rs.2.90 crores. Learned Counsel for the Assessee referred to various replies filed before A.O. at original assessment stage as well as in the re-assessment proceedings in which it was clearly highlighted that there is application of mind from the side of the A.O. to frame the re-assessment order. PB-300 and 301 is report of the Inspector to show that notice under section 133(6) have been served upon M/s. Vogue Leasing & Finance Pvt. Ltd.

PB-319 is the report of the Investigation Wing which clarifies that summons under section 131 and notice under section 133(6) have been issued on the Directors of the assessee-company which have been complied with. Necessary enquiry have been conducted by the Inspector of the Office who has submitted his report without pointing-out any specific discrepancy. PB-310-317 is order sheet. Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Company vs. CIT (2009) 308 ITR 38 (Del.) in which it was held as under :

> *"Conclusion :*
>
> *AO while making assessment under s. 143(3) having made specific queries with regard to share application money in response to which assessee furnished all relevant documents and after considering this material, AO having completed the assessment, it could not be said that income escaped assessment on account of failure on the part of assessee to disclose fully and truly all material facts necessary for assessment, hence*

reopening of assessment after expiry of four years from the end of the relevant assessment year was invalid."

20.2. In the case of Well Intertrade (P) Ltd., & Another vs. Income Tax Officer (2009) 308 ITR 22 (Del.) (HC), the Hon'ble Delhi High Court has held as under :

"Conclusion :

Assessee having fully and truly disclosed all the material facts necessary for the assessment as required by the A.O, the precondition for invoking the proviso to Section 147 was not satisfied and therefore, A.O. acted wholly without jurisdiction in issuing notice under section 148 beyond the four year period mentioned in Section 147."

20.3. Learned Counsel for the Assessee submitted that there is totally non-application of mind by the A.O. while framing the re-assessment order, therefore, re-assessment is illegal and bad in law. In support of his contention, he has relied upon decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. RMG Polyvinyl (2017) 396 ITR 5 (Del.), Pr. CIT vs.

Meenakshi Overseas Pvt. Ltd., (2017) 99-CCH-28-Del.-HC, Pr. CIT vs. G & G Pharma India Ltd., (2016) 384 ITR 147 (Del.). He has submitted that there is no approval for reopening of the assessment by the Competent Authority. He has submitted that all the seized papers were considered by the A.O, therefore, reopening of the assessment was bad in law, illegal and as such Ld. Pr. CIT should not assume jurisdiction under section 263 of the I.T. Act.

21. On the other hand, Learned D.R. reiterated the submissions made in the case of M/s. Supersonic Technologies Pvt. Ltd., Delhi. in ITA.No.2269/Del./2017 hereinabove. The Learned D.R. submitted that seized material was not considered by the A.O. Summons under section 131 were not complied with. All material facts were not disclosed. A.O. took the figure of Rs.2.90 crores in the reasons based on information received from Investigation Wing. Therefore, Ld. Pr. CIT correctly invoked jurisdiction under section 263 of the I.T. Act. Assessee cannot challenge validity of re-assessment proceedings under section 263 of the I.T. Act.

22. We have considered the rival submissions and perused the material available on record. It is well settled that the Ld. Pr. CIT while exercising power under section 263 of the I.T. Act could not revise the assessment order which was illegal, bad in law and non-est in the eye of Law. The assessee can challenge the validity of the re-assessment order referred to under section 263 of the I.T. Act being non-est and illegal. The case Laws relied upon by the Learned Counsel for the Assessee are squarely applicable to the facts and circumstances of the case. In the present case, A.O. passed the original assessment order under section 143(3) of the I.T. Act, Dated 27.11.2009. The A.O. has mentioned in the assessment order that details have been filed by assessee and after discussion of the case return of income have been accepted. The assessee in this case received share application money/premium from two parties and filed several documents on record to prove genuine credit in the matter which is accepted by the A.O. Thereafter, re-assessment proceedings were initiated under section 148 of the I.T. Act. The A.O. in the notice under section 148 as well

as in the reasons did not mention if there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Therefore, the decisions of Hon'ble Delhi High Court relied upon by the Learned Counsel for the Assessee in the cases of Haryana Acrylic Manufacturing Co. vs. CIT & Another (supra) and Well Intertrade (P) Ltd., and Another (supra), are squarely applicable to the facts of the case. Therefore, the re-assessment done after four years from the end of the relevant assessment year would be bad in law unless the income chargeable to tax has escaped assessment for such assessment year by the reason of failure on the part of the assessee to make return under section 139 or in response to notice issued under section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for assessment for that assessment year. In the absence of any such details mentioned in the reasons or notice under section 148, the re-assessment order would be invalid and bad in law. Further A.O. recorded incorrect facts in the reasons for reopening of the assessment because the amount in question

is Rs.2.20 crores but A.O. has mentioned in the reasons the amount of Rs.2.90 crores which escaped assessment. Further, no names of the parties have been mentioned in reasons under section 147 from whom the amount in question have been received by the assessee as accommodation entry. All the facts brought to the notice of the A.O. by the Investigation Wing have been considered by the A.O. while framing the re-assessment and accepted the return of income. Therefore, there was no new material available on record to justify reopening of the assessment or to invoke jurisdiction under section 263 of the I.T. Act, which would also show that there is totally non-application of mind on the part of the A.O. to reopen the assessment in the matter. These facts are sufficient to hold that reopening of the assessment was bad in law, illegal and non-est, therefore, such order could not be revised in the proceedings under section 263 of the I.T. Act. We, accordingly set aside the Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. In this view of the matter, there is no need to decide the issue on merit. However, we may note briefly that documentary

evidences were filed before A.O. at original assessment stage as well as at the stage of re-assessment to prove genuine credit in the matter which have accepted by the A.O. after considering and examining the material on record and calling explanation from the Investors under section 133(6) of the I.T. Act. In this view of the matter, we allow the appeal of assessee.

24. In the result, ITA.No.2527/Del./2017 of the Assessee is allowed.

ITA.No.3301/Del./2017 – M/s. Superior Buildwell Pvt. Ltd., Delhi.

25. This appeal by Assessee has been directed against the Order of the Ld. Pr. CIT-8, New Delhi, Dated 17.03.2017, for the A.Y. 2009-2010 under section 263 of the I.T. Act, 1961.

26. Briefly the facts of the case are that original return of income was filed on 18.09.2009 declaring NIL income. On the basis of information received from Directorate of Investigation Wing of Income Tax Department, it was noticed

that during the course of search in the premises of Shri Surendra Kumar Jain group of cases, it was found that assessee has obtained an entry of Rs.2 crores by way of share capital/share application money. The assessment was reopened under section 148 of the I.T. Act, 1961. Notice under section 148 was issued on 18.10.2013. The A.O. issued notice under section 142(1) Dated 22.05.2014 and the assessee in reply thereto, submitted that return already filed may be treated as return filed pursuant to notice under section 148 of the I.T. Act. The A.O. issued notice under section 133(6) to M/s. Supersonic Construction Ltd., and M/s. Oriental Bank of Commerce for relevant information and verification. The assessee was asked to file details of addition to share capital with complete name, address, PAN and the amount received. The assessee submitted desired details before A.O. and also filed confirmations, audited bank statement, ITR and return of allotment filed with ROC. The A.O. verified the identity, creditworthiness and genuineness of the transaction in the matter and accordingly accepted the

return of income vide order under sections 147/143(3) of the I.T. Act, 1961 Dated 30.06.2014.

26.1. The Ld. Pr. CIT found the re-assessment order to be erroneous in so far as it is prejudicial to the interests of the Revenue because information was received that assessee received accommodation entry from Shri S.K. Jain group of concerns and all the seized documents have not been verified by the A.O. Show cause notice was issued to the assessee seeking explanation of credit entry of Rs.1 crores received from Shalini Holdings Ltd. The assessee filed detailed reply which is reproduced in the impugned order in which the assessee submitted that complete details were filed before A.O. and receipt of share capital money supported by the documents and confirmations. Therefore, re-assessment order is not erroneous in so far as prejudicial to the interests of the Revenue. The Ld. Pr. CIT noted the submissions of the assessee wherein the shares were originally issued to Shalini Holdings Ltd on 25.08.2008 were transferred on 25.03.2010 in favour of Frank Merchantile Private Limited. Seized documents are reproduced in the impugned order. The Ld. Pr.

CIT noted that as against the entry in the name of assessee, an amount of Rs.2 crores have been mentioned. However, on verification of the seized material, it was found that total amount of Rs.1 crore as per details given in the show cause notice is there and not Rs.2 crores. It would show that A.O. did not verify and examine the seized material relating to assessee and accepted the explanation of assessee without examining the seized paper. The Ld. Pr. CIT, therefore, found that the seized documents have not been examined and verified by the A.O. Therefore, re-assessment order was set aside and matter was restored to the A.O. for passing the Order afresh as per provisions of Law.

27. The assessee in the present appeal challenged the Order under section 263 of the I.T. Act as well as filed an application for admission of additional grounds which reads as under :

7.(a) On the facts and circumstances of the case, the learned Pr. CIT has erred, both on facts and in law, in holding that the legality of original assessment proceedings could not be

challenged in the 263 proceedings, disregarding the various judicial pronouncements cited by the assessee in this regard.

7.(b) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the order of the AO reopening the assessment under Section 147 of the Act, without complying with the statutory conditions and the procedure prescribed under the law, is bad and liable to be quashed, and thus, the same could not have been revised under Section 263 of the Act.

7.(c) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the order of the AO passed on the basis of reasons recorded for reopening of the assessment, which are incorrect on facts and bad in law,

is illegal and liable to be quashed, and thus, the same could not have been revised under Section 263 of the Act.

7.(d) On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law, in assessing the jurisdiction under Section 263 of the Act, despite the fact that the original assessment having been made without issuing of statutory notice under Section 143(2) of the Act, being itself illegal, the same could not be revised under Section 263 of the Act."

27.1. Learned Counsel for the Assessee submitted that it is legal ground and goes to the root of the matter and without further investigation, same may be admitted for disposal of the appeal.

28. Learned D.R. however, objected to the admission of the additional ground of appeal and submitted that no

such ground was taken in the original proceedings and that such ground cannot be taken in the present appeal.

29. Similar issue was considered by us in the above group of appeal in the case of M/s. Shiv Sai Infrastructure (P) Ltd., (supra) and additional ground have been admitted. Following the reasons for decision of the same, we admit the additional grounds of appeal for the purpose of disposal of the appeal.

30. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that no notice under section 143(2) have been issued in the case of assessee. Copy of the order sheet of the A.O. is filed at page 279 of the paper book to show that no notice under section 143(2) have been issued. He has referred to PB-20 which is reasons for reopening of the assessment in which A.O. has mentioned wrong facts of taking accommodation entry of Rs.2 crores. However, assessee has received share capital/premium of Rs.1 crore only in assessment year under appeal. No name of the person from whom assessee received Rs.2 crores have been

mentioned in the reasons. The show cause notice under section 263 have been issued for a lesser amount of Rs. 1 crore. If reasons were incorrect for reopening of the assessment, then, re-assessment proceedings would be invalid and non-est, therefore, Ld. Pr. CIT has no power to review the same under section 263 of the I.T. Act. Learned Counsel for the Assessee referred to several replies filed before A.O. to show all documentary evidences were examined by the A.O. at re-assessment proceedings. There is no co-relation of the seized documents with the assessee. Since the A.O. recorded incorrect reasons for reopening of the assessment and that no notice under section 143(3) have been issued, therefore, re-assessment order is invalid and as such, same cannot be revised under section 263 of the I.T. Act. A.O. made enquiry of all the documents but Ld. Pr. CIT did not make any enquiry on the documentary evidences on record. Learned Counsel for the Assessee submitted that the issue is same as have been considered and decided in the cases of M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ

Hotels Private Limited and M/s. Shiv Sai Infrastructure (P(Ltd., New Delhi (supra).

31. On the other hand, Learned D.R. reiterated the submissions already made in the case of M/s. Supersonic Technologies Pvt. Ltd., (supra) and also submitted that no ground was taken in original proceedings for illegality in the re-assessment proceedings. The issue of notice under section 143(2) is a disputed question and not relevant in the present proceedings. Seized papers are not considered and examined by the A.O. The amount in question is Rs.1 crore only. Therefore, the Order of the A.O. is erroneous in so far as prejudicial to the interests of the Revenue. He has, therefore, submitted that Order under section 263 may be confirmed.

32. We have considered the rival submissions. The issue is same as have been considered in the above three cases viz., M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ Hotels Private Ltd., and M/s. Shiv Sai Infrastructure (P) Ltd., (supra). In the present case, no notice under section 143(2) have been issued for completion of the re-assessment proceedings and that incorrect facts have been recorded in

the reasons for reopening of the assessment. Therefore, the re-assessment proceedings are invalid, bad in law and non-est and as such, liable to be quashed. We, therefore, following the reasons for decision in the cases of M/s. Supersonic Technologies Pvt. Ltd., M/s. SPJ Hotel Private Ltd., and M/s. Shiv Sai Infrastructure (P) Ltd., (supra), set aside the impugned Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. Accordingly, appeal of the assessee is allowed.

33. In the result, appeal of the Assessee is allowed.

34. To sum-up, all the appeals of the Assessees are allowed.

6.3. Same view have been taken by ITAT, Delhi E-Bench in the case of M/s. NKG Infrastructure Ltd., New Delhi vs., Pr. CIT, Circle-3, New Delhi in ITA.Nos.3825 to 3827/Del./2018 Dated 05.09.2018 [PB-11]. Further same view have been taken by ITAT, Kolkata Bench in the case of M/s. Rozelle Sales & Services Pvt. Ltd., vs., ACIT, Central

Circle-1(1), Kolkata in ITA.No.2030/Kol./2018, Dated 30.08.2019 [PB-35].

6.4. The ITAT, SMC Delhi Bench in the case of Agroha Fincap Ltd., New Delhi vs., ITO, Ward-1(4), New Delhi, in ITA.No.1063/Del./2019, Dated 17.10.2019 considering the identical issue and approval of the Ld. Pr. CIT about his satisfaction held as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1063/Del/2019
Assessment Year: 2010-11

Agroha Fincap Ltd., *Raj Kumar & Associates, CAs,* *L-7A (LGF), South Extension Part-II,* *New Delhi.*	*Vs.*	*ITO,* *Ward-1(4),* *New Delhi.*
PAN: AAACA8075G *(Appellant)*		*(Respondent)*

Assessee by : Shri Raj Kumar, CA
Revenue by : Shri S.L. Anuragi, Sr.DR

Date of Hearing : 13.08.2019
Date of Pronouncement : 17.10.2019

ORDER

This appeal by the assessee is directed against the order dated 19th December, 2018 of the CIT(A)-1, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company and had filed its return of income on 12th October, 2010 declaring the total income at Rs.9,912/-. The Assessing Officer received information based on the search and seizure operation conducted u/s 132 of the IT Act, 1961 in the case of Shri Surendra Kumar Jain group of cases on 14th September, 2010 that Shri Surendra Kumar Jain, through a large number of dummy companies floated by him provided accommodation entries to various beneficiaries. In the list of beneficiaries so obtained, the name of the assessee also appears. He noticed the modus operandi of the Jain brothers was that they have received cash from the various beneficiaries which were deposited in the bank accounts of various entities as cash received against sales and were immediately transferred to various dummy companies of Jain

brothers. The money is then routed through a maze of transactions through a web of dummy concerns managed by Jain brothers. Subsequently, cheques were given to the beneficiaries in lieu of cash given initially from the account of the concerns which is at the last step of money trail and in this process, Jain brothers used to earn a certain percentage of commission. He also referred to the assessment order in case of S.K. Jain wherein the Assessing Officer had applied the commission @ 1.8% on account of accommodation entries provided by them. The order of the Assessing Officer was confirmed by the CIT(A) and the Tribunal had also approved the fact that Shri S.K. Jain and Shri V.K. Jain are involved in providing accommodation entries. In view of the above, the Assessing Officer reopened the case of the assessee u/s 147/148 of the Act after recording satisfaction and prior approval u/s 151(1) of the Act by the PCIT, Delhi-1. In response to notice u/s 148, the assessee filed its return of income on 30th March, 2017 declaring an income of Rs.9,912/-. During the course of assessment proceedings, the Assessing Officer asked the assessee to substantiate the

amount of Rs.20 lakhs received by him towards 20000 shares of Rs.10/- each at a premium of Rs.90/- per share. Rejecting various explanations given by the assessee, the Assessing Officer held that the assessee failed to discharge the onus cast on it to prove the identity and capacity of the creditor and the genuineness of the transaction and made an addition of Rs.20 lacs to the total income u/s 68 of the IT Act. Similarly, the Assessing Officer also made addition of Rs.36,000/- being commission @ 1.8% for arranging the accommodation entries. Thus, the Assessing Officer completed the assessment at a total income of Rs.20,45,912/- as against the returned income of Rs.9,912/-.

3. Before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the reassessment proceedings. However, the ld.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer in making the addition of Rs.20,36,000/- and also upheld the validity of the reassessment proceedings.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

"1. That under the facts and circumstances initiation of proceedings under section l47/148 are without jurisdiction, on borrowed satisfaction, without application of mind, unwarranted, mechanical and unsustainable in law and on merits.

2. That the Ld. A.O., since failed in adjudicating all objections against reopening proceedings, properly, as per law and in totality and as per the directions of Hon'ble Supreme Court in the case of G.K.N. Drive Shafts, hence consequential proceedings and impugned asstt. is illegal and without jurisdiction.

3. That under the facts and circumstances, the approval under section l51 is fatally defective, mechanical and without application of mind which makes the whole proceedings without jurisdiction, illegal and unwarranted.

4. That under the facts and circumstances, the Ld. A.O, erred in law and on merits in making addition of Rs,20,00,000 under section 68 of the I.T. Act.

4.1 That under the facts and circumstances, addition of Rs. 20,00,000 under section 68 for the share capital / share premium received from Utsav securities (P) ltd. by holding the same as received from alleged entry operator is illegal and unsustainable in law as well as on merits.

4.2. That the findings of A.O. are unsustainable for addition of Rs.20,00,000 in the absence of providing the copies of all materials used against the assessee and by not providing cross-examination of persons whose statements have been relied upon, thus no proper and reasonable opportunity of hearing has been allowed and principles of natural justice is grossly violated which makes the impugned asstt. unsustainable in law.

5. That the Ld. A.O. erred in making addition of Rs.36,000 as unexplained expenditure under section 69C for alleged commission expenses @1.8 percent of

Rs.20,00,000, the amt. of total sale consideration received of both the shares, although there is no material and evidence for the same."

5. The ld. counsel for the assessee submitted that the initiation of reassessment proceedings was made in a mechanical manner, on borrowed satisfaction and without application of mind. Referring to the copy of the reasons supplied by the Assessing Officer, copy of which is placed at page 225 of the paper book, he submitted that the initiation is purely on the basis of the report received from the Investigation Wing and the Assessing Officer before initiating the reassessment proceedings had not conducted any inquiry even to know and understand that the information as per the Investigation Report is prima facie correct. He submitted that at the time of initiation of proceedings, the Assessing Officer was not having even the material before him on the basis of which the Investigation Wing had sent its report. The Assessing Officer assumed and worked only on the satisfaction of the Investigation Wing. Relying on the following decisions, he submitted that when the proceedings

were initiated mechanically and on borrowed satisfaction and without application of mind, such reassessment proceedings are a nullity:-

i. *Pr. CIT vs. RMG Polyvinyl (I) ltd., 396 ITR 5 (Del);*

ii. *Pr. CIT vs. Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del);*

iii. *Pr. CIT vs. G and G Pharma India Ltd., 384 ITR (2016) (Delhi) 147; and*

iv. *Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del).*

6. The ld. counsel for the assessee further submitted that the assessee filed objections against the reopening vide letter dated 16th August, 2017, copy of which is placed at page 6 to 7 of the paper book. Referring to page 8 to 10, he drew the attention of the Bench to the disposal of the objections by the Assessing Officer. He submitted that vide para 2 of the objection letter dated 16th August, 2017, it was requested that to file complete objections, the materials relied upon by the Investigation Wing for sending the report to the Assessing Officer and such other material including the statement of

persons recorded at the back of the assessee should be supplied. However, the Assessing Officer had not provided any of these documents on the ground that the relevant material is internal documents of the Department and cannot be shared. He accordingly submitted that the Assessing Officer by not providing the above documents has not disposed of the objections fully as per the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft. Referring to the following decisions, he submitted that incomplete disposal of objections makes the assessment invalid.

i. Sabh Infrastructure Ltd. vs. ACIT, 398 ITR 198;

ii. Pr. CIT vs. Tupperware India (P) Ltd., 127 DTR 161 (Del);

iii. Scan Holding (P) Ltd. vs. ACIT, 402 ITR 290 (Del); &

iv. Goa State Copr. Bank Ltd. vs. ACIT 7 Ors., (2017) 295 CTR (Bom) 369.

7. The ld. counsel for the assessee submitted that the approval u/s 151 is in a mechanical manner and without application of mind. Therefore, it is fatally defective. He

submitted that the PCIT while giving approval has simply mentioned: 'I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act.' Referring to the decisions of the Hon'ble Delhi High Court in the case of PCIT vs. NC Cables Ltd., 391 ITR 11 (Del) and United Electrical Company Pvt. Ltd. vs. CIT & ors, 258 ITR 317 and the decision of the Hon'ble M.P. High Court in the case of CIT vs. S. Goyanka Lime & Chemical Ltd. (2015) 56 taxmann.com 390, he submitted that the courts have unequivocally held that where the satisfaction has been given in a mechanical manner and without application of mind for issuing notice u/s 148, such reopening of assessment is invalid. He submitted that the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue against the decision of the Hon'ble MP High Court in the case of Goyanka Lime & Chemical Ltd. (supra).

8. So far as the merit of the case is concerned, he submitted that to substantiate the identity and credit worthiness of the share applicant and the genuineness of the transaction, the assessee has filed the audited financial statement, income-tax return, copy of bank statement, copy

and confirmation of Utsav Securities Pvt. Ltd. The assessee also filed Form No.2 filed with ROC dated 29th June, 2010, a copy of form No.2 filed before ROC intimating the issue of 20000 shares to Utsav Securities Pvt. Ltd. at a premium of Rs.90/- per share. He submitted that the balance sheet of Utsav Securities Pvt. Ltd. shows its share capital at Rs.1.26 crores and the reserves and surplus at Rs.8.66 crore. He submitted that Utsav Securities Pvt. Ltd. has an investment of Rs.8.92 crore and current assets, loans and advances of Rs.1.14 crore. He submitted that the smallness of the income cannot be a reason for not accepting the credit worthiness of the said company. Relying on various decisions, he submitted that when the assessee has discharged its onus by proving the identity and credit worthiness of the investor and the genuineness of the transaction, no addition u/s 68 can be made. The ld. counsel further submitted that the assessee was never provided with the photo copy of page No.2 of diary of Shri S.K. Jain and Shri V.K. Jain claimed to have been seized on search at the residence of Shri Jain. Despite specifically asking the Assessing Officer to

provide the documents relied by the Department for making the addition and asking to give opportunity to cross examine, the same were never provided. Relying on various decisions, he submitted that since the addition is based purely on presumptions and surmises and the relevant materials were not provided to the assessee, therefore, the addition so made is not sustainable. So far as the addition of Rs.36,000/- being the commission for getting the accommodation entry is concerned, he submitted that it is an estimated addition and there is no basis or material or information based on which such addition could have been made. He accordingly submitted that the addition made by the Assessing Officer and upheld by the CIT(A) should be deleted.

9. The ld. DR, on the other hand, submitted that the Assessing Officer, in the instant case, has duly applied his mind and has made a thorough analysis of the documents and after analyzing the documents has recorded his satisfaction and reopened the assessment. The ld. Addl. CIT had perused the note and had recorded his satisfaction that income pertaining to assessment year 2010-11 has escaped

assessment and, hence, the case is required to be reopened u/s 147. The Pr. CIT had given his satisfaction u/s 151 separately as mentioned at page 5 of the paper book filed by the ld. counsel for the assessee. The Assessing Officer, in the instant case, has disposed of the objections by passing a speaking order, therefore, it is wrong to say that the assessment was reopened in a mechanical manner and the approving authorities have given the approval in a mechanical manner without due application of mind. He submitted that the reassessment proceedings were not initiated in a mechanical manner or on borrowed satisfaction and without application of mind since the perusal of the reasons recorded clearly show that there is a thorough application of mind by the Assessing Officer and the approving authorities have also given valid reasons for reopening of the case. So far as the merit of the case is concerned, the ld. DR submitted that S.K. Jain group of cases are known to be accommodation entry providers and the assessee, in the instant case, has obtained the accommodation entry of Rs.20 lacs and has failed to

discharge the onus cast on it by proving the identity and capacity of the loan creditor and the genuineness of the loan transaction. Therefore, the ld.CIT(A) was fully justified in sustaining the addition of Rs.20 lacs made by the Assessing Officer and also the addition of Rs.36,000/- added by the Assessing Officer being commission for the accommodation entries. He accordingly submitted that both factually and legally the ld.CIT(A) has passed a reasoned order and, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

10. I have considered the arguments of both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered various decisions cited before us. At the outset, I deem it proper to adjudicate the legal ground raised by the assessee challenging the validity of the reassessment proceedings in absence of proper approval given u/s 151 of the IT Act. A perusal of the copy of approval given u/s 151, copy of which is placed at page 13 of the paper book, shows that the Addl. CIT, while giving approval has simply

mentioned: "Yes. I am satisfied that it is a fit case for reopening of assessment u/s 148." Similarly, the PCIT, while giving approval has also simply mentioned: "I am satisfied that it is a fit case for issue of notice u/s 148 of the IT Act." From the above, it is clear that none of the supervisory authorities have applied their mind. I find, the Hon'ble Delhi High Court in the case of CIT vs. N.C. Cables Ltd., 391 ITR 11(Del), has observed as under:-

> *"Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee*

on legality of reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise

appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

11. Similar view has been taken by the coordinate Benches of the Tribunal in a number of cases where it has been held that merely giving approval by mentioning, "Yes. I am satisfied that it is a fit case for reopening of assessment" is not a valid approval. Accordingly the reassessment proceedings have been quashed. Since, in the instant case, both the superior authorities have merely given their approval in a mechanical manner without independent application of mind, therefore, respectfully following the decision of the jurisdictional High Court in the case of N.C. Cables (supra), I hold that the reassessment proceedings are bad in law. Accordingly, the same is quashed. Since the reassessment proceedings have been quashed, the subsequent order passed by the Assessing Officer becomes bad in law and accordingly the same is quashed. Since the assessee succeeds on the legal grounds, the grounds raised

by the assessee become academic and, therefore, are not being adjudicated.

12. In the result, the appeal filed by the assessee is allowed."

6.5. The ITAT, SMC Delhi Bench in the case of Mr. Mukesh Chand Garg, New Delhi vs., ITO, Ward-49(3), New Delhi in ITA.No.794/Del./2019 Dated 07.10.2019 took same view. The findings of the Tribunal are reads as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.794/Del/2019
Assessment Year: 2009-10

Mukesh Chand Garg *B-1/305, Ground Floor, Janak Puri, New Delhi-110058* *PAN No.AEYPG7826A*	*Vs*	*ITO* *Ward- 49 (3)* *New Delhi*
(APPELLANT)		*(RESPONDENT)*

Appellant by	*Sh. Ved Jain, Advocate* *Ms. Surbhi Goyal, CA*
Respondent by	*Sh. S. L. Anuragi, Sr. DR*

Date of hearing:	*08/08/2019*
Date of Pronouncement:	*07/10/2019*

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24.12.2018 of the CIT(A) -17, New Delhi relating to A.Y.2009-10.

2. The assessee in its various grounds of appeal has challenged the order of the Ld. CIT(A) in confirming the addition of Rs.4,25,810/- and has also challenged the validity of proceedings u/s. 147.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 24.08.2009 declaring total income of Rs.5,49,980/-. Subsequently on the basis of information received from PCIT of the Income Tax (Investigation), Ahemdabad that the assessee had availed contrived loss of Rs.4,39,342/- through broker by changing the client codes in sale and purchase orders of securities, the case of the assessee was reopened u/s. 147 after recording

reasons. In response to notice u/s. 148 the assessee submitted that the original return filed may be treated as return filed in response to notice u/s. 148. The Assessing Officer, during the course of assessment proceedings, concluded that the assessee has purchased exempt long term capital gain through brokers by changing client codes in sale and purchase orders of securities and had claimed the same as exempt. Since the assessee has earned capital gain of Rs.4,39,342/- and claimed the same as long term capital gain exempt from tax, the Assessing Officer held the same to be non genuine and accordingly made addition of Rs.4,39,342/-.

4. In appeal the CIT(A), relying on various decisions, upheld the action of the Assessing Officer. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee referring to page-12 of the paper book drew the attention of the bench to column No.12 where the PCIT had simply mentioned

"satisfied". Referring to clause No.11 of the form he submitted that the additional CIT has simply mentioned "YES", it is fit case to issue notice u/s. 148 of the IT Act". Referring to the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. M/s. N. C. Cables Limited reported in 391 ITR 11 and the decision of the Hon'ble M. P. High Court in the case of CIT Vs. S. Goenka Lime and Chemicals Limited reported in (2015) 56 taxman.com 390 and various other decisions filed in the paper book, he submitted that the courts have held that the reopening is not sustainable where approval / sanction given by the authority is without recording satisfaction. Referring to various other decision he submitted that the Assessing Officer, not having jurisdiction over the assessee, cannot issue notice u/s. 148 of the IT Act. The Assessing Officer in the instant case has not applied his mind and initiated action u/s. 147 on the basis of report of the investigation wing Therefore, the reassessment proceedings initiated by the Assessing Officer is not sustainable.

6. So far as the merit of the case is concerned, the Ld. Counsel for the assessee referring to the decision of Hon'ble Bombay High Court in the case of PCIT Vs. PAT Commodity Services Private Limited reported in (2019) 2 TMI 720 submitted that the Hon'ble High court has decided the issue in favour of the assessee and the appeal filed by the revenue has been dismissed. He accordingly submitted that both legally and factually the order of the CIT(A) is not sustainable.

7. The Ld. DR on the other hand heavily relied on the order of the AO and CIT(A).

8. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the Assessing Officer, on the basis of report of the investigation wing of the department, reopened the assessment and made addition of Rs.4,39,342/- on account of client code modification through broker which has been upheld by the CIT(A). It is the submission of the Ld. Counsel

for the assessee that the reopening was made in a mechanical manner without application of mind by the Assessing Officer and on borrowed satisfaction. Further the approving authorities have also given the approval in a mechanical manner and the assessee was never given any opportunity of cross-examination. It is also his submission that in view of the decision of Hon'ble Bombay High Court in the case of PCIT Vs. PAT Commodity Services Private Limited (supra) the addition on account of client code modification is not sustainable.

9. A perusal of the proforma for approval to issue of notice u/s. 148, copy of which is placed at page 12 of the paper book shows that as per clause 12 of the proforma, the PCIT while giving approval has simply mentioned "satisfied". Similarly as per clause 11, the Addl. CIT has simply mentioned "Yes", it is a fit case to issue notice u/s. 148 of the IT Act, 1961.

9.1 The Hon'ble Delhi High Court in the case of PCIT Vs. N. C. Cables Ltd. (supra) has held as under :-

"11. Section 151 of the Act clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT (A) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed."

9.2 The Hon'ble M. P. High court in the case of CIT Vs. S. Goyanka Lime & Chemicals Ltd. (supra) has held as under :-

"7. We have considered the rival contentions and we find that while according sanction, the Joint

Commissioner, Income Tax has only recorded so "Yes, I am satisfied". In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

"The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format "Yes, I am satisfied" which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material."

8. If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner,

which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9. As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10. In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of Arjun Singh (supra), we see no question of law involved in the matter, warranting reconsideration.

11. The appeals are, therefore, dismissed."

9.3 Since in the instant case also both the approving authorities have given the approval in a mechanical manner, therefore, in the light of the ratio laid down by the decisions cited (supra) and the other decisions filed in the case law compilation, the reassessment proceedings in my opinion are not in accordance with law. Therefore, the same is liable to be quashed. I, therefore, quash the reassessment proceedings.

10. Even otherwise on merit also, so far as the addition on account of client code modification is concerned I find the Hon'ble Bombay High Court in the case of PAT Commodity Services (supra) has observed as under :-

> *"3. The respondent assessee is a private limited company engaged in the Business of providing Commodity services to its clients. In the return of income filed by the assessee for the Assessment Year 200607, the Assessing Officer noticed that there were instances of client code modifications. The Assessing Officer believed that the same was done to indulge in circular*

trading to pass on profits or losses to the clients of the assessee company as per requirements. After hearing the assessee, the Assessing Officer made additions in the income of the assessee on such basis. The issue eventually reached to the Tribunal. The Tribunal did accept the Revenue's theory of misuse of clients code modification facility. However, the Tribunal accepted the assessee's explanation and discarded the Revenue's theory that profit of the assessee's company were passed on to the clients. It was also noticed that the Revenue has not contended that the client code modification facility is often misused by the assessee to pass on losses to the investors, who may have sizable profit arising out of commodity trading against which such losses can be set off. The Revenue normally points out number of such instances of client code modifications as well as nature of errors in filling of the client code. At any rate, what can be taxed in the hands of the present assessee is the income escaping assessment. Even if the Revenue's theory of the

assessee having enabled the clients to claim contrived losses, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the present case, the Assessing Officer has added the entire amount of doubtful transactions by way of assessee's additional income, which is wholly impermissible. We do not know the fate of the individual investors in whose cases, the Revenue could have questioned the artificial losses. Be that as it may, we do not think entertaining these appeals would serve any useful purpose.

4. In the result, both the appeals are dismissed."

11. Respectfully following the decision of Hon'ble Bombay High Court cited (supra). I hold that the addition made by the Assessing Officer and sustained by the CIT(A) on account of client codes modification is not justified. The grounds raised by the assessee are accordingly allowed.

12. In the result, the appeal filed by the assessee is allowed".

6.6. The ITAT, C-Bench, Delhi in the case of M/s. Ganesh Ganga Investments Pvt. Ltd., Delhi vs., ITO, Ward-10(1), New Delhi in ITA.No.1579/Del./2019, Dated 07.11.2019 on an identical issue held as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1579/Del./2019
Assessment Year 2010-2011

M/s. Ganesh Ganga Investments Pvt. Ltd., A-52, Top Floor, Street No.1, Gurunanakpura, Laxmi Nagar, Delhi–110 092. PAN AAACG2710J	*vs.,*	*The Income Tax Officer, Ward – 10 (1), Room No.206A, C.R. Building, I.P. Estate, New Delhi. PIN – 110 002.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Raj Kumar, C.A. And Shri Rajeev Ahuja, Advocate Shri Sumit Goel, C.A.*
For Revenue :	*Ms. Parmit M. Biswas, CIT-DR*

Date of Hearing :	*10.10.2019*
Date of Pronouncement :	*07.11.2019*

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-4, New Delhi, Dated 26.12.2018, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that assessee company filed its return of income on 04.02.2011 for the A.Y. 2010-2011 declaring loss of Rs.9,616/- which was processed under section 143(1) of the I.T. Act, 1961. The assessee declared income from brokerage and commission, interest on loan and profit on sale of investment also.

2.1. An information was received from the O/o. CIT, Central-2, New Delhi, vide letter Dated 14.02.2014 mentioning therein that a search/survey operation under section 132/133A of the Income Tax Act, 1961 was conducted by the Investigation Wing at the business and residential premises of Shri Himanshu Verma and his Group on 29.03.2012 wherein after intensive and extensive inquiry and examination of documents seized during the course of

search, it has been gathered that the said persons are involved in providing accommodation entries to the persons who were named in the report. During the course of inquiry made by the Investigation Wing, it also came to the notice that Shri Himanshu Verma was engaged in the business of providing accommodation entries through cheques/PO/DD in lieu of cash to large number of beneficiary companies through various paper and dummy companies floated and controlled by him. The cash received from the parties for providing accommodation entries was first deposited in the account of these dummy firms/companies in the guise of cash received against the bogus sales duly shown in the books of account. On the basis of the material available on record, the A.O. after recording reasons for reopening of the assessment, issued notice under section 148 to the assessee on 31.03.2017 which was served upon the assessee. The assessee objected to the reopening of the assessment and requested to provide copy of the approval of Competent Authority under section 151 of the I.T. Act, 1961. The Assessee also contended that whatever material was

collected at the back of the assessee was not confronted and requested to supply statement of Shri Himanshu Verma, report and data complied / received from Investigation Wing, report and data complied/received by ITO, Ward-10(1), New Delhi, diaries and registers considered as incriminating material seized from Shri Himanshu Verma and any other documents which Department wanted to rely. It was further submitted that proceedings under section 147/148 of the I.T. Act, cannot be invoked for making inquiry or verification purposes. The assessee denied receipt of any accommodation entry from any such person. The A.O, however, rejected the objections of the assessee and proceeded to make assessment in the matter. The A.O. noted that in assessment year under appeal, assessee has received Rs.11,05,00,000/- on account of share capital and share premium from 38 parties as noticed during the course of assessment proceedings. The summary of the same is reproduced in the assessment order. The assessee was asked to file complete postal address, PAN and other details of these 38 parties. The A.O. also issued notice under section 133(6) to all 38

share subscriber companies and asked for the details from them. The A.O. received replies from 26 companies. In 06 cases, although notice issued under section 133(6) of the I.T. Act were issued as per new name as well as old name of the company, but, the same were returned back un-served by the Postal Authorities. In the remaining 06 cases, no replies have been received. The A.O. noted that replies received from 26 parties under section 133(6) have been analysed and these companies furnished copy of the acknowledgment of ITR, balance sheet as on 31.03.2010, P & L A/c, copy of the bank statement. The A.O. however, did not accept the replies filed by the 26 investor companies on the reasons that replies have been received in bunch for similar style of envelopes and posted from three post offices. The A.O. also noted that none of the parties explained as to why high premium was paid and parties have not explained source of the investment. The A.O. also noted that 26 parties filed copy of the ITR, balance sheet, P & L A/c and bank statement, but, it shows that their income shown is very meagre in the return of income. The assessee was asked to produce the

persons/Principal Officers of these entities for verification. However, assessee did not produce the same. The A.O. also analysed the statement of Shri Himanshu Verma through whom amount have been received and the A.O. ultimately rejected the explanation of assessee on genuine share application money received from 38 parties and made addition of Rs.11.05 crores. The A.O. further noted that assessee has paid commission in cash for arranging these entries, on which, addition was made of Rs.22,10,000/- i.e., @ 2% of the amount in question which was also added to the returned income.

3. The assessee challenged the reopening of the assessment as well as additions on merit before the Ld. CIT(A). It was contended that assessment framed on the basis of material / documents / information received from third party and without application of mind by the A.O, therefore, whole assessment is invalid and bad in law. It was further submitted that assessee has shown all the amounts in his books of account and return of income filed with the Department. The A.O. has reopened the assessment by

mentioning in the reasons that assessee has received entries of Rs.2.45 crores which fact is incorrect. The initiation of re-assessment have been made merely on the basis of Investigation Wing report without applying the mind. No right of cross-examination have been provided to the assessee to the statement of Shri Himanshu Verma and others. The assessee relied upon the following decisions.

3.1. In the case of Pr. CIT vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.) the Hon'ble Delhi High Court held as under:

> *"In the present case too, the information received from the Inv. Wing cannot be said to be tangible material per se without a further enquiry being undertaken by the learned assessing officer"*

3.2. In the case of Pr. CIT vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), the Hon'ble Delhi High Court held as under :

> *"Reassessment notice condition precedent recording of reasons to believe that income has escaped assessment mere reproduction of*

investigation report in reasons recorded absence of link between tangible material and formation of ceding illegal Income Tax Act, 1961, Sec.147, 148"

3.3. In the case of Pr. CIT vs., G And G Pharma India Ltd., [2016] 384 ITR 147 (Del.), the Hon'ble Delhi High Court held as under :

"Reassessment condition precedent application of mind by assessing officer to materials prior to forming reason to believe income has escaped assessment - No independent application of mind to information received from Directorate of Investigation and no prima facie opinion formed- reassessment order invalid".

3.4. In the case of Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), the Hon'ble Delhi High Court held as under :

"No independent application of mind by the Assessing officer but acting under information from Inv. Wing - Notice U/s. 147 to be quashed".

3.5. The assessee also submitted that assessment is barred by time. The assessee further submitted that approval under section 151 have been granted in a most mechanical manner without applying independent mind by the Pr. Commissioner of Income Tax. He has submitted that Pr. Commissioner of Income Tax has recorded in the approval as under :

"Form for recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of the Ad CIT/CIT/CBDT

1.	*Name and address of the assessee*	*M/s. Ganesh Ganga Investment P. Ltd., A-52, Top Floor Street No.l, Guru Nanak Pura, Laxmi Nagar, Delhi 110092*
2.	*PAN*	*AAACG2710J*
3.	*Status*	*Company*
4.	*Ward/Circle*	*Ward-10(1)*
5.	*Asstt. Year in respect of which it is proposed to issue notice u/s 148*	*2010-11.*
6.	*The quantum of income which has escaped assessment*	*Rs.2,45,00,000/-*
7.	*Whether the provisions of section*	

	147(a) or 147(b) are applicable or both the sections are applicable.	*147(b)*
8.	*Whether the assessment is proposed to be made for the first time. If the reply is affirmative, please state* *(a) Whether any voluntary return has already been filed.* *(b) If so, the date of filing of return*	*Yes* *Yes* *04.02.2011*
9.	*If answer to item 8 is negative, please state*	
(a)	*Income originally assessed*	*NA*
(b)	*Whether it is a case of under assessment, at lower rate, assessment which has been made the subject of excessive relief or allowing excess loss/depreciation.*	*NO*
10.	*Whether the provision of Sec. 150(1) are applicable. If the reply is in affirmative the relevant facts may be stated against Item No. 11 and 8 may also be brought out that the provisions of Sec. 150(2) would not stand in the way of initiating*	*NO*

	proceedings u/s. 147.	
11.	*Reasons for the belief that the income has escaped assessment.*	*As per annexure.*

Sd/- H.K. Sharma

Dated: 29.03.2017. *ITO, Ward-10(1), New Delhi.*

12.	*Whether the Addl. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*In view of the facts notice u/s.148 to be issued.*
13.	*Whether the Pr. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.*

Sd/-S.K. Mittal,

Pr. Commissioner of I. Tax, New Delhi."

3.6. This approval is not valid in Law because it would show that approval have been granted without application of mind. Learned Counsel for the Assessee relied upon Judgment of the Hon'ble Delhi High Court in the case of United Electrical Co. Pvt. Ltd., vs. Commissioner of Income

Tax 258 ITR 317 in which approval by Addl. Commissioner of Income Tax under section 151 was given in the following terms – "Yes" I am satisfied that it is a fit case for issue of notice under section 148 of the I.T. Act." The Hon'ble Delhi High Court considering the similarly worded approval did not approve the same and held that "in the present case, there has been no application of mind by Addl. Commissioner of Income Tax before granting the approval." The assessee also relied upon Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., S. Goyanka Lime & Chemical Ltd., [2015] 64 taxmann.com 313 (SC) approving the Judgment of Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax, Jabalpur vs., S. Goyanka Lime & Chemical Ltd., [2015] 56 taxmann.com 390 (M.P.) in which the Departmental SLP has been dismissed on the same reason because the Joint Commissioner of Income Tax recorded satisfaction in a mechanical manner and without application of mind. The assessee also relied upon Judgment of Hon'ble Madhya Pradesh High Court in the case of Arjun Singh vs., ADIT [2000] 246 ITR 363 (M.P.) in which

also similarly worded sanction under section 148 was not found valid. The assessee also relied upon Judgment of Hon'ble Delhi High Court in the case of Pr. Commissioner of Income Tax vs., N.C. Cables Ltd., [2017] 88 taxmann.com 649 (Del.) in which also on similarly worded sanction, it was held that re-assessment was not valid. The assessee also submitted that since no right of cross-examination have been allowed to the statement of Shri Himanshu Verma, therefore, such statement cannot be read in evidence against the assessee. He has relied upon Judgment of Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries vs., Commissioner of Central Excise, Kolkata-II reported in 281 CTR 241.

4. The Ld. CIT(A), however, did not accept the contention of assessee and confirmed the reopening of the assessment. The assessee also made submissions on merit to show that addition is wholly unjustified. However, the Ld. CIT(A) did not accept the contention of assessee and upheld the addition on merit as well. The appeal of assessee was accordingly dismissed.

5. The assessee in the present appeal challenged the reopening of the assessment under section 147/148 of the I.T. Act, 1961, on several grounds, addition of Rs.11.05 crores under section 68 of the I.T. Act and addition of Rs.22,10,000/- on account of commission.

6. We have heard the Learned Representatives of both the parties. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to reasons recorded in this case for reopening of the assessment, copy of which is filed at page-15 of the PB. PB-29 is approval/sanction granted by the Pr. Commissioner of Income Tax, New Delhi. PB-6 is balance-sheet to show that in preceding assessment year the share capital was of Rs.3.01 crores and in assessment year in increased to Rs.14.06 crores. Thus, about Rs.11 crores have increased and this fact was also disclosed to the Revenue Department. Such details are filed in the return of income. No verification could be allowed in the garb of proceedings under section 148 of the Income Tax Act, 1961. The name of M/s. Management Services Pvt. Ltd., in the reason from whom alleged entry

have been taken by the assessee do not figure in the appellate order because such party does not exist. M/s. Shubh Propbuild Pvt. Ltd., has been mentioned in the reasons do not belong to Shri Himanshu Verma. In assessment order name of M/s. Management Services Pvt. Ltd., do not appear. PB-13 of the assessment order referred to the statement of Shri Himanshu Verma in which name of M/s. Shubh Propbuild Pvt. Ltd., does not appear. The A.O, therefore, recorded incorrect reasons and did not apply his mind to the material on record. The A.O. has not gone through the record and the balance Company do not belong to the assessee. The statement of Shri Himanshu Verma was not subjected to cross-examination on behalf of assessee, despite making a request to the A.O. [PB-19]. In the statement of Shri Himanshu Verma filed on record, no such companies have been mentioned, therefore, no adverse inference could be drawn against the assessee. The assessee did not receive any notice for production of the parties before A.O. There is no evidence on record of any payment of commission paid by assessee for arranging share capital. Learned Counsel for the

Assessee relied upon Order of the ITAT, Delhi Bench in the case of Pioneer Town Planners Pvt. Ltd., vs. DCIT ITA.No.132/Del./2018 Dated 06.08.2018 in which in similar circumstances the re-assessment have been quashed which case also relates to entry provided by Shri Himanshu Verma. Learned Counsel for the Assessee submitted that the A.O. issued notices to all the parties under section 133(6) of the I.T. Act. In response to the same, 26 parties filed reply supported by documentary evidences to prove genuine share application money have been received. The A.O. did not take help of any handwriting export before forming any opinion. If replies were not in order, assessee should have been confronted with the material so that assessee could rebut the same. Therefore, such fact could not be taken adversely against the assessee. The assessee never received notice Dated 11.12.2017 for production of the parties for examination. In reasons 06 parties are mentioned which belong to Shri Himanshu Verma, but, in his statement he says 08 parties, but, the A.O. made addition for 38 parties. A.O. made the addition only on the statement of Shri

Himanshu Verma, but, the parties did not belong to him. Learned Counsel for the Assessee submitted that since approval is not in accordance with Law, therefore, reopening of the assessment is bad in Law and relied upon the same Judgments as were relied upon before Ld. CIT(A). He has submitted that A.O. did not apply his mind to the reasons and recorded incorrect facts and approval is also given on incorrect facts. The initiation and approval on the basis of wrong facts is not legally valid. He has relied upon Judgment of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs., Kamdhenu Steel & Alloys Ltd., 248 CTR 33 and other decisions as was relied upon before the authorities below. The amount received from 30 companies is Rs.8.13 crores only out of total amount of Rs.11.05 crores. Therefore, there is no other material on record to justify the addition. He has submitted that A.O. cannot ask to explain source of the source. Learned Counsel for the Assessee, therefore, submitted that reopening of the assessment is invalid and no addition could be made against the assessee even on merits.

7. The Ld. D.R. on the other hand relied upon the Orders of the authorities below and submitted that A.O. dealt with the objections of the assessee, but, for re-assessment proceedings no manner is provided as to how sanction is to be granted. A.O. recorded details in the reasons on which Pr. Commissioner of Income Tax was satisfied. Therefore, reopening of the assessment is valid because information was received from Investigation Wing that assessee has received accommodation entries. The name of assessee was appearing. Sufficiency of reasons is not required at this stage of formation of re-assessment proceedings. The A.O. cannot do any roving enquiry at initial stage. The assessee failed to prove creditworthiness of the Investor Companies as they were having meagre income. The assessee did not prove genuineness of the transaction in the matter. The A.O. made enquiry from Investors and assessee did not produce parties before A.O. Even a premium have been charged for allotment of shares for which no reasons have been explained. The companies are having meagre income only. Apart from statement of Shri Himanshu Verma, there is enough material

to justify the addition on merit. The assessee also did not prove identity and creditworthiness of the Investors even if no cross-examination to the statement of Shri Himanshu Verma have been allowed. The Ld. D.R. relied upon Judgment of Hon'ble Supreme Court in the case of Raymond Woollen Mills 236 ITR 34 (SC). He has submitted that information is prima facie relevant and there is sufficient material on record to justify the initiation of re-assessment proceedings. The assessee failed to prove that no notice Dated 11.12.2017 have been received. The Ld. D.R. relied upon the following decisions.

1. *PCIT vs., Paramount Communication (P.) Ltd., 2017-TIOL-253-SC-IT.*
2. *PCIT vs., Paramount Communication (P.) Ltd., [2017] 392 ITR 444 (Del.) (HC)*
3. *Aradhna Estate (P.) Ltd., vs. DCIT [2018] 91 taxmann.com 119 (Gujarat) (HC).*
4. *Pushpak Bullion (P.) Ltd., vs. DCIT [2017] 85 taxmann.com 84 (Gujarat) (HC).*
5. *Ankit Financial Services Ltd., vs. DCIT [2017] 78 taxmann.com 58 (Gujarat) (HC).*
6. *Aaspas Multimedia Ltd., vs. DCIT [2017] 83 taxmann.com 82 (Gujarat) (HC).*

7. *Ankit Agrochem (P.) Ltd., vs. JCIT [2018] 89 taxmann.com 45 (Rajasthan) (HC).*

8. *Yogendrakumar Gupta vs., ITO [2014] 227 Taxman 374 (SC).*

8. We have considered the rival submissions. It is well settled Law that validity of re-assessment proceedings is to be examined with reference to the reasons recorded for reopening of the assessment. The Counsel for Assessee has filed copy of the reasons recorded for reopening of the assessment at Page-15 of the Paper Book which reads as under :

"M/s. Ganesh Ganga Investments Pvt. Ltd.,

PAN AAACG2710J A.Y. 2010-11

The assessee filed return of income for the A.Y. 2010-11 on 04.02.2011 declaring loss of Rs.(-) 14,162/-. The return was processed u/s 143(1).

Information was forwarded to this office through the Addl.CIT, Range-10, New Delhi that search & seizure action was conducted by Inv. Wing at the office of Sh. Himanshu Verma where various incriminating

documents/materials were seized during the course of search. During the post search investigation and perusal of seized documents it was observed that Sh. Himanshu Verma was engaged in the business of providing accommodation' entries by providing cheques/PO/DD in lieu of cash to a large number of beneficiary companies thorough various paper and dummy companies floated and controlled by them. It was also evidently established by the Investigation Wing that Sh Himanshu Verma is known entry providers and is the actual controller of more than 100 companies/proprietary firms/partnership firms. They control these entities through various persons by appointing them as directors/partners/proprietors apart from nominating them as authorized signatories for maintaining the bank accounts of these entities but in fact all these persons act only as their stooges. The cash received from the recipient parties for providing the accommodation entries was first deposited in the accounts of these dummy firms/companies in the

disguise of the cash received against the bogus sales, duly shown in the books of accounts. From there, this cash was transferred to the different paper companies floated by Sh. Himanshu Verma through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Himanshu Verma

In this way, the reserve & surpluses and the capital account of a specific set of companies are enhanced with the help of the unexplained cash received by Himanshu Verma, which is routed to these companies through their dummy firm/companies. Once the funds of these companies have been enhanced sufficiently, accommodation entries through RTGS/ Cheque in the shape of the share capital, capital gains or loans as per the specific requirement of the recipient clients were provided to them in lieu of the cash received from them. In this way, the chain for providing an accommodation entry gets completed.

It is noticed from the list of entries that the assessee M/s Ganesh Ganga Investment P. Ltd. has taken following accommodation entries during the financial year 2009-10 :-

S.No.	Amount	Conduit companies through which cheque issued.
1.	4000000	Shubh Propbuild P Ltd.,
2.	4000000	Jaguar Softech P. Ltd.,
3.	4000000	Join Fashion P. Ltd.,
4.	4500000	Management Services P. Ltd.,
5.	4000000	Greenvision Construction P. Ltd.,
6.	4000000	USK Exim P. Ltd.,
TOTAL	2,45,00,000/-	

On the basis of the reports received from the Investigation Wing, I have downloaded the return from the ITD portal and verified the records and it is clear that the assessee company has not disclosed fully and truly all material facts necessary for its assessment for the assessment year under consideration as it emerges that transactions shown in the return are not genuine. Apart from the above the assessee company is not doing any real business and keeping in view the huge investments, disallowances u/s 14A read with rule 8D also applicable in the case. The statement given by

Shri Himanshu Verma also establishes the link with the self-confessed "accommodation entry providers", whose business is to help assessees bring back their unaccounted money into their books of account. Thus, there is a direct link between the information/available with the department and the income escaping assessment.

I have, therefore, reasons to believe that income to the extent of Rs.2,45,00,000/- has escaped assessment relevant to A.Y.2010-11. Thus, the same is to be brought to tax under section 147/148 of the I.T. Act 1961.

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment year, for issuing the notice u/s 148, necessary approval / sanction may kindly be accorded by the Pr. Commissioner of Income Tax, Delhi-4, New Delhi in view of the amended provision of section 151 w.e.f 01.06.2015.

Sd/- H.K. Sharma,
Dated : 27.03.2017. ITO, Ward-10(1), New Delhi."

8.1. PB-29 is the sanction granted by Pr. Commissioner of Income Tax for reopening of the assessment in which it is mentioned as under :

13.	*Whether the Pr. Commissioner of I. Tax is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s.148.*	*Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.*

Sd/-S.K. Mittal,
Pr. Commissioner of I. Tax, New Delhi."

8.2. Learned Counsel for the Assessee relied upon Judgment of Hon'ble Delhi High Court in the case of United Electricals Company (supra) in which the Addl. Commissioner of Income Tax similarly recorded the approval "Yes" I am satisfied that it is a fit case for issue of notice under section 148 of the I.T. Act." In this case the Hon'ble Delhi High Court held as under :

> *"On a careful perusal of the statement made by V' it was found that facts mentioned in reasons were de hors the facts available on record. It was*

evident that the said statement was too general. It did not mention any name much less the name of the assessee. It was not the stand of the revenue that a list of the creditors, which included the name of the assessees, was furnished by V' subsequently and the same was forwarded to the Assessing Officer of the assessee. Applying the aforenoted settled principles governing an action under section 147, there could be no hesitation in holding that there was no information on record which could provide foundation for the Assessing Officer's belief that the assessee's transaction with 'V' Ltd. was not genuine and its income had escaped assessment on that account. Therefore, the impugned action of the Assessing Officer could not be sustained. Even the Addl Commissioner had accorded his approval for action under section 147 mechanically. If the Addl. Commissioner had cared to go through the statement of said V 'perhaps he would not have granted his approval,

which is mandatory in terms of proviso to sub-section (1) of section 151 as the action under section 147 was being initiated after the expiry of four years from the end of the relevant assessment year. The Legislature has provided certain safeguards to prevent arbitrary exercise of powers by an Assessing Officer particularly after a lapse of substantial time from completion of assessment. The power vested in the Commissioner to grant or not to grant the approval is coupled with a duty. The Commissioner is required to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. The said power cannot be exercised casually and in a routine manner. In the instant case, there had been no application of mind by the Addl. Commissioner before granting the approval.

The petition was, thus, allowed and impugned notice was quashed."

8.3. The Hon'ble Supreme Court approving the Judgment of Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax, Jabalpur (MP) vs., S. Goyanka Lime & Chemicals Ltd., [2015] 46 taxmann.com 313 held as under :

> *"SLP dismissed against High Court's ruling that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid."*

8.4. Similar view have been taken by Hon'ble Madhya Pradesh High Court in the case of Mr. Arjun Singh vs., Asst. Director of Income Tax [2000] 246 ITR 363 (MP) (supra), copy of which is filed at page-97 of the paper book. The ITAT, Delhi Bench in the case of M/s. Pioneer Town Planners Pvt. Ltd., vs., DCIT (supra) in paras 7 to 22 on similar facts relating to entry provider Shri Himanshu Verma held as under :

"7. Apropos these legal grounds , we have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. As agreed by both the parties, we have heard argument of both the sides on these legal grounds of the assessee, wherein the assessee has challenged to the initiation of reassessment proceedings and reopening of assessment u/s. 147/148 of the Act. The ld. AR submitted that the impugned order of assessment is invalid and unsustainable in law as the same has been passed by the AO without providing the reasonable time of four weeks for taking remedy against the order of disposal of preliminary objection against the incorrect assumption of jurisdiction by the AO u/s. 147 of the Act in violation of principles enunciated by Bombay High Court in the case of Asian Paints Ltd. 296 ITR 90. He further submitted that the Impugned orders of authorities below need be set aside as the

reassessment proceedings have been initiated without obtaining a subjective satisfaction by the Pr. CIT Delhi-7, New Delhi as the approval u/s 151 is mechanical and without application of mind.

8. *The ld. AR vehemently pointed out that the reassessment proceedings initiated by the Ld. AO is based on the information received from investigation wing and there was no material before him to substantiate the allegation contained in the information and therefore initiation of proceedings is bad in law. He also contended that the order under appeal is bad in law as the assessing officer has passed the order of assessment u/s 143(3) r/w. s. 147 of the Act without issuing notice u/s 143(2) of the IT Act.*

9. *The ld. AR drew our attention towards copy of proforma of obtaining approval u/s. 151 of the Act along with reasons recorded, which are placed at pgs. 16-18 of the assessee's paper book, submitted that in column 12 Addl. CIT has granted*

approval without application of mind by writing only 'Yes, I am satisfied'. The ld. AR submitted that as per decision of Hon Madhya Pradesh High Court in the case of CIT vs. M/s. S. Goyanka Lime and Chemicals Ltd. 231 Taxman 0073 (MP), where the Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act and has only recorded so "Yes, I am satisfied" then, the reopening assessment has to be held as invalid. The ld. AR also placed reliance on the decision of ITAT, Delhi in the case of ITO vs. Virat Credit & Holdings Pvt. Ltd. in ITA No.89/Del/2012 dated 09.02.2018. The ld. AR submitted that as per decision of Hon'ble High Court of Bombay in WP (L) No.3063/2017 in the case of Smt. Kalpana Shantilal Haria vs. ACIT dated 22.12.2017, sanction for issuing a reopening notice cannot be mechanical but has to be on due application of mind. Sanction accorded despite

mention of non-existent section in the notice is prima facie evidence of non-application of mind on the part of the sanctioning authority. Their lordship in this judgment categorically held that such defect cannot be cured u/s. 292B of the Act.

10. *The ld. AR placed reliance on the decision of Hon'ble High Court of Delhi dated 31.08.2017 in WP(C) No. 614/2014 in the case of Yum Restaurants Asia Pte Ltd. vs. DDIT it was held that the glaring mistakes in the proforma for approval is the valid ground for quashing the assessment on the premise of non-application of mind by all the authorities involved in the process of recording reasons and providing satisfaction/s. 151 of the Act. Further placed reliance on the decision of ITAT, Mumbai in the case of GTL Ltd. vs. ACIT reported in 37 ITR (Trib.) 0376 (Mum.), notice u/s. 148 of the Act does not mention the fact that the same is issued after the satisfaction of the authority u/s. 151 of the Act, such non-mentioning*

of this fact renders the consequent assessment invalid in law, Relied on the judgment of DSJ Communication vs. DCIT 222 Taxman 129 (Bom.).

11. On the issue of validity of reopening and initiation reassessment proceedings u/s. 147 of the Act the ld. AR also pointed out that as per ratio of the decision of Hon'ble Bombay High Court in the case of Asian Paints Ltd. 296 ITR 90 (Bom), the AO to wait for four weeks to begin assessment after disposing of the objection and non-compliance of the same renders assessment proceedings void. He submitted that in the present case the objections of the assessee vide dated 29.11.2016 filed before the AO were disposed of/dismissed by the AO by the order dated 12.12.2016 and he passed impugned reassessment order u/s. 143(3) r/w s. 147 of the Act on 22.12.2016 which is clear violation of directions given by Hon'ble High Court in the case of Asian Paints (supra) and on this count also reassessment proceedings and

consequent orders are void and thus, bad in law. This view was again approved by Hon'ble High Court of Bombay itself in the subsequent decision in the case of Aroni Commercials Ltd. vs. DCIT reported in 362 ITR 403 (Bom) and followed by ITAT, Bombay in the case of Shri Hirachand Kanuga vs. DCIT in ITA No.4261 & 4262/2012 dated 27.02.2015.

12. *On these submissions, the ld. DR could not controvert the facts that the AO disposed of objections of the assessee by way of passing order on 12.12.2016 and impugned reassessment order u/s. 143(3) r/w s. 147 of the Act was passed only after 10 days of disposal of objections. These facts trigger the ratio of the decision of Hon'ble Bombay High Court in the case of Asian paints (supra), wherein their lordship directed that the AO to wait for four weeks to begin assessment after disposing of the objections of the assessee and non-compliance the same renders assessment*

proceedings void and bad in law. Present impugned reassessment order cannot be held sustainable and valid as the AO has passed the same immediately after 10 days of disposal of/dismissal of objection of the assessee which is clear violation of direction of Hon'ble High Court of Bombay in the case of Asian paints (supra) and legal contention of the assessee on this issue are found to be acceptable and we hold so.

13. *The ld. AR drew our attention towards reasons recorded and submitted that there is no date in the reasons recorded which shows casual approach of the AO while recording the reasons. The ld. AR submitted that as per decision of Hon'ble Jurisdictional High Court of Delhi in the case of PCIT vs. Meenakshi Overseas P. Ltd. 395 ITR 677 (Del) if the reasons failed to demonstrate the link between the tangible material and formation of the reasons to believe that the income has escaped assessment then, it would amount to borrowed*

satisfaction and it has to be presumed that there is no independent application of mind by the AO to the tangible material which forms the basis of the reason to believe that income has escaped assessment. The ld. AR submitted that from the three pages of reasons recorded, it is discernable that in first four paras the AO has noted facts of the information received from DDIT (investigation), Faridabad, in para 6 modus operandi of entry providers has been noted thereafter, in para 7 & 8, it has been arisen that either during survey or post survey proceedings the assessee company has not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital/premium introducers and thus, the same is from paper companies of entry operator and then, he recorded satisfaction that the assessee company taken bogus/ accommodation entries. The ld. AR vehemently pointed out that thereafter in last para 9 & 10, the AO, without

applying mind to the information received from the Investigation Wing, recorded that he has reason to believe that the an income has escaped assessment which clearly shows that the AO proceeded to initiate initiatory assessment proceedings and reopening of assessment without having any valid satisfaction on the basis of borrowed satisfaction as there was no independent application of mind to the tangible material received from Investigation Wing, which could form the basis reason to believe that income has escaped assessment.

14. *Further placing reliance on the decision of Hon'ble High Court of Delhi in the case of PCIT vs. G&G Pharma India Ltd. reported in 384 ITR 147 (Del), the ld. AR submitted that reopening of assessment by an AO based on the information received from the Director of Investigation without making any effort to discuss the materials on the basis on which he formed a prima facie opinion that income*

had escaped assessment. The Court held that the basic requirement of s. 147 of the Act that AO should apply independent mind in order to form reasons to believe that income had escaped assessment had not been fulfilled.

15. *The ld. AR submitted that as per ratio of the decision of Hon'ble High Court of Delhi in the case of PCIT vs. RMG Polyvinyl (I) Ltd. reported in 396 ITR 5 (Del), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material as per se and, thus, reassessment on said basis was not justified. Finally, the ld. AR submitted that the impugned initiation of reassessment proceedings, notice and all consequent proceedings and orders are not valid and bad in law therefore, the same may kindly be quashed.*

16. *Replying to the above, the ld. DR submitted that the copy of proforma for obtaining approval u/s. 151 of the Act and reasons recorded by the AO are the internal departmental communication between the PCIT and ACIT and the PCIT being administrative head and senior to the ACIT has power to peruse the approval u/s. 151 of the Act and his sings thereon does not make the same as mechanical and without application of mind and the same cannot be termed or alleged as invalid or bad in law. The ld. DR submitted that in column 12 of approval the ACIT Shri Sarabjeet Singh has granted valid approval by noting that "Yes, I am satisfied" which is sufficient to comply with the provisions of s. 151 of the Act. He also submitted that if there is any defect therein the same is rectifiable u/s. 292B of the Act and thus, the reassessment proceedings and orders cannot be challenged on this count. The ld. DR further submitted that the format/proforma for granting*

approval u/s. 151 of the Act has been designed by the Department and there is no role of AO in framing and designing the same and the allegation of non-application of mind on the basis of such proforma or words used by the approving authority cannot be made.

17. *The ld. DR submitted that the team of Revenue officers work under the supervision and guidance of PCIT and the Department is very careful about the compliance of the provision of the Act as well as directions of Hon'ble Supreme Court, Hon'ble High Court and CBDT Circulars and also towards working of the Revenue Officers in the cases of initiation of reassessment proceedings and framing of reassessment orders. The ld. DR submitted that the proforma of approval u/s. 151 of the Act is being followed all over India and the ACIT applied his mind to the all material placed before him by the AO prior to granting approval u/s. 151 of the Act in column 12 of the proforma.*

Therefore, allegations made by the ld. AR are not sustainable and tenable and the same may kindly be dismissed.

18. *Placing rejoinder to the above, the ld. AR submitted that in the reasons para 6 the information of DDIT (Investigation) has been given and reference of various entry providers such as Shri Himanshu Verma, Shri Praveen Aggarwal etc. who are engaged in providing accommodation entries through dummy companies with dummy directors. The ld. AR submitted that in the table given in para 3 is taken along with para 6 of the reasons recorded then, it is clear that the names of companies are 13 and above named two persons at serial No. 11 & 12 have been noted and there is no name of entry provider in the other 11 columns and there is no link in the reasons recorded with regard to these 11 companies. The ld. AR submitted that these facts clearly show that the AO has acted on suspicion only and not on any*

credible input available to him through DDIT (investigation) information or otherwise on the basis of any exercise or application of mind by himself. Therefore, the reassessment proceedings and all consequent orders are not sustainable and bad in law. Reiterating his earlier arguments, the ld. AR vehemently pointed out that the approval/sanction given in para 12 of the proforma is not a valid sanction as per ratio of the various decisions including decision of Hon'ble High Court of Madhya Pradesh in the case of S. Goyanka Lime and chemicals Ltd. (supra), which has been upheld by Hon'ble Supreme Court by dismissing SLP of the Revenue reported in 237 Taxman 378 (SC) therefore, initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent orders may kindly be quashed.

19. *On careful consideration of above rival submissions, first of all, we may point out that from the proforma of approval u/s. 151 of the Act placed at pgs. 16-17 of the assessee paper book, it is clear that in column 12 the ACIT has granted approval for the issue of notice u/s. 148 of the Act by writing that "Yes, I am satisfied" which is not sufficient to comply with the requirement of s. 151 of the Act. As per ratio of the decision of High Court of Madhya Pradesh in the case of CIT v. M/s. S. Goyanka Lime and Chemical Ltd. (supra), where the JCIT/ACIT has only recorded "Yes, I am satisfied" then, it has to be held that the approving authority has recorded satisfaction in a mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 of the Act for reopening of assessment and in this situation initiation of reassessment proceedings and reopening of assessment has to be held as invalid and bad in law. Therefore, we are inclined*

to hold that the reopening of assessment and notice u/s. 148 of the Act are bad in law and consequently all subsequent proceedings in pursuant thereto are also bad in law and the same cannot be held as valid and sustainable.

20. So far as legal contention of the ld. AR on behalf of the assessee regarding non-application of mind by the AO, while recording reasons for reopening of assessment, is concerned from careful perusal and reading of the three pages of reasons recorded, we observe that in first four paras the AO has noted facts of the information received from DDIT (Investigation), Faridabad, further, in para 6 modus operandi of entry providers has been noted thereafter, in para 7 & 8, it has been arisen that either during survey or post survey proceedings the assessee company has not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital/premium introducers and thus, the same is

from paper companies of entry operator and then, he recorded satisfaction that the assessee company taken bogus/accommodation entries. Thereafter, the AO in last para 9 & 10, without applying mind to the information received from the Investigation Wing states/writes that he has reason to believe that the income has escaped assessment. The text and words used by the AO in the reasons recorded for reopening of assessment clearly show that the AO proceeded to initiatory assessment proceedings and reopening of assessment without having any valid satisfaction and only on the basis of borrowed satisfaction as there was no independent application of mind by the AO to the tangible material received from Investigation Wing which could form the valid basis and reason to believe that income has escaped assessment.

21. In view of decisions of Hon'ble High Court of Delhi in the cases of PCIT vs. Meenakshi Oversaes

(supra), PCIT vs. G&G Pharma (I) Ltd. (supra) and decision in the case of PCIT vs. RMG Polyviny (I) Ltd. (supra), where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified. In the case of Meenakshi Overseas (supra), their lordship speaking for the Hon'ble Jurisdictional High Court held that where the reasons recorded by the AO failed to demonstrate the link between the tangible material and the formation of the reasons to believe that income has escaped assessment then, indeed it is a borrowed satisfaction and the conclusion of the AO based on reproduction of conclusion drawn in the investigation report cannot be held as valid reason to believe after application of mind. In this judgment their lordship also held that where

nothing from the report of investigation wing is set out to enable the reader to appreciate how the conclusions flow there from then there is no independent application of mind by the AO to the tangible material which form the basis of the reasons to believe that income has escaped assessment.

22. *In the present case, as we have noted above, the conclusion recorded by the AO in para 9 & 10 of the reasons is based on the information received from the director of investigation wing and the AO without making any effort to examine and discuss the material received from the Investigation Wing and without application of the mind to the same formed a reason to believe that income had escaped assessment. This shows that the AO proceeded to initiate reassessment proceedings on the basis of borrowed satisfaction without any application of mind and exercise on the information received from the Investigation Wing of the*

Department. Therefore, we have no hesitation to hold that the AO proceeded to initiate reassessment proceedings u/s. 147 of the Act and to issue notice u/s. 148 of the Act on the basis of borrowed satisfaction and without any application of mind and examination of the so called material and information received from the investigation wing to establish any nexus, even prima facie, with the such information. Therefore, in our considered opinion the initiation of reassessment proceedings u/s. 147 of the Act, notice u/s. 148 of the Act, reassessment proceedings and all consequent proceeding and orders, including impugned reassessment and first appellate order, are bad in law and thus, not sustainable and we hold so. Accordingly, on the basis of foregoing discussion, grounds No.2, 3, 4 and additional ground of the assessee are allowed and impugned proceedings, notice u/s. 148 of the Act and all consequent orders are quashed."

8.5. The statement of Shri Himanshu Verma is also filed on record which did not find mention if M/s. Shubh Propbuild Pvt. Ltd., as mentioned in the reasons belong to Shri Himanshu Verma. There is no investor exist in the name of M/s. Management Services Pvt. Ltd., and no addition in respect of the same company have been made by the A.O. The A.O, therefore, recorded incorrect facts in the reasons for reopening of the assessment. Thus the same cannot be approved under the Law. It is well settled Law if wrong facts and wrong reasons are recorded for reopening of the assessment, reopening of the assessment would be invalid and bad in Law. We rely upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries 180 ITR 319 (P&H). It is well settled Law that note already filed with return disclosing nature of capital receipt and no other tangible material found, therefore, reopening of the assessment under section 148 was quashed. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., Atul Kumar Swami [2014] 362 ITR 693 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Kanpur Texel

P. Ltd., 406 ITR 353 (Alld.). Similarly, in the case of CIT vs., Vardhaman Industries [2014] 363 ITR 625 (Raj.), the Hon'ble Rajasthan High Court has held that "reasons must be based on new and tangible materials. Notice based on documents already on record, 148 not valid." In the instant case under appeal, the A.O. has reproduced the information received from Investigation Wing and reproduced the same in the reasons recorded under section 148 of the I.T. Act. This information shows that assessee has received the amount of credit from 06 parties, but, one of the party i.e., M/s. Management Services Pvt. Ltd., do not exist and that M/s. Shubh Propbuild Pvt. Ltd., do not belong to Shri Himanshu Verma. It, therefore, appears that A.O. has not gone through the details of the information and has not even applied his mind and merely concluded that he has reason to believe that income chargeable to tax has escaped assessment. In the reasons A.O. has recorded that assessee has received accommodation entry of Rs.2.45 crores, but, ultimately made an addition of Rs.11.05 crores without bringing any material against the assessee. The reasons to believe are, therefore,

not in fact reasons, but, only conclusion of the A.O. In the case of Meenakshi Overseas Pvt. Ltd., (supra), the A.O. in the reasons has even mentioned that he has gone through the information received which is lacking in the present case. The A.O. being a quasi-judicial authority is expected to arrive at subjective satisfaction independently on his own. The A.O. however, merely repeated the report of the Investigation Wing in the reasons and formed his belief that income chargeable to tax has escaped assessment without arriving at his satisfaction. Thus, there is no independent application of mind by the A.O. to the report of Investigation Wing to form the basis for recording the reasons. The reasons recorded by the A.O. are also incorrect as noted above. The reasons failed to demonstrate the link between the alleged tangible material and the formation of reasons to believe that income chargeable to tax has escaped assessment. The decisions relied upon by the Learned Counsel for the Assessee in the cases of Pr. Commissioner of Income Tax vs., RMG Polyvinyl (I) Ltd., 396 ITR 5 (Del.), Pr. Commissioner of Income Tax vs., Meenakshi Overseas (P) Ltd., 395 ITR 677 (Del.), Pr.

Commissioner of Income Tax vs., G and G Pharma India Ltd., 384 ITR 147 (Del.) and Sarthak Securities Co. (P) Ltd., 329 ITR 110 (Del.), clearly apply to the facts and circumstances of the case. Learned Counsel for the Assessee also relied upon Order of ITAT, Delhi Bench in the case of Pioneer Town Planners Pvt. Ltd., (supra) in which on identical facts reopening of the assessment have been quashed. The Ld. D.R. relied upon certain decisions in support of the contention that reopening of the assessment is justified, but, the same are distinguishable on facts of the present case. Considering the facts and circumstances of the case in the light of above discussion and decisions referred to in the Order, we are of the view that reopening of the assessment is bad in law and that sanction/approval granted by Pr. Commissioner of Income Tax is also invalid. We may also note that vide Order sheet Dated 23.08.2019 the case was re-fixed for hearing because the Ld. D.R. argued that approval have been granted by Commissioner of Income Tax after due discussion of the matter and perusal of the relevant information and thereafter approval in prescribed proforma sent to the A.O. and he has

mentioned that I am satisfied. However, no record was produced. Therefore, this case was re-fixed for fresh hearing. However, on the date of hearing no such record have been produced for the inspection of the Bench. Therefore, satisfaction recorded by the Pr. Commissioner of Income Tax is invalid and without application of mind. Therefore, the reopening of the assessment is invalid and bad in Law and cannot be sustained in Law. We, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act, 1961. Resultantly, all additions stands deleted. Since we have quashed the reopening of the assessment, therefore, there is no need to decide the addition on merit which is left with academic discussion only.

9. In the result, appeal of Assessee allowed."

6.7. Considering the issue involved in the present appeal in the light of above decisions, it is clear that the Addl. CIT and Ld. Pr. CIT while granting approval for reopening of the assessment under section 147/148 of the I.T. Act merely stated "Yes", which would show that they

have not applied their independent mind and merely accorded sanction without going through any material on record. The issue is thus covered against the Revenue by the aforecited decisions in which even on more facts the approval was not found valid. Therefore, the issue is covered by the above decisions of the Tribunal in which even on better footing the re-assessment order was quashed and ultimately it was held that such proceedings could not be reopened in collateral proceedings under section 263 of the I.T. Act, 1961. The Learned Counsel for the Assessee has pointed-out several inconsistencies in the reasons which also show that the reasons are recorded just by reproducing the report of the Investigation Wing without application of mind. The issue is, therefore, covered in favour of the assessee by the above Orders of the Tribunal. Following the same we hold that reopening of the assessment in this case is invalid, bad in law and therefore, such re-assessment proceedings could not be reopened under section 263 of the I.T. Act, 1961. It may also be briefly noted that the A.O. in the reasons recorded in the assessment order has

mentioned that assessee has received accommodation entries in assessment year under appeal from five parties in a sum of Rs.70 lakhs and after reopening of the assessment, A.O. called for the details and documents from the assessee and was satisfied with the explanation of assessee, therefore, the of proceedings under section 263 of the I.T. Act by the Ld. Pr. CIT could not have substituted the view taken by the A.O. In view of these facts and circumstances, we are of the view that initiation of proceedings under section 263 of the I.T. Act are not justified. The same are bad in law and invalid. We, accordingly, set aside the Order of the Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same. Resultantly, the re-assessment order Dated 05.12.2016 under section 147/143(3) of the I.T. Act, 1961 by the A.O. is restored. Appeal of assessee is accordingly allowed.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(B.R.R. KUMAR)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated31st December, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.