

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6372/Del./2019
(ASSESSMENT YEAR : 2010-11)**

M/s. Eminent Computers Pvt. Ltd., vs. ITO Ward 8 (2),
S-363, Greater Kailash 1, New Delhi.
New Delhi – 110 048.

(PAN : AAACE2256K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shaantanu Jain, Advocate
REVENUE BY : Shri Jagdish Singh, Senior DR

**Date of Hearing : 19.10.2020
Date of Order : 24.11.2020**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Eminent Computers Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 24.05.2019 passed by the Commissioner of Income-tax (Appeals)-34, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

“1. Because the action for initiation, continuation and conclusion of reassessment proceedings is being challenged on facts and law.

2. Because the action for the assumption of jurisdiction of reassessment proceedings and the misapplication of the jurisdiction sanction being ‘a fit case for issue of notice’ is being challenged on facts and law.

3. Because the action for initiation of re-assessment proceedings is unreasonable since while recording reasons, there is non-application of mind much less independent application of mind and merely relying upon investigation report by AO, further reasons recorded are vague, lacking tangible material/ reasonable cause and justification.

4. Because the action is being challenged since the addition of Rs 45,00,000/- has been made without having provided the cross examination of the person on whose statement or information the proceedings under section 147 were initiated which is in violation of the settled principle of law.

5. Because the action is being challenged since the addition of Rs 45,00,000/- has been made without making proper investigation from the other party whereby assessee has discharged the onus by providing relevant documents

6. Because the action for addition u/s 68 amounting Rs.45,00,000/- is being challenged on facts and law while all parameters for the provision of law required by assessee fulfilled as revealed in findings from acquiescence by silence.

7. Because the action for enhancement of addition on account of commission Rs. 45,000/- is being challenged on facts and law as no specific show cause notice issued by CIT(A) on assessee.

8. Because the action is being challenged on facts and law for making addition on account of commission paid amounting Rs.45,000/- at the rate of 1 % of Rs.45,00,000/-.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Initially return of income filed by the assessee for the Assessment Year 2010-11 declaring an income of Rs.7,15,990/- was processed under section 143 (1) of the

Income-tax Act, 1961 (for short 'the Act'). Subsequently, on receipt of information from the Investigation Wing for providing accommodation entries to different beneficiaries by the companies floated by Pradeep Kumar Jindal Group on the basis of search and seizure operation carried out on 18.11.2015 and from the documents impounded/seized & from the submissions of Pradeep Kumar Jindal and dummy Directors of his front companies, it was found that Pradeep Kumar Jindal provided bogus entries to various business entities and individuals by accepting cash from them. It was also found that 15 companies floated by Pradeep Kumar Jindal, which were subjected to search and survey proceedings, have no genuine business activities but have been made front companies for providing accommodation entries of various nature. Statements of dummy Directors were recorded.

3. Assessing Officer received the information that in the case at hand, share capital premium of Rs.45,00,000/- have been received from M/s. Hajima Resorts Ltd., M/s. Juneja Nagpal Construction Pvt. Ltd. and M/s. Lustre Finlease & Investment Ltd.. One Shri Subodh Kumar Khandelwal, one of the Directors of M/s. Juneja Nagpal Construction Pvt. Ltd. got recorded his statement that he has been shown Director in 34 companies by Pradeep Kumar

Jindal without his knowledge and the said 34 companies were belonging to Pradeep Kumar Jindal only.

4. AO noticed that assessee's name also figured in the name of beneficiaries of taking accommodation entries to the tune of Rs.45,00,000/- in AY 2010-11 from three corporate entities managed and controlled by Pradeep Kumar Jindal, as shown in the report of Investigation Wing, which are as under :-

S.No.	From	To	Amount	Date
1.	M/s. Hajima Resorts Ltd.	M/s. Eminent Computers Pvt. Ltd.	Rs.15,00,000	23.06.2009
2.	M/s. Juneja Nagpal Constructions Pvt. Ltd.	M/s. Eminent Computers Pvt. Ltd.	Rs.18,00,000	23.06.2009
3.	M/s. Lustre Finlease & Investment Pvt. Ltd.	M/s. Eminent Computers Pvt. Ltd.	Rs. 3,00,000	23.06.2009
4.	M/s. Lustre Finlease & Investment Pvt. Ltd.	M/s. Eminent Computers Pvt. Ltd.	Rs. 9,00,000	25.06.2009
			Rs.45,00,000	

5. AO, after examining the report of Investigation Wing recorded "reasons to believe" that income has escaped assessment and after getting prior approval of the competent authority, initiated proceedings u/s 147 of the Act by issuing notice u/s 148 of the Act and in response thereto, assessee opted to treat his return of income filed on 24.09.2010 for AY 2010-11 as reply to the notice

u/s 148 of the Act. After completing procedural formalities by providing “reasons recorded” and issuance of notice u/s 143(2) & 142(1), information was called from aforesaid three companies. After considering the contentions raised by the assessee, AO proceeded to conclude that identity, creditworthiness and genuineness of the transactions of aforesaid three companies were not established and from the statements of Shri Subodh Kumar Khandelwal, Ms. Seema Khandelwal, Ms. Meera Mishra, Shri Laxman Singh, Shri Satya and Shri Pradeep Kumar Jindal related to aforesaid three corporate companies from whom Rs.45,00,000/- claimed to have been made, admitted that these three companies were engaged in the business of providing accommodation entries in the form of share capital and share premium etc. and thereby made addition of Rs.45,00,000/- and consequently, framed the assessment at Rs.52,15,990/- u/s 143(3)/147 of the Act.

6. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has not only confirmed the addition but also enhanced the same to the extent of Rs.45,000/- i.e. @ 1% on account of commission for obtaining accommodation entries to the taxable income of the assessee. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. By moving a separate application, assessee company sought to raise additional legal grounds on the ground that the same go to the root of the case which are as under :-

“(i) Because the action for initiation of reassessment proceedings is unreasonable since the approval granted by Pr.CIT was a mechanical approval and hence initiation of proceedings u/s 147 of the Act on this ground is invalid.

(ii) Because the action for initiation, continuation & completion of reassessment proceedings is unreasonable since in view of the facts that the AO has not followed the due process of law as held by the Apex Court in CKN Drive Shaft (supra) before framing the reassessment.”

9. Ld. DR for the Revenue opposed the additional ground on the ground that at no point of time, assessee has raised any such ground before the AO or Id. CIT (A) and, as such the same is not maintainable.

10. Keeping in view the fact that the additional grounds sought to be raised by the assessee, which are legal grounds and can be raised at any stage of the proceedings, and are otherwise necessary for complete adjudication of the controversy at hand, the application for additional ground is hereby allowed in view of the

law laid down by Hon'ble Supreme Court in the case of NTPC vs. CIT 229 ITR 383 (SC).

11. Undisputedly, AO on receipt of information from ADIT (Inv.), Unit 2(1), New Delhi reopened the assessment by issuing notice dated 29.03.2017 u/s 148 of the Act by recording following reasons :-

**“Recording of reasons for reopening the case of
M/s. Eminent Companies Pvt. Ltd.
For the A.Y. 2010-11 – PAN : AAACE2256K**

In this case return of income has been filed by the assessee on 24.09.2010 at a return income of Rs.7,15,990/-.

Now it is found that the ADIT (Inv.)-Unit 2 (1), New Delhi vide his letter F.No.ADIT (Inv.)/Unit 2(1)/PKJ/2016-17/155 dated 21.03.2017 has informed that a search and seizure action was carried out on 18.11.2015 on entry provider Sh. Pradeep Kumar Jindal, resident of H-1/1A, Model Town New Delhi who was involved in providing various types of accommodation entries in lieu of cash to a large number of beneficiaries through front/non-descript companies managed and controlled by him with the help of dummy directors, simultaneously, search and seizure action was carried out on Faridabad based Sh. Sajan Kumar Jain group who had taken accommodation entries of more than 100 crores in the form of bogus share premium, exempt LTCG and advance against property etc. majority from front and non-descript companies of Sh. Pradeep Kumar Jindal.

Pre-search enquiries had revealed that Sh. Pradeep Kumar Jindal is managing and controlling a web front/non-descript companies through dummy directors and has provided accommodation entries of share capital and premium and unsecured loans to a large number of beneficiaries. The front companies of Sh. Pradeep Kumar Jindal have no creditworthiness to invest such huge amounts in share capital/premium or to issue loans and advances. The enquiries had revealed that the investing companies were shell companies. The so called directors of the shell companies had been evading income tax summons/letters issued to them from time to time.

The bank statements of various front companies of Sh. Pradeep Kumar Jindal was provided by Vaish Co-operative Bank Ltd., Nai Sarak, Delhi U/s 131 (1A) of the Income tax act 1961 analysis of the bank statement revealed that huge cash is being deposited in such bank account and RTGS/cheque issued immediately to other bank account in the same bank for purpose of laying and on 3rd and 4th stage finally RTGS/cheque is issued to the beneficiaries for purpose of providing accommodation entries.

During the course of search on 18.11.2015 and post search investigation the statement of Smt. Meera Mishra, Sh. Laxman Singh Satyapal, Sh. Subodh Khandelwal, Smt. Seema Khandelwal, Smt. Renu Jindal, Sh. Ajay Jindal and Sh. Uttam Kumar Srivastava (various dummy directors of front and non descript companies) was recorded u/s 132 and 131 (1A) of the Income tax Act, 1961 wherein all of them stated that they are namesake directors in front companies of Sh. Pradeep Kumar Jindal, that is managing all the front companies where they have been appointed as directors, that Sh. Pradeep Kumar Jindal is involved in providing accommodation entries of various nature to a large number of beneficiaries in lieu of cash, besides, Sh. Laxman Singh Satyapal and Sh. Uttam Kumar Shrivastava have admitted that besides being the dummy directors they were also cash handlers of Sh. Pradeep Kumar Jindal and explained their role in this capacity. The statement of Sh. Pradeep Kumar Jindal was also recorded during search and post search investigation u/s 132 and 131 (1A) of the Income tax act, 1961, wherein he stated and explained entire modus operandi of providing accommodation entries to various beneficiaries. Later on two consequential surveys were also carried out on 01.02.2016 in the case of Sh. Pradeep Kumar Jindal at 514, Usha Kiran Building Complex, Azadpur Commercial Complex, Azadpur, Delhi, large number of physical documents and soft data majority tally data of the front companies of Sh. Pradeep Kumar Jindal was found and impound during the survey operation on 25.05.2016.

The documents/digital data seized impounded during search/survey action and the admission of Sh. Pradeep Kumar Jindal, dummy directors of his front companies & beneficiaries has established beyond doubt that Sh. Pradeep Kumar Jindal provides bogus entries to various business entities and individual by accepting cash from them. The detailed analysis of digital data and annexures seized/impounded revealed that Sh. Pradeep Kumar Jindal has provided accommodation entries of shares Capital/Premium, Share forfeiture, Exempt long term capital gain/loss, short term capital gain/loss

advance against property, unsecured loans, transfer of company, bogus sale-purchase etc.

The name of individuals of Sh. Pradeep Kumar Jindal group whose bank accounts have been used by him for purpose of providing accommodation entries are :-

S. No.	Name of the individual	Address of the individual	Relation with Sh. Pradeep Kr. Jain
1.	Pradeep Kumar Jindal	H-1/1A, Model Town, Delhi	Self
2.	Mamta Jindal	H-1/1A, Model Town, Delhi	Wife and Dummy Director
3.	Archit Jindal	H-1/1A, Model Town, Delhi	Dummy Director and Cash Handler
4.	Meera Mishra	K-31/6, Model Town-III, Delhi	Dummy Director
5.	Renu Jindal	4/429, Kacheri Ghat, Agra	Sister-in-law and Dummy Director
6.	Ajay Kumar Jindal	4/429, Kacheri Ghat, Agra	Brother and Dummy Director
7.	Subodh Kumar Khandewal	88, Baldev Park, Parwana Road, Delhi	Dummy Director
8.	Uttam Kumar Shrivastava	88, Baldev Park, Parwana Road, Delhi	Dummy Director and Cash Handler
9.	Laxman Singh Satyapal	Gali No.10, Block A, Baba Colony, Burari, Delhi	Dummy Director and Cash Handler

During the course of post-search investigation it has been found that the assessee was using accommodation entries in the form of share premium/share application money/unsecured loan/bogus purchase/advance against property/ transfer of company etc.

3.1	Commission rate charged by Sh. Pradeep Kumar Jindal and as admitted by him
3.1.1	Commission admitted by Sh. Pradeep Kumar Jindal on date of search i.e. 18.11.2015
3.1.2	Commission admitted by Sh. Pradeep Kumar Jindal during his statement dated 21.03.2016
3.2	Evidence of commission rate charged by Sh. Pradeep Kumar Jindal found in post search investigation

Sh. Pradeep Kumar Jindal has admitted to have charged commission in cash @ 2% from various beneficiaries for providing accommodation entries in lieu of cash. However, during the course of post search investigation, evidence have been found that Sh. Pradeep Kumar Jindal has charged commission in cash @ 2.5% on the accommodation entries. The commission paid in cash @ 2.5% by the beneficiary to Pradeep Jindal on account of accommodation entries has to be added income of the beneficiary assessee.

S. no.	Name & address of the beneficiary	Amount	Date of entry	Entry provided by
1.	M/s. Eminent Computers Pvt. Ltd.	18,00,000	23.06.2009	M/s. Juneja Nagpal Construction Pvt. Ltd.
2.	M/s. Eminent Computers Pvt. Ltd.	3,00,000	23.06.2009	M/s. Luster Finlease & Investment Pvt. Ltd.
3.	M/s. Eminent Computers Pvt. Ltd.	9,00,000	23.06.2009	M/s. Luster Finlease & Investment Pvt. Ltd,

These aforesaid transactions are found recorded at various documents seized from Pradeep Kumar Jindal Group of Companies, a copy of which was supplied along with the report as scanned documents in the CD.

I have carefully examined the above referred information as received along with the return of the assessee for A.Y. 2010-11. The return of income filed by the assessee has also been analyzed with reference to the information received from the Investigation Wing and keeping in view the factual position found by the Investigation Wing on the basis of documents seized in the search operation and post search inquiries, as discussed above. Considering all these material in

totality there is enough material on record to have a reason to believe that share application money/Share premium consideration are merely and accommodation entries for which the assessee company has paid cash from its coffer and commission thereon.

The assessee has received unexplained sums as accommodation entries through Pradeep Kumar Jindal as per the above details as per information available with the undersigned. As explained above, the identity, creditworthiness and genuineness of transactions with these persons/subscribers as accommodation was found to be dubious. The transaction amount of Rs.30,00,000/- received as discussed above leads to a credible question on the genuineness of share capital/ share application money received etc., during the year within the meaning of section 68 of the Income Tax Act, 1961, on the basis of facts discussed above relating to the so called subscribers. It is evident from the perusal of the return that assessee has not disclosed its income to the tune of Rs.30,00,000/-.

Keeping in view the above facts, I have reason to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above assessment year 2010-11, the income chargeable to tax to the extent of above mentioned accommodation entry amounting to Rs.30,00,000/- as mentioned above has escaped assessment within the meaning of section 147/148 of the Act.

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

Sd/-
(Virendra Singh)
Income Tax Officer,
Ward 8(2), New Delhi.

12. Ld. AR for the assessee contended inter alia that Principal CIT has accorded sanction without applying judicial mind which is not sustainable; that AO has not applied his independent judicial mind while recording reasons for reopening the assessment rather

reasons are based upon alleged admission of Pradeep Kumar Jindal, Shri Subodh Kumar Khandelwal, Ms. Seema Khandelwal & Ms. Meera Mishra.

13. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the assessee contended inter alia that only prima facie material is to be seen for the purpose of reopening; that sanction has been accorded by Principal CIT for reopening after perusing entire assessment record prepared by the AO as well as report of the Investigation Wing after duly applying his mind. Ld. DR for the Revenue further supported the order passed by Ld. CIT(A) by placing on record, Annexure 'A', which is summary of the case purportedly put up before Pr. CIT for according approval for initiating proceedings U/s 148 of the Act. We are of the considered view that neither from the approval dt. 29.03.2017 nor from Annexure 'A' it is made out if Pr. CIT has applied his mind before writing in cl. 13 of the approval that, "I am satisfied". Ld. DR has also filed written submissions to support his arguments which are made part of the record.

14. First of all, ld. AR for the assessee drew our attention towards the sanction accorded by the ld. Principal CIT for reopening the assessment which is available at pages 14 & 15 of the paper book. On perusal of the sanction accorded by the ld.

Principal CIT in the prescribed proforma goes to show that there is a question no.13 viz.:

“Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the A.O. that it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961.”

15. In response to the aforesaid question no.13 in the prescribed proforma for according sanction, Id. Principal CIT has written **“Yes, I am satisfied.”**

16. No doubt, column of “reasons recorded” are there in the prescribed proforma shown as Annexure A, available at page 14 of the paper book, and it is mentioned in Column No.11 that “reasons for the belief that income has escaped assessment”. In response to the said question as contained in Column No.11, it is mentioned by the AO that “as per Annexure A”. But no such Annexure ‘A’ has been brought on record before the Bench for perusal. In these circumstances, it is difficult to make out as to what were the “reasons for belief that income has escaped assessment” with the AO on the basis of which Principal CIT has accorded sanction by merely writing **“I am satisfied.”**

17. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it is proved on record that the sanction is accorded in mechanical manner and Pr.CIT has not applied independent mind while according sanction as there is not an iota

of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/ss 147/148 of the Act.

18. Even the AO has not applied his judicial mind independently while recording the reasons for initiating proceedings u/s 147/148 of the Act. Bare perusal of the reasons recorded shows that the entire emphasis is placed on the report of the Investigation Wing, which has otherwise been based upon the statements of Pradeep Kumar Jindal, Shri Subodh Kumar Khandelwal, Ms. Seema Khandelwal & Ms. Meera Mishra who have furnished the list of companies stated to be not doing any business but engaged in providing accommodation entries. Before issuing the notice, the AO has not examined the profile of the said companies to arrive at the logical conclusion so as to issue notice u/s 148 of the Act.

19. Bare perusal of the “reasons recorded” further shows that the reopening has been made on the allegation that the accommodation entry to the tune of Rs.30,00,000/- have been provided by M/s. Juneja Nagpal Construction Pvt. Ltd. and M/s. Lustre Finlease & Investment Ltd., however after initiating the reassessment proceedings u/s 147/148 of the Act, AO roped in one M/s. Hajima Resorts Ltd. for providing accommodation entry to the tune of

Rs.15,00,000/- to the assessee and proceeded to make addition of Rs.45,00,000/-.

20. Neither any reason has been recorded which is sufficient to believe that income to the tune of Rs.15,00,000/- received from M/s. Hajima Resorts Ltd. has escaped assessment nor any such notice has been given to the assessee. All these facts goes to prove that the AO has not applied his judicial mind before recording the “reasons to believe” that such and such income has escaped assessment rather proceeded to initiate the proceedings u/s 147/148 of the Act by blindly following the report of the Investigation Wing. Before according approval, Id. Principal CIT has also not examined all these facts rather accorded the approval in a mechanical manner.

21. Coordinate Bench of the Tribunal in case cited as **ITO, Ward 17 (4), New Delhi vs. M/s. Virat Credit & Holdings Pvt. Ltd. in ITA No.89/Del/2012 & M/s. Virat Credit & Holdings Pvt. Ltd. vs. ITO, Ward 17 (4), New Delhi in CO No.57/Del/2012 order dated 09.02.2018** dealt with the identical issue arising out of the search and seizure operation conducted by the Investigation Wing on 18.11.2015 on Pradeep Kumar Jindal Group of companies who were allegedly engaged into providing accommodation entries, quashed the reassessment on the ground

that AO has not applied his judicial mind independently and that Id. Principal CIT has accorded mechanical approval by merely writing words that **“Yes, I am satisfied.”** without applying his judicial mind by returning following findings :-

“10. First of all, Id. AR for the assessee company drew our attention towards sanction accorded by the Addl.CIT for reopening of the assessment obtained by moving an application under Right to Information Act, 2005, available on file as Annexure 'A'. Perusal of the sanction accorded by Addl. CIT in the prescribed proforma shows that there is a question no.13 viz :

“13. Whether the Addl. CIT is satisfied on the reasons recorded under section 147 that it is a fit case for issue of notice under section 148 of the IT Act.

11. In response to aforesaid question no.13 in the prescribed proforma, Addl. CIT has written "Yes. I am satisfied." No doubt, columns of reasons recorded was there and it is also mentioned in column no.12 that reasons for belief that income has escaped assessment are as per annexure enclosed but such annexure has not been produced before the Bench for perusal.

12. Apparently, from the approval recorded and words used that "Yes. I am satisfied.", it has proved on record that the sanction is merely mechanical and Addl.CIT has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s 148 of the Act.

13. Even AO while recording the reasons for initiating the reopening of assessment has not applied his mind independently. When we peruse the reasons recorded, available at pages 31-32 of the paper book, the entire reasons have been based on the statement of one Shri P.K. Jindal, who has furnished the list of companies stated to be not doing any business activities but engaged in providing accommodation entries. Before issuing the notice AO appeared to have not examined the profile of the said companies to arrive at a logical conclusion so as to issue the notice u/s 148 of the CO No.57/Del/2012 Act. When this fact is

examined in the light of the completed assessment of the assessee u/s 143 (3), all the documents concerning share application money, now available at pages 1 to 30 of the paper book, were supplied to the AO. This fact has not been taken into consideration by the AO before initiating the proceedings u/s 147/148 of the Act. However, since reopening of assessment in this case is otherwise not sustainable, we are not entering into any merits.

14. Hon'ble Supreme Court in case cited as CIT vs. S. Goyanka Lime & Chemical Ltd. - (2015) 64 taxmann.com 313 (SC) examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording "Yes. I am satisfied." And held that reopening on the basis of mechanical sanction is invalid by returning following findings :-

" Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held 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 - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

Search and Seizure-Procedure for block Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and CO No.57/Del/2012 147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'-Action for sanction was alleged to be without application of mind and to be done in mechanical manner-Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such consideration, both Appellate authorities interfered into matter- No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only

pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."

15. *The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings:-*

" 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 CO No.57/Del/2012 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."

22. In view of what has been discussed above, we are of the considered view that according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Principal CIT/CIT, as the case may be, as required u/s 151 of the Act. We fail to understand that when the Revenue Department is manned by highly qualified officers having experience of at least 20 years till reaching in the rank of Principal CIT, they are required to evolve legally sustainable “standard operating procedure” containing “self-speaking reasons” for according sanction while discharging such quasi-judicial function.

23. Hon'ble High Court of Delhi in case cited as **SABH Infrastructure Ltd. vs. ACIT in WP (C) 1357/2016 order dated 25.09.2017** has issued guidelines to the Revenue authorities while CO No.57/Del/2012 deciding the issue of reopening u/s 147/148 of the Act. Operative part of which is reproduced as under:-

"19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or

endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re- opening the assessment - especially in those cases where the first proviso to [Section 147](#) is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for CO No.57/Del/2012 reopening of the assessment beyond what has already been disclosed."

24. Perusal of the written submissions filed by the Id. DR for the Revenue goes to prove that he has relied upon the order passed by the AO as well as Id. CIT (A). Case law relied upon by the Id. DR is touching the merits of the case. Since the very initiation of proceedings u/s 147/148 of the Act is not sustainable in the eyes of law, we are not inclined to enter into the merits of the additions, so case law relied upon by the Id. DR is not applicable to the facts and circumstances of the case.

25. In view of what has been discussed above, we are of the considered view that reassessment opened by the AO and sustained by the Id. CIT (A) in this case is not sustainable in the eyes of law,

hence hereby quashed. Consequently, appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 24TH day of November, 2020.

**SD/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24TH day of November, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-34, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**