

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-II" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.4257/Del./2019
Assessment Year 2009-2010

Maheshwari Roller Flour Mills Pvt. Ltd., New Delhi. PAN AAACM1075C C/o. Raj Kumar & Associates, CA, L-7A (LGF), South Extn. Part-II, New Delhi – 110 002.	vs.	The Income Tax Officer, Ward – 16 (1), New Delhi.
(Applicant)		(Respondent)

For Assessee :	Shri Raj Kumar, C.A. Shri Sumit Goel, C.A.
For Revenue :	Shri Prakash Duby, Sr. DR

Date of Hearing :	10.12.2020
Date of Pronouncement :	17.12.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-6, Delhi, Dated 29.03.2019, for the A.Y. 2009-2010, challenging the initiation of re-assessment proceedings under section

147/148 of the I.T. Act, 1961, addition of Rs.25 lakhs under section 68 of the I.T. Act, 1961, received from M/s. KDG Properties and Con (P) Ltd., and addition of Rs.45,000/- under section 69C of the I.T. Act, 1961 on account of unexplained expenditure.

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

3. Briefly the facts of the case are that assessee is a company which was incorporated on 20.06.1988 under the Company Act, 1956. The assessee-company filed its return of income on 30.09.2009 for the assessment year under appeal declaring income at Rs 20,83,590/-. The return was processed under section 143(1) of the I.T. Act, 1961. Subsequently, an information was received from the office of the Director of Income-tax (Investigation-II), New Delhi, Dated 12.03.2013, mentioning therein that a search operation was carried out in the case of S.K. Jain group of cases wherein after investigation and extensive enquiry and examination of document seized during course of search, it

was found that the said group has been providing accommodation entries to various persons and the assessee-company was also figured in the same list. The A.O, therefore, recorded reasons for reopening of the assessment and issued notice under section 148 of the I.T. Act, 1961. The A.O. reproduced the reasons at pages 2 to 8 of the assessment order and after considering the objections of the assessee company against reopening of the assessment, rejected the objections of the assessee company and made the addition of Rs.25 lakhs under section 68 of the I.T. Act, 1961 on account of unexplained share capital and further made addition of Rs.45,000/- on account of unexplained expenditure for obtaining accommodation entry. The Ld. CIT(A), however, dismissed the appeal of assessee.

4. Learned Counsel for the Assessee referred to PB-22 which is the Form for recording the reasons for initiation of re-assessment proceedings under section 148 of the I.T. Act, 1961. The same reads as under :

*“Form for recording the reasons for initiation of proceedings
u/s.148 of Income Tax Act, 1961.*

1.	<i>Name of Assessee</i>	<i>M/s. Maheshwari Roller Flour Mills Pvt. Ltd., B-11, W.H.S. Kritinagar, New Delhi-110015</i>
2.	<i>Permanent Account Number</i>	<i>AAACM1075C</i>
3.	<i>Status</i>	<i>Company</i>
4.	<i>District/Circle/Range</i>	<i>Ward-16(1)</i>
5.	<i>Assessment year in respect of which it is proposed to issue notice u/s.148.</i>	<i>2009-10</i>
6.	<i>The quantum of income which has escaped assessment.</i>	<i>Rs.25,00,000/-</i>
7.	<i>Whether the provisions of sec.147(a) or 147(b) are applicable or both the sections are applicable</i>	<i>147(b)</i>
8.	<i>Whether the assessment is proposed to be made for first time. If the reply is in the affirmative, please state :</i>	<i>YES.</i>
	<i>(a) Whether any voluntary return had already been filed, and (b) If so, the date of filing the said return.</i>	<i>30.09.2009</i>
9.	<i>If the answer to item 8 is in the negative, please state</i>	<i>NA</i>
	<i>(a) The income originally assessed;</i>	
	<i>(b) Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation;</i>	

10.	<i>Whether the provisions of Sec.150(1) are applying. If the reply is in the affirmative the relevant facts may be stated against item No.11 and it may also be brought out that the provision of section 150(2) would not stand in the way of initiating proceeding u/s.147.</i>	NA
11.	<i>Reasons of the belief that income has escaped assessment.</i>	As per Annexure-A
12.	<i>Whether the Addl. CIT is satisfied on the reasons recorded by the ITO that it is a fit case for issue of a notice under section 148.</i>	<i>I have carefully examined the proposal of the Assessing Officer and reasons recorded by the Assessing Officer for initiating action u/s.147 of the Act. It is seen that in this case information was received from Investigation Wing along with incriminating documents seized during the course of search in case of Sh. S.K. Jain Group which provided accommodation entry to the assessee in lieu of the cash payments. Subsequent to the information the Assessing Officer has made its own investigation by examining the information received from Investigation Wing, return of income, copies of relevant seized document, findings of the Assessing Officer and CIT(A) in case of Shri S.K. Jain. After making further investigation, the Assessing Officer has formed his belief that income amounting to atleast Rs.25,00,000/- has escaped assessment. After considering aforesaid</i>

		<i>material I am satisfied that this is fit case for issue of notice u/s.148 of the Act.</i>
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*Sd/- Raman Kant Garg,
Addl. Commissioner of Income Tax,
Range-16, New Delhi.*

13.	<i>Whether the Pr. CIT is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice under section 148.</i>	<i>For the reasons as recorded by me in Annexure-I [copy attached with Memo], I am satisfied that it is a fit case for issue of notice u/s.148 of the Act. Approval u/s.151 is granted.</i>
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*Sd/- Sanjay Kumar Mishra
Pr. Commissioner of Income Tax-06,
New Delhi.”*

4.1. He has submitted that A.O. in para-11 has attached Annexure-A which are reasons for reopening of the assessment which is reproduced at pages 2 to 8 of the assessment order, copy of which is also filed at PB-1 to 13.

The same reads as under :

4 - " The assessee is a company which was incorporated on 20.06.1988 under the Company Act, 1956. The business of the assessee is not mentioned in the return of income for the A.Y. 2009-10. The details of the directors of the assessee company are hereunder:

(a) Mangi Lal Karnany

2. The company filed its return of income on 30.09.2009 for the assessment year 2009-10 declaring income at Rs 20,83,590/-. Thereafter the return was processed under 143(1) of the I.T. Act on. However, the case was not selected for scrutiny.

3. Subsequent to the processing of the return of income u/s. 143(1) on 28.02.2011. An information was received from Investigation Wing on 12.03.2013. After receipt of the information from the Investigation Wing, New Delhi following enquires were made

(a) Scrutiny of return of income.

The return of income of the assessee company has been downloaded from the ITD system and the same was examined in the light of information received from Investigation Wing. On examination of the return of income, it has been found that during the year under consideration, the share capital / loans of the assessee company have increased to the extent as provided in the information of Investigation Wing.

(b) Other enquiry if any.

Details of Information received regarding escapement of Income :

4. In this case, the information has been received from the office of the director of Income-tax (Investigation-II) Jhandewalan Ext. New Delhi vide letter No. F. No. DIT(Inv)-II/U/s.148/2012-13/197, dated 12.03.2013 mentioning therein that a search operation was carried out in the case of Sh. Surendra Kumar Jain group of cases (herein after known as Entry operator) wherein after intensive and extensive enquiry and examination of document seized during course of search it has been noticed that the said group is involved in providing accommodation entries to the persons which were named in the report. The assessee company also figures in the list as one of the beneficiaries of the accommodation entries.

5. As per the report of Investigation Wing, name of various companies / persons being beneficiaries were identified after extensive verification of documents seized as a result of search operation conducted against Sh. S.K. Jain Group (Entry Operator). The incriminating document seized during search (date of search 14.09.2010) included the companies/ persons as identified to be beneficiaries have obtained the accommodation entries generally in the form of share capital / share premium / loans. The details like the amount received by these companies / persons, the cheque / PO number, the name of issuing company, the mediator/ middle man, bank e.t.c. as recorded in the seized documents have been tabulated and enclosed with the report.

6. In the appraisal report of Sh. Surendra Kumar Jain Group, the investigation Wing has summarized evidences which established that Sh. Surendra Kumar Jain and his brother Sh. Virendra Jain were accommodation entries providers and their modus operandi for providing accommodation entries in lieu of cash which are discussed below in brief.

A. During the course of search proceedings in the Sh. S.K. Jain Group it was found that a number of companies were running from the residential as well as other address related to Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain. However, all the books of accounts and other relevant papers of these companies were found at the residence of Sr. Surendra Kumar Jain and Sh. Virendra Kumar Jain itself and no documents was found at the other addresses which were mentioned in the statutory records of these companies. The above facts and result of post search enquiries have revealed Shri Surendra Kumar Jain and Shri Virendra Kumar Jain companies are controlled by through dummy directors / Principal officers of these companies.



B. The seized records include blank unsigned as well as blank signed cheque book, acknowledgement of filing of return of these companies, user ID and password of all companies of e-filing of their return, bank account opening and closing letters, authorization letters for attending assessment proceedings, book of account in tally format as well as format for filing the return, proof of use of mobile numbers of Sh. Surendra Kumar Jain and Sh. Virendra kumar Jain in bank account opening forms where option of mobile banking was required. Thus all these companies are tools of their business of providing accommodation entries.

C. The investigation wing has drafted a list of such 99 companies being controlled by S.K. Jain Group which has been supplied along with the report. A copy of the same is placed on record.

7. The investigation wing has sent a list of beneficiaries to the Assessing Officers hearing jurisdiction over these cases who have obtained accommodation entries through S.K. Jain Group which included detail of accommodation entries taken by the beneficiaries. The report has also included the name of company of S.K. Jain which have provided the accommodation entries to the beneficiary. Scanned copy of the relevant document seized from S.K. Jain Group wherein the details pertaining to the accommodation entry taken by the beneficiary from S.K. Jain Group Company were also sent with the report.

8. A careful scrutiny of the details and copies of seized documents have revealed that the assessee company has taken accommodation entry amounting to Rs.25,00,000/- in the F.Y. 2008-09 from the S.K. Jain Group Companies (details as per Annexure - 'A'). These transaction are found recorded at various documents seized from S.K. Jain Group Company (details as per Annexure - 'A'), a copy of which has been supplied along with the report as scanned documents in the CD.

Details of analysis of information received and collected material

9. I have carefully examined the above referred to information as received along with the return of the assessee for A.Y. 2009-10. It is evident from the perusal of the return that assessee has introduced capital in the form of share application money amounting to Rs. 25,00,000/- during this period. The above information as disclosed in return of income is corroborated with the information received about the receipt of accommodation entry by the assessee amounting to Rs. 25,00,000/- from the Investigation Wing as discussed above.

10. I have carefully perused the report of investigation wing along with transaction as recorded in the seized documents and results of post search enquiries; it has revealed following important facts:

i. That passbooks and chequebooks in the name of approximately 200 persons/firms/companies including the assessee company were found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain containing undated blank signed cheque.

ii. That computer hard discs seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contain confidential details of user name, passwords and IDs of the various companies required for filing of e-returns of these companies, authority letter of these companies authorizing to represent these companies in various Govt. Department.

iii. That details of funds transferred through cheque / RTGS/pay order to various entities / persons through these dummy companies maintained by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain in excel sheets found and seized during the course of search on them.

iv. That maintenance of books of accounts in tally format as well as in the format required for preparing Income Tax Return of these companies in the computer Hard Discs found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

v. That daily cash books, balance sheet and cheque books found and seized from Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain wherein details of cash received from different companies / persons through various middleman / agents in lieu of accommodation entries provided to them on different dates have been recorded.



- vi. That one of the mediators Sh. Rajesh Aggarwal admitted that he arranged accommodation entries for a group through a person named Sh. Ravinder Goel through various companies directly controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain and also accepted the fact that he knew since long that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain are engaged in the business of providing the accommodation entries in lieu of cash charging a certain amount of commission for the same.

vii. That these dummy companies are running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

viii. That existence of third party correspondence with these companies in the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain have been re-covered from S.K. Jain Group Company.

ix. That S.K. Jain / Virendra Jain are / were director in many of these companies presently or at one point of time in the past.

It is evident from above that all the relevant documents pertaining to conduit companies/firm were found in custody and control of Shri S.K. Jain

11. It has been further noticed that out 99 companies controlled by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain, a large number of companies have following common addresses:

i. 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi (12 companies).

ii. 3198-15, 4th Floor, Gali No.1, Sangatrashan, Paharganj, New Delhi (14 companies).

iii. 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj, New Delhi. (11 companies).

12. To verify the genuineness and the existence of these companies at the above mentioned addresses, a simultaneous survey action 133A of the I.T. Act, 1961 was carried out on 14.09.2010 on above referred to address which resulted following facts:

a. At 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi the survey party found only one person named Sh. Mukesh Kumar, S/o Sh. Satyender Kumar, R/o Village Gazera, Distt. Pauri Gadhwal. He told the survey party that his employer and owner of that place is one Sh. Virendra Jain R/o somewhere in Rajender Nagar, Delhi and provided his telephone No. as 9891095232. It was already proved from the call records that this telephone number pertained to Sh. Virendra Jain resident of 221/, New Rajinder Nagar, New Delhi. Further, it was also told by him that Sh. Virendra Jain used to visit once in a while at 106, Palco House, T-10, Main Patel Road, Patel Nagar, Delhi. Sh. Mukesh Kumar also told that no books of account of any company are present at 106, Palco House, T-10, Main Patel road, Patel Nagar, Delhi.

b. During the course of the survey at premise, no. 3198-15, 4th Floor, Gali No.1, Sangatrashan, Paharganj, New Delhi, it was found that this premise is a small room, which is incapable of accommodating so many companies and persons.

c. At the third premises 209, Bhanot Plaza, 3, D.B. Gupta Road, Paharganj, New Delhi, as reported by the survey team, there was single room office occupied by one Sh. Jaikishan Tikku S/o late Sh. Prem Nath Tikku, who is running his courier business from there in the name and style of M/s Linkers Couriers since Aug. 2006. Mr. Tikku had told the survey team that he was a tenant of Sh. Surendra Kumar Jain and was paying him monthly rent of Rs.3,000/- in cash every month.

d. It is evidence from survey that the companies controlled by Shri S.K. Jain having registered office at the above mentioned three addresses, did not exist at those addresses. Neither any books of account, document relating to business and employee of these companies were found at those addresses. From a single address a number of companies have been shown to be registered as well as this address was also declared as the residential address of various directors of different companies and partners/ proprietors of various firms. As mentioned above, during the course of survey operation at these addresses, there are found to be very small dwelling units and it is just impossible to be an office and residential address of so many entities and persons.



13. I have also noted another pertinent point highlighted by investigation wing that during the course of post search enquiries they had obtained the bank details of S.K. Jain Group Companies like account opening forms, introducers' form and statement of accounts etc. for last few years on test check basis. It has been pointed out that in some cases where the option of mobile banking has been exercised, the mobile numbers of either of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain were provided in the account opening forms of those specific companies/firms/persons. Some of these bank accounts are mentioned.

Name of the bank	Account No.	Name of the Company	Mobile NO.	Person to whom this number belongs
Axis Bank	224010200005906	Eagle Infratech Pvt. Ltd.	9891095232	Virendra Jain
Axis Bank	224010200007160	Kailash Textiles	9891095232	Virendra Jain
Axis Bank	223010200020846	Mani Mala Delhi Properties Pvt. Ltd.	9891095232	Virendra Jain
Axis Bank	224010200005890	Singhal Securities Pvt. Ltd.	9310395234	Surendra Kumar Jain
Axis Bank	224010200007016	Roshal Lal Lalit Kumar & Co.	9310395234	Surendra Kumar Jain
Axis Bank	224010200005845	Finage Leasing & Finance Ltd.	9310395233	Surendra Kumar Jain
Axis Bank	223010200012014	Mani Mala Delhi Properties Pvt. Ltd.	9310395235	Surendra Kumar Jain
Axis Bank	224010200006989	Erode Clothing Empire	9310395235	Surendra Kumar Jain

This aspect strongly establishes that all the 200 odd entities, data pertaining to which were found and seized from the premises of S.K. Jain Group, are basically controlled by Shri S.K. Jain his brother Shri Virendra Kumar Jain.

14. I have also noted as highlighted in the report that incrementing documents in the form of hand written cash books have been seized from the residence of Shri S.K. Jain showing the receipts of cash by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain to provide accommodation entries. It has been elaborated that

a. these cash books were maintained on daily basis to keep a record of their daily transactions of receipts and payments of cash as well as to keep them aware in respect of entries provided as well as entries pending in lieu of the cash which they have received. However, this cash being recorded by them in hand written cash books which are not recorded in their regular books of accounts. To introduce and channelize this unexplained cash in their books, they have shown the sales various items including Rice etc., made through the bogus proprietary/ partnerships firms directly controlled by them.

b. Thus, 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 different paper companies floated by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through a complex trail of transactions, so as to hide the actual sources of funds of the last set of recipient companies of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.

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



- d. This contention gets more credibility with the seizure of documents by investigation wing evidencing the above mentioned process used by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain for providing accommodation entry.

15. I have also noted that various specific documents were seized from S.K. Jain Group which establish that Sh. SK Jain and Sh. Virendra Kumar Jain were engaged in the business of providing accommodation entries by issuing cheque in lieu of cash through several paper companies controlled by them by charging a certain amount of commission. e.g.

a. Pages No. 1 to 13 of the Annexure A-150 found and seized from the residence of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain contain one account in respect of one Sh. Satish Garg for a period spread to three Financial Years i.e. April 2007 to March 2010. Below the printed table on page no. 2 the consolidated amount of commission on an aggregate amount of accommodation entries of Rs. 816702000/- provided to different companies through this above mentioned person Satish Garg is calculated at Rs. 14292285/- @ 1.75%.

b. Further, out of this total amount of commission of Rs. 14292285/- on the accommodation entries provided till 31.03.2010 an amount of Rs. 10159000/- has been reduced, apparently being received, and an amount of Rs. 342343/- is added to the balance of Rs. 4133285/- recording 'new' before it. Below these calculations three more amounts have been recorded against three different dates which were apparently received by Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain apart from the amount of Rs. 10159000/- shown as received till 31.03.2010. The date wise and amount wise breakup of the receipts of Rs 10159000/- is given in a printed table on page no. 1 of this seized annexure A-150.

A scanned copy of both these documents was supplied along with the report as insertion at relevant points in the text. A copy of the same is placed on record.

16. It has also been pointed out that Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain also kept a meticulous record of cheque/ RTGS(handwritten 'cheque books') issued from the bank accounts of these concerns to various beneficiary parties (in lieu of the cash) that had been regularly received by them over a period time and regularly entered in the cash books maintained by them in their own hand writing.

Summary of evidences relating to the assessee

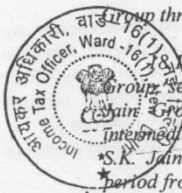
Return of income

17. The return of income on 30.09.2009 for the assessment year 2009-10 declaring income at Rs 20,83,590/- .Thereafter the return was processed under 143(1) of the I.T. Act on. The case was not selected for scrutiny for A.Y. 2009-10. The assessee has declared in its return of income that it has share application money of Rs. 2,22,48,214/- which corroborates the information received from the investigation wing.

Relevant seized documents

18. I have also gone through various documents (relevant to the instant case) seized from the premises of Shri S.K. Jain Group during the course of search which has been supplied in the form of scanned copies in a CD along with the report as per the Annexure - 'A', annexed herewith. It is seen from the perusal of the same that the name of the assessee appears on these documents having taken accommodation entries amounting to Rs. 25,00,000/- from various companies controlled by S.K. Jain Group through intermediary (O.P. Karnani) as evident from for-going discussion.

On further perusal and analysis of cash book and ledger maintained by the SK Jain Group, seized during the course of search operation of S.K. Jain Group, it is noticed that M/s. S.K. Jain Group (Accommodation entry operator) received the certain payments in cash through intermediary (O.P. Karnani) as per Annexure - 'B' annexed herewith. It is seen from this table that S.K. Jain Group has received Rs. 1,07,00,000/- from the intermediary - O.P. Karnani during the period from 06.01.2009 to 08.01.2009. Part of this sum has been converted into accommodation entry to the benefit of instant assessee as evident from for-going discussion. The difference in the cash



received from intermediary and accommodation entries issued to the instant assessee may be on account of the intermediary acting on behalf of many beneficiaries including the instant assessee.

19. 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 enquiries, 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 / loan received by the assessee company during the year under consideration are merely a accommodation entries for which the assessee company has paid cash from its coffer and commission thereon.

Assessment & Appeals Proceedings:

20. As sequel to the information received from the Investigation Wing, copies of assessment order & CIT(A) order were obtained from assessment wing.

Assessment Order

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CIT(A) Order

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Reason for formation of belief:

21. I have carefully perused and considered the return of income of the assessee, information received from Investigation Wing and copies of assessment order and appeal order as discussed along with evidences related to the assessee. It is evident from the same:

a. That S.K. Jain Group is engaged in the business of providing accommodation entries to beneficiaries in cash to a series of entity controlled by them.

b. During the course of search on S.K. Jain Group various incrementing documents have been seized which show that all the companies/entities pertaining to the group do not have independent existence as a separate entity and are a part of a hotch-potch providing accommodation entries.

c. The following evidences found and seized during the course of search on S.K. Jain Group from their premises specifically confirm the for-going proposition:

- Seizure of passbooks and/or cheque books in the name of approx. 200 persons/firms/companies
- Computer hard disks containing confidential details of in the form of user name, password, id of various companies etc.
- Documents containing the details of fund transfer through cheque/ RTGS/pay order to various entities/persons through these dummy companies.
- Seizure of daily cash books wherein details of cash received from different companies/ persons through various middleman/agents in lieu of accommodation entries provided to them on different dates have been recorded.
- That these dummy companies are running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.
- That existence of third party correspondence with these companies in the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain have been re-covered from S.K. Jain Group Company.

• That S.K. Jain / Virendra Jain are / were director in many of these companies presently or at point of time in the past.

• Seizure of documents showing working of commission of mediators.

d. That evidences have been seized from S.K. Jain Group pertaining to all legs of modus operandi giving accommodation entries in lieu of cash i.e. at the stage of receipt of cash, at the point of payment of cheque, working of commission, control of intermediary companies etc.



- e. Perusal of various documents as per Annexure - 'A' seized from the premises of Shri S.K. Jain Group shows that the name of the assessee appears on this document having taken accommodation entry amounting to Rs.25,00,000/- from S.K. Jain Group Companies.

22. The assessee has declared in its return of income that it has share fund of Rs. 2,22,48,214/- which confirms the information received from the investigation wing. This leads to a creditable question on the genuineness of share capital / loan of Rs. 25,00,000/- shown by the assessee to have been received 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.

23. The facts discussed in the report of investigation wing after verifying the documents seized as a result of search operation and post search enquiries raise serious question on the genuineness of the transaction with SK Jain Group (Entry Operator) which is having implications on the taxable income of the assessee.

Income Chargeable to tax escaping assessment

24. Keeping in view all above, I have reason to believe that an amount atleast of Rs 25,00,000/- has escaped assessment in case the of M/s Maheshwari Roller Flour Mills Pvt. Ltd. for the A.Y 2009-10 within the meaning of Section 147/148 of Income-tax Act, 1961.

25. The assessment/re-assessment proceedings in this case for A.Y. 2009-10 pertain to period beyond four years but before the expiry of six years from the date of issue of notice. In view of the same, as no assessment has been made in this case for A.Y. 2009-10 u/s. 143(3) or u/s. 147, the first proviso to section 147 (as re-produced below) is not applicable to the case.

" Provided that where an assessment under sub section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

In other words, the assessing officer is not bound by the restriction imposed by the proviso that no action can be taken unless any income chargeable to tax has escaped income by reason of failure as the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

Moreover, as the case pertains to a period beyond four years from the end of relevant assessment years at the time of issue of notice, necessary sanction has to be obtained from Pr. Chief Commissioner of Income Tax or Pr. Commissioner of Income Tax or Commissioner of Income Tax, in view of the amended provision of section 151 w.e.f 01.06.2015. The necessary sanction in this regard is being obtained separately from Pr. Commissioner of Income Tax-06, Delhi before the issue of notice u/s. 148."

4.2. Learned Counsel for the Assessee referring to the aforesaid Form for reopening of the assessment and reasons, submitted that initiation under section 147 of the I.T. Act have been done by mentioning the wrong Section

147(b) of the I.T. Act which is deleted from the Income Tax Act w.e.f. 01.04.1989, therefore, reopening is done under non-existent Section in a mechanical manner without application of mind. He has also referred to PB 40 to 79 which is the report of the DDIT (Inv.) Dated 12.03.2013 and report of DDIT (Inv.) to CIT, New Delhi which is referred to in the reasons in which the A.O. has wrongly mentioned receipt of share capital/premium/loan and has also stated that these amounts are required to be taxed in the hands of these companies by initiating action under section 148 of the I.T. Act, 1961. Similarly, it is suggested that the amounts shall have to be brought to tax by initiating action under section 147/148 read with section 143(3) of the I.T. Act, 1961 for relevant assessment years in the case of abovementioned beneficiary companies. Learned Counsel for the Assessee submitted that these clearly show that A.O. has reopened the assessment on the basis of the directions and action suggested by DDIT/DIT (Inv.), therefore, initiation of reopening of the assessment have been done on the basis of borrowed satisfaction. The A.O. did not carry-

out any independent enquiry and even did not verify the correctness of the information so received. The A.O. acted on the information mechanically without application of mind and initiated the re-assessment proceedings. he has further submitted that Rs.25 lakhs were received on 06.01.2009 from M/s. KDG Properties and Con Private Ltd., through banking channel which was returned on 30.03.2009 in assessment year under appeal itself through banking channel because no shares were issued. He has referred to copies of the bank statements at pages 26 to 29 of the PB. He has, therefore, submitted that assessee was never beneficiary of the impugned amount. A.O. under mistaken belief initiated the re-assessment proceedings that assessee is beneficiary of Rs.25 lakhs which fact is incorrect. Thus, even the Senior Authorities have not applied their mind to the facts of the case and approved the reopening of the assessment under section 151 under wrong section as well as under mistaken belief of escapement of any income. Learned Counsel for the Assessee in their written synopsis relied upon several Judgments in support

of the contention. Further he has submitted that the issue is squarely covered by the Order of ITAT, Delhi Bench in the case of VRC Township Pvt. Ltd., Delhi vs., ITO, Ward-17(1), New Delhi Dated 14.10.2020 in ITA.No.1503/Del./2017, in which several decisions of different High Courts and jurisdictional High Court have been relied upon for quashing the re-assessment proceedings on identical issue. He has, therefore, submitted that the issue is squarely covered by the decision of Hon'ble Tribunal in the case of VRC Township Pvt. Ltd., (supra).

5. The Ld. D.R. on the other hand relied upon the Orders of the authorities below and submitted that re-assessment have been done on the basis of information received from Investigation Wing.

6. We have considered the rival submissions and perused the material on record. It is well settled Law that validity of re-assessment proceedings is to be determined on the basis of the reasons recorded for reopening of the assessment. The A.O. in the Form for recording the reasons for initiating the re-assessment under section 148 of the I.T.

Act, 1961 has mentioned that *“reopening have been done under section 147(b) of the I.T. Act as is reproduced above.”*

Further, such Section under section 147(b) of the I.T. Act have already been omitted from the Income Tax Act w.e.f. 01.04.1989. Learned Counsel for the Assessee further placed on record report of DIT (Inv.) Dated 12.03.2013 which is referred to in the reasons for reopening of the assessment in which A.O. has clearly suggested that the impugned amount is required to be taxed by initiating the proceedings under sections 147/148 of the I.T. Act, 1961. Thus, it was a borrowed satisfaction without applying independent mind by the A.O. to the relevant provision of Law and to the facts of the case. In the reasons also it is mentioned that assessee has received share capital/loan which fact is also incorrect. It is also a fact that assessee just after receipt of the amount in question has returned the amount in question because no shares have been issued in assessment year under appeal itself. Thus, assessee was not a beneficiary of any amount. Thus, the A.O. has mentioned wrong Section, wrong facts in the reasons for reopening of

the assessment and has acted in a mechanical manner without application of mind. Similarly, the Senior Authorities while granting sanction under section 151 of the I.T. Act have not taken care that A.O. has mentioned wrong Section and wrong facts in the reasons for reopening of the assessment. An identical issue have been examined by ITAT, Delhi Bench in the case of VRC Township Pvt. Ltd., Delhi (supra) in which several decisions of High Court and Tribunal have been referred to on identical issue and reopening of the assessment have been quashed. The Order is reproduced as under :

“IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCHES “G” : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.1503/Del./2017

Assessment Year 2007-2008

<p><i>VRC Township Pvt. Ltd., Plot No.16, Rohtak Road, Paschim Vihar Ext. Paschim Vihar, Delhi.</i></p> <p><i>PIN – 110 063.</i></p> <p><i>PAN AACCV1750F</i></p>	<i>vs.</i>	<p><i>The Income Tax Officer,</i></p> <p><i>Ward – 17 (1),</i></p> <p><i>New Delhi.</i></p>
<p><i>(Appellant)</i></p>		<p><i>(Respondent)</i></p>

<p><i>For Assessee :</i></p>	<p><i>Shri Suresh K. Gupta, C.A.</i></p>
<p><i>For Revenue :</i></p>	<p><i>Ms. Shalini Verma, Sr. D.R.</i></p>

<p><i>Date of Hearing :</i></p>	<p><i>13.10.2020</i></p>
<p><i>Date of Pronouncement :</i></p>	<p><i>14.10.2020</i></p>

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-9, New Delhi, Dated 28.02.2015, for the A.Y. 2007-2008.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that the return declaring income of Rs.21,000/- was e-filed on 31.10.2007. The return was processed under section 143(1) at returned income. Proceedings under section 147 of the Income Tax Act, 1961 were initiated after recording reasons that the assessee's income has escaped to the tune of Rs.80 lakhs. Accordingly notice under section 148 was issued on 29.03.2012. The assessee in reply thereto submitted that the return originally filed may be treated as return filed in response to notice under section 148 of the I.T. Act, 1961. The A.O. noted in the present case that information was received from Investigation Wing that assessee has taken accommodation entries totaling to Rs.80 lakhs from the companies floated by Shri Tarun Goyal. The A.O. after examining the issue on merit made the addition of Rs.80 lakhs under section 68 of the I.T. Act, 1961.

3.1. *The assessee challenged the reopening of the assessment as well as addition on merit before the Ld. CIT(A), however, the Ld. CIT(A) dismissed the appeal of assessee.*

4. *In the present appeal the assessee challenged the initiation of re-assessment proceedings under section 147 of the I.T. Act, invalidate sanction under section 151 of the I.T. Act that the reopening have been done without application of mind along with addition under section 68 of the I.T. Act, 1961, at Rs.80 lakhs.*

4.1. *Learned Counsel for the Assessee referred to page Nos.14 and 15 of the PB which are reasons recorded for reopening of the assessment. He has submitted that in the reasons the A.O. has mentioned that Section 147(b) of the I.T Act is applicable in the present case for reopening of the assessment which does not exist in the statute w.e.f. 01.04.1989. He has submitted that Column Nos.8 and 9 of the same is also in 'Blank' and it did not say whether assessee has filed any return voluntarily or what is the date*

of filing of the return and whether assessee is assessed. Therefore, A.O. was not having anything with him and as such it was non-application of mind on the part of the A.O. to record reasons for reopening of the assessment. He has also submitted that the Addl. CIT, Range-12 has also not verified the fact and granted sanction under section 151 in most mechanical manner and that too without application of mind. He has relied upon Judgment of the Hon'ble Bombay High Court in the case of Kalpana Shantilal Haria vs., ACIT [2017] 100 CCH 165 (Bom.) (HC) on the proposition that "if wrong Section is mentioned in the reasons i.e., 147(b) of the I.T. Act, it would invalidate the re-assessment proceedings." He has submitted that same Judgment have been followed by ITAT G-Bench, New Delhi in the case of Shree Balkishan Agarwal Glass Industries Ltd., Delhi vs., DCIT, Circle-8(1), New Delhi in ITA.No.5768/ Del./2016, Dated 21.09.2020 and reopening was held to be invalid. He has also relied upon Order of ITAT, Delhi A-Bench in the case of M/s. Behat Holdings Ltd., Delhi vs., ITO, Ward-4(3), New Delhi in ITA.No.8066/Del./2019, Dated 15.01.2020 in which on identical issue the reopening

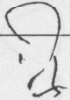
of the assessment have been quashed holding that approval by Pr. CIT is invalid.

5. *On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that though the Old Form for recording of the reasons have been used and by mistake Section 147(b) have been mentioned in the reasons, but, it will not vitiate the entire re-assessment proceedings as well as would not vitiate the sanction granted by the Addl. CIT.*

6. *We have considered the rival submissions. It is well settled Law that validation of re-assessment proceedings shall have to be determined with reference to the reasons recorded for reopening of the assessment. The Ld. CIT(A) filed copy of the reasons recorded for reopening of the assessment at pages 14 and 15 of the PB. The same read as under :*

14

**Form for recording the reasons for initiating proceedings u/s 148 and for obtaining
the approval of the Addl. Commissioner / Commissioner of Income Tax**

1	Name and address of the assessee	VRC Township Pvt Ltd., 100/23, IInd Floor, Shiva Tower, Sec-9, Rohini, Delhi
2	PAN / GIR No	
3	Status	Company
4	District / Circle	Ward 17(1)
5	Assessment year in respect of which it is proposed to issue notice u/s 148	2007-08
6	The quantum of income which has escaped assessment	Rs 80 lacs
7	Whether the provisions of section 147(a) or 147(b) or 147(c) are applicable or all the sections are applicable	147(b)
8	Whether the assessment is proposed to be made for the first time. If the reply is in affirmative, please state : (a) Whether any voluntary return has already been filed ; and (b) If so, the date of filing of return	
9	If the answer to item no 8 is in the negative, please state (a) The income originally assessed (b) Whether it is a case of under assessment, assessment at too low rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation	
10	Whether the provisions of section 150(1) are applicable. If the reply is in affirmative, the relevant facts may be stated against item no 11 and it may also be brought out that provisions of section 150(2) would not stand in the way of initiating proceedings u/s 147	No
11	Reasons for the belief that the income has escaped assessment	As per Annexure 'A' 

Dated: 21.03.2012

(RAJINDER SINGH)
ITO Ward 17(1), Delhi

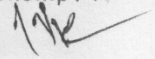
12. Whether the Addl. Commissioner is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of notice u/s 148

yes, I am satisfied that this is a fit case for reopening u/s 148
29/3/2012

Dated:

(SUNITA SINGH)
Addl. CIT, Range-12, Delhi

For VRC Township Pvt


Auth. Signatory/Circ:11

15

M/s VRC Township Pvt Ltd , AY 2007-08:

Action u/s 132 of the Income Tax Act, 1961 was carried out by the Directorate of Investigation, Jhandewalan, New Delhi on Sh Tarun Goyal, Chartered Accountant, 13/34, WEA, Karol Bagh, N Delhi. It was established during the search operation that Sh Tarun Goyal has floated many companies for the purpose of providing bogus/accommodation entries. The name of the assessee figures as one of the beneficiaries of these alleged bogus transactions It has been revealed that the following entries have been received by the assessee:

S NO	BENEFICIARIES NAME	NAME OF THE COMPANY FLOATED BY SH TARUN GOYAL	VALUE OF ENTRY TAKEN (In Rs.)	TOTAL VALUE OF ENTRY TAKEN (In Rs.)
1.	VRC Township (P) Ltd	Campri Fiscal Servises Pvt. Ltd	10,00,000	10,00,000
2.	VRC Township (P) Ltd	Countrywide Credit & Securiites Pvt Ltd	15,00,000	15,00,000
3.	VRC Township (P) Ltd	Karol Bagh Trading Ltd	15,00,000	15,00,000
4	VRC Township (P) Ltd	Tejasvi Investments Pvt Ltd	25,00,000	25,00,000
5	VRC Township (P) Ltd	Sadguru Finman Pvt Ltd	15,00,000	15,00,000

The above amount of Rs 80,00,000/- has been credited into assessee's bank account on various dates. Investigation made by the Investigation Wing of the Department has found that assessee is a beneficiary of taking the aforesaid accommodation entries. I have also perused various materials and report from investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries. Therefore, I have reason to believe that the income of the assessee company amounting to Rs 80,00,000/- has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee company to truly and fully disclosed all material facts necessary for assessment. Thus, it is fit case for initiation of proceeding: u/s 147 of the Income tax act, 1961.

Issue notice u/s 148 of the Income tax act, 1961.

Dated: 21 .03.2012

(RAJINDER SINGH)
ITO Ward 17(1), Delhi

*Received only copy of Reason
of Re-opening the case u/s 148*

NK

6.1. *The above recording of reasons for initiation of re-assessment proceedings clearly show that in para 7 A.O. has mentioned Section 147(b) of the I.T. Act is applicable for reopening of the assessment, though such Section does not exist in the statute on the day of recording of the reasons for reopening of the assessment. Column Nos.8 and 9 above are 'Blank' and did not provide any details. It did not say if assessee has filed any return earlier and whether assessee was assessed to tax prior to recording of the reasons, though the fact remain that assessee filed return of income voluntarily for the assessment year under appeal on 31.10.2007 through e-filing and such record was available with the A.O, therefore, non-mentioning of the correct fact would lead to the conclusion that no material was available before A.O. to come to the conclusion that there is escapement of income based on the facts. Similarly, the Addl. CIT, without pointing-out the mistake and error in the reasons recorded above, in a most mechanical manner granted sanction to the reopening of the assessment. It is a settled principle of Law that sanction granted by the higher authority for issuing of*

reopening notice has to be on due application of mind. It cannot be a mechanical approval without examining the proposal sent by the A.O. It appears from the reasons recorded above that the A.O. as well as Addl. CIT have not applied their mind and by mentioning wrong Section i.e., 147(b) of the I.T. Act came to the conclusion that there is escapement of income under section 147(b) of the I.T. Act which no longer exist in the statute. The Learned Addl. CIT instead of pointing-out such glaring mistake in the reasons and even finding two Columns 'Blank' in the reasons granted approval, even without mentioning how he was satisfied with the reasons for reopening of the assessment in the matter. Such issue have been examined by the Hon'ble Bombay High Court in the case of Kalpana Shantilal Haria vs., ACIT (supra) in which in Paras 5 to 8 it was held as under :

5. *Our attention is invited to the sanction given by the Joint Commissioner of Income Tax on the application by the Assessing Officer seeking his approval in the prescribed form. The prescribed form filled by the Assessing Officer indicated that*

the notice has been issued under Section 143(b) of the Act. The Joint Commissioner of Income Tax has while granting the sanction has recorded the word "satisfied".

- 6. The grievance of the petitioner is that there is no proper sanction in view of non application of mind by the Joint Commissioner of Income Tax. The Assessing Officer has invoked a provision of law to sustain the impugned notice which is admittedly not in the statute and the Joint Commissioner has yet approved it.*
- 7. Mr. Chanderpal, learned Counsel appearing for the Revenue tendered a copy of the letter dated 19th December, 2017 issued to the petitioner wherein the Assessing Officer has stated that the words "147(b)" were inadvertently filled in the prescribed form, instead of Section 147 of the Act while obtaining the sanction from the Joint Commissioner of Income Tax. It is further submitted on behalf of the Revenue that the same*

is a curable defect under section 292B of the Act.

Therefore, the impugned notice cannot be held to be bad for mere incorrect mentioning of section on account of the mistake.

8. *There can be no dispute with regard to the application of Section 292B of the Act to sustain a notice from being declared invalid merely on the ground of mistake in the notice. However, the issue here is not with regard to the mistake / error committed by the Assessing Officer while taking a sanction from the Joint Commissioner of Income Tax but whether there was due application of mind by the Joint Commissioner of Income Tax while giving the necessary sanction for issuing the impugned notice. It is a settled principle of law that sanction granted by the higher Authority for issuing of a reopening notice has to be on due application of mind. It cannot be an mechanical approval without examining the proposal sent by the Assessing Officer. Prima facie, it appears to us*

that if the Joint Commissioner of Income Tax would have applied his mind to the application made by the Assessing Officer, then the very first thing which would arise is the basis of the notice, as the provision of law on which it is based is no longer in the statute. Non pointing out the mistake / error by the Joint Commissioner of Income Tax on the part of the Assessing Officer is prima facie evidence of non-application of mind on the part of the sanctioning authority while granting the sanction.”

6.2. *The ITAT Delhi G-Bench, New Delhi in the case of Shree Balkishan Agarwal Glass Industries Ltd., Delhi vs., DCIT, Circle-8(1), New Delhi (supra) following the Order of ITAT Delhi Bench in the case of DCIT vs., M/s. KLA Foods (India) Ltd., and Others, quashed the reopening of the assessment holding that recording reasons are based on wrong facts and approval was given in a mechanical manner, therefore, reopening of the assessment is held to be invalid.*

The findings of the Tribunal in paras 23 to 28 is reproduced as under :

“23. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, based on the report of the Investigation Wing that the assessee has received accommodation entries from Shri Surendra Kumar Jain and Virendra Kumar Jain controlled/managed companies, reopened the assessment by recording the following reasons:-

“ANNEXURE- ‘A’

M/s Shri Balkishan Agarwal Glass Industries Ltd.

*J-4-126-B, D.D.A. Flats Kalka Ji, New Delhi-110019 Assessment Year;
2005-06*

Reasons for belief that income has escaped assessment;

Enquiries were conducted by the Investigation Wing of the Dept in the case of Shri Surendra Kumar Jain Group. During the course of post search investigation and preparation of appraisal report it has been evidently established that SH. S.K, Jain and his brother Sh. Virendra Jain are known entry providers and are in the business of providing accommodation entries to various beneficiary companies/entities/persons through cheques through a number of paper & dummy companies in lieu of cash.

These dummy companies are totally managed and controlled by Sh.

Surendra Kumar Jain and his brother Sh. Virendra Jain.

The company M/s Shri Balkishan Agarwal Glass industries Ltd. has also

received accommodation entry from Sh. S. K. Jain during the F.Y.2004-05.

Details of cheque/pay orders issued in the name of the assessee are

reproduced below:-

<i>Bank Book Date</i>	<i>From</i>	<i>TO</i>	<i>Bank</i>	<i>Cheque/ RTGS</i>	<i>Cheque Date</i>	<i>Amount</i>	<i>Throgh</i>	<i>Annexure No.</i>	<i>Page No,</i>
	AVAIL	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No. 947828	11-Nov-04	500000	Neeraj	A-148	22
	AVAIL	Shri Balkishan Agarwal Glass Industries Ltd,	ABN	PIO No. 947829	11-Nov-04	500000	Neeraj	A-148	22
	AVAIL	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No. 947830	11-Nov-04	500000	Neeraj	A-148	23
	GRAPH	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No. 947827	11-Nov-04	500000	Neeraj	A-148'	23
	GRAPH	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No! 947826	11-Nov-04	500000	Neeraj	A-148	23

	GRAPH	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No. 974556	24- Nov- 04	500000	Ch aw la	A- 148	27
	SMART EST	Shri Balkishan Agarwal Glass Industries Ltd.	ABN	PIO No. 974425	25- No v- 04	500000	Ne er aj	A- 148	28
	SMART EST	Shri Balkishan Agarwal Glass industries Ltd.	ABN	PIO No. 974426	25- No v- 04	500.000	Ne er aj	A- 148,	28

For Shri Balkishan Agrav Glass industries

SMART EST	Shri Balkishan Agarwal Glass Industries Ltd.'	ABN	PIONo. 974427	25- Nov- 04	500000	Ne er aj	A- 148	28
LOVEL Y	Shri Balkishan Agarwal Glass industries Ltd.	ABN	PIONo, 17.8048	20- Dec- 04	500000	He er aj	A 149	12
LOVEL Y	Shri Balkishan Agarwal Glass Industries Ltd.	ABN		28- Dec- 04	500000	Ne er aj	A- 149	18
					5500000			

The escapement of income has been clearly on account of failure on the part of the assessee to truly and fully disclose all the material fact necessary for assessment. Thus it is a fit case for initiation of proceedings u/s 148 of I.T.Act, 1961.

**Therefore, I have reason to believe that an income of Rs,55,00,000/-
lias escaped assessment within the meaning of section 147 of the
Income Tax Act 1961.**

No assessment u/s 143(3) has been done earlier. The assessment record is being submitted for kind perusal and approval of the Addl. Commissioner of Income-tax, Range-8, New Delhi according to section 151(1) of the IT Act, 1961 for issuance of notice u/s 148 of the IT Act.

Sd/-

(Nishtha Tiwari)

Dy. Commissioner of Income Tax

Circle-8(1),

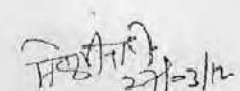
New Delhi"

24. *We find, in the performa for recording reasons for initiating proceedings under section 148 and for obtaining approval of the Addl. CIT, the AO at para 7 of the performa has mentioned that the assessee has not filed the return voluntarily. The form for recording reasons for initiating the proceedings is reproduced hereunder for the sake of clarity:-*

Form for recording the reasons for initiating proceedings u/s 148 and for Obtaining the approval of the Addl. Commissioner of Income Tax, Delhi-III, New Delhi

- | | | | |
|----|---|---|--|
| 1. | Name and address of the assessee | : | M/s Shri Balkishan Agarwal
Glass Industries Ltd.
J-4-126-B, D.D.A. Flats
Kalka Ji, New Delhi-110019 |
| 2. | PAN | : | AABCS2870C |
| 3. | Status | : | Company |
| 4. | Circle/Range | : | Circle-8(1) |
| 5. | Assessment year in respect of which
it is Proposed to issue notice u/s 148 | : | 2005-06 |
| | The quantum of income which has
Escaped assessment. | : | 5500000/- |
| 6. | Whether the assessment is proposed
to be made for the first time | : | Yes |
| 7. | If the reply is in the affirmative,
please state | : | |
| | a) Whether any voluntary return
had already been filed | | No |
| | b) If so, date of filing of the said
return. | | |
| 8. | If the answer to item 6 is in the negative
Please state | | |
| | c) The income originally assessed. | | N.A. |
| | d) Whether it is a case of under
assessment
Assessment at low rate, assessment
which has been made subject | | Escapement of income |
| 9. | Reasons for the belief that income has
escaped assessment | | As per annexure 'A'
enclosed. |

Dated: 27.03.2012


 (Nishtha Tiwari)
 Dy. Commissioner of Income Tax
 Circle-8(1), New Delhi

10. Whether the Addl. Commissioner of income tax is satisfied on the reasons recorded by the DCIT that it is a fit case for issue of notice u/s 148.

Dated: 27/3/12

I am satisfied that this is a fit case for issue of notice u/s 148

Alok Singh
27/3/12

(Alok Singh)
Addl. Commissioner of Income Tax
Range-8, New Delhi

For Shri Balkishan Agrawal
Glass Industries Ltd.

Director

25. A perusal of the above shows that at clause 7(a) the AO has categorically mentioned that no return has been filed by the assessee. However, a perusal of the paper book page 1 shows that the assessee has duly filed its return of income on 31.3.2006 declaring total loss of Rs.2,79,76,596/- vide receipt number 0851001128. A perusal of Page 3 of the paper book shows that the return was processed under section 143(1) on 26th July 2006. Thus, it is seen that the AO had no occasion to go through the return filed by the assessee along with the audited accounts before recording reasons and has mentioned that no return has been filed while reopening the assessment and the Id. Addl. CIT, without application of mind, has simply mentioned, "I am satisfied that this is a

fit case for issue of notice under section 148.” The Hon’ble Bombay High Court in the case of Kalpana Shantilal vs ACIT 100 CCH 0165 has held that sanction granted by higher authority for issuing of reopening notice had to be on due application of mind and it could not be mechanical approval without examining proposal sent by AO. The Hon’ble Delhi High Court in the case of Yum Restaurants Ltd. vs Dy. Director of Income Tax 99 CCH 232 has held that where authorities appear to have concurred with reasons for reopening assessment without applying their mind, reopening of assessment would be invalid. The Hon’ble Bombay High Court in the case of Ankita A. Choksey vs. Income Tax Officer And Others (2019) 411 ITR 207 (Bom) has held that condition precedent for issue of notice for reassessment is that the reasons to believe that income has escaped assessment must be based on correct facts. Notice based on wrong facts is without jurisdiction and has to be quashed. The Delhi Bench of the Tribunal in the case of DCIT vs. M/s KLA Foods (India) Ltd. and Others, vide ITA No.2846/Del/2015, order dated 8th April 2019, has held that condition precedent for issue of notice for reassessment is that reason to believe that income has escaped assessment must be based on correct facts. Notice based on wrong facts is without jurisdiction and is to

be quashed. The Hon'ble Delhi High Court in the case of PCIT vs. M/s SNG Developers Limited, 404 ITR 312, has held that condition precedent for issue of notice for reassessment is that the reason to believe that income has escaped assessment must be based on correct facts. Notice based on wrong facts is without jurisdiction and has to be quashed. The above decision of the Hon'ble High Court was challenged by the Revenue before the apex court and the apex court dismissed the SLP vide SLP No.42379/2007, order dated 9th February 2018. Since, in the instant case, although the assessee has filed return of income which was processed u/section 143(1), however, the AO proceeded to reopen the assessment by mentioning that no voluntary return has been filed by the assessee and, thus, proceeded to reopen the assessment on wrong appreciation of facts on record.

26. *We further find the Hon'ble Delhi High Court in the case of BPTP vs PCIT, vide Writ Petition No.13803/2018, order dated 11th January 2020, has held that if the AO has failed to perform its statutory duty, he cannot review his decision and reopen on a change of opinion. The reopening is not an empty formality. There has to be relevant tangible material for the AO to come to the conclusion that there is escapement of income and*

there must be a live link with such material for the formation of the belief. Merely using the expression 'failure on the part of the assessee to disclose fully and truly all material facts' is not enough. The reasons must specify as to what is the nature of default or failure on the part of the assessee. Similarly The Hon'ble Bombay High Court in the case of Anand Developers vs. ACIT, vide Writ Petition No. 17/2020, order dated 18th February, 2020 has held that a mere bald assertion by the AO that the assessee has not disclosed fully and truly all material facts is not sufficient. The AO has to give details as to which fact or the material was not disclosed by the assessee leading to its income escaping assessment otherwise the reopening is not valid.

27. Thus, we agree with the argument of the Id. counsel for the assessee that the reason to believe that income has escaped assessment is not based on correct facts and the approval has been given in a mechanical manner and, therefore, such notice based on wrong facts and the approval given in a mechanical manner make the re-assessment proceedings invalid being not in accordance with law. Accordingly we hold that the reassessment proceedings initiated by the AO is not valid in the eyes of law. Accordingly the same is directed to be quashed. Since

the assessee succeeds on this preliminary legal ground, the other legal grounds as well as the grounds on merit, in our opinion, do not require adjudication being academic in nature.

28. *In the result, the appeal filed by the assessee is allowed.”*

6.3. *The ITAT Delhi A-Bench in the case of M/s. Behat Holdings Ltd., Delhi vs., ITO, Ward-4(3), New Delhi (supra) examining the issue of 147 based on non-application of mind and that sanction have been granted by the Pr. CIT without recording reasons quashed the reopening of the assessment. The findings of the Tribunal in paras 5 and 6 are reproduced as under :*

“5. *We have considered the rival submission and perused the material on record. It is well settled Law that validity of re-assessment proceedings shall have to be determined with reference to the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee filed copy of the reasons recorded for reopening of the assessment at pages 16 to 22 of PB. The same reads as under:*

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1. Name & Address of the Assessee : M/s Behat Holdidngs Ltd.
Formerly known as M/s Behat Holdings Pvt. Ltd.
14, 4380/4-B, Murarli Lal Street
Ansari Road, Darya Ganj, New Delhi- 110 002.
2. PAN No. : AADCB7691L
3. Status : Company
4. A.Y. : 2010-11

Reasons for issue of Notice u/s 148 for reopening of assessment u/s 147 of IT Act 1961 for the A.Y.2010-11 in the case of M/s M/s Behat Holdidngs Ltd. Formerly known as M/s Behat Holdings Pvt. Ltd.

1. In this case, the information forwarded by the Serious Fraud Office, New Delhi vide letter F.No. SFIO/NKSHPL/2016 was received from the office of Pr.Commissiner of Income tax, Delhi-2, New Delhi vide letter F.No.Pr.CIT-2/ITO(Hqqs.2)/2016-17/1813 dated 05.01.2017 alongwith the report of serious Fraud Investigation Office, Ministry of Finance, New Delhi
2. In the report of Serious Fraud Office, it has been mentioned that search and seizure operation under the Income tax Act was conducted at the business premises of some of these companies alongwith residential premises of its promoters, Sh. S.K. Jain and Virendra Jain(Jain Brothers). In the assessment order, the Income tax Department has recorded a finding that Jain brothers were controlling around 99 companies/entities and indulged in providing accommodation entries to a large number of beneficiaries.
3. It has been further mentioned that during the follow up investigation done by SFIO in respect of M/s NKS Holdings Pvt. Ltd and 10 other group companies a clear case of money laundering has been established. In its report, it has been stated that money laundering, being an organized crime, requires coordinated investigation by many agencies including Enforcement Directorate, Income tax department, Reserve Bank of India, SEBI & ICAI. The money laundering operation was conducted by Jain brothers with the help of 56 professionals who worked as mediators to bring the potential beneficiaries to Jain brothers for laundering their unaccounted cash. The SFIO has identified 559 beneficiaries during The Financial Year 2009-10 and the total quantum has been estimated at a minimum of Rs. 11,970/- crores. The modus operandi for laundering money during pre and post search period has been clearly brought out in the report. SFIO investigation focused on only some of the players associated with this organized crime to prove criminal conspiracy. However, this investigation needs to be expanded to cover all the beneficiaries and the professional mediators, most of them being chartered Accountants registered with the ICAI.
4. Further, SFIO had forwarded soft copy containing the investigation report and the details of accommodation entries viz. amount received by beneficiary companies, the cheque/ PO number, and the name of company engaged in providing accommodation entries, the mediator/ middle man, bank etc. noted from scrutiny of the seized documents. The entries pertaining to the assessee company M/s Behat Holdings Pvt. Ltd is tabulated as under:

BEHAT HOLDINGS PVT. LTD.

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	DATE	AMOUNT	FROM	BANK	C/P	Beneficiary company	Mediator
1	6/26/2009	1,000,000.00	Euro (M)	Axis	191138	Behat Holdings Pvt. Ltd.	P K Aggarwal
2	6/26/2009	500,000.00	Hum Tum	Indusind	446194	Behat Holdings Pvt. Ltd.	P K Aggarwal
3	6/26/2009	500,000.00	Hum Tum	Indusind	446193	Behat Holdings Pvt. Ltd.	P K Aggarwal
4	6/26/2009	1,000,000.00	Mega Top	Axis	120173	Behat Holdings Pvt. Ltd.	P K Aggarwal
5	6/26/2009	1,000,000.00	Zenith	HSBC	HSBC	Behat Holdings Pvt. Ltd.	P K Aggarwal
6	6/27/2009	1,000,000.00	Victory	Axis	12480	Behat Holdings Pvt. Ltd.	P K Aggarwal
7	7/7/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
8	7/7/2009	500,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
9	7/7/2009	1,000,000.00	Karishma	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
10	7/8/2009	1,000,000.00	Euro (M)	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
11	7/8/2009	500,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
12	7/8/2009	1,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
13	7/9/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
14	7/9/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
15	7/9/2009	1,000,000.00	Shalini	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
16	7/9/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
17	7/9/2009	1,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
18	7/10/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
19	7/10/2009	2,000,000.00	Attractive	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
20	7/10/2009	1,000,000.00	Karishma	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
21	7/10/2009	1,000,000.00	Shalini	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
22	7/23/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
23	7/23/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal

24	7/23/2009	1,000,000.00	Attractive	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
25	7/23/2009	1,000,000.00	Karishma	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
26	7/23/2009	1,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
27	7/24/2009	1,000,000.00	Euro (M)	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
28	7/24/2009	1,000,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
29	7/24/2009	1,000,000.00	Shalini	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
30	7/24/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
31	7/24/2009	1,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
32	7/28/2009	1,000,000.00	Euro (M)	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
33	7/28/2009	1,000,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
34	7/28/2009	1,000,000.00	Shalini	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
35	7/28/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
36	7/28/2009	1,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
37	7/29/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
38	7/29/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
39	7/29/2009	1,000,000.00	Attractive	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
40	7/29/2009	1,000,000.00	Karishma	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
41	7/29/2009	1,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
42	7/30/2009	1,000,000.00	Euro (M)	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
43	7/30/2009	1,000,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
44	7/30/2009	1,000,000.00	Shalini	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
45	7/30/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
46	7/30/2009	1,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
47	7/31/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
48	7/31/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal

49	7/31/2009	1,000,000.00	Attractive	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
50	7/31/2009	1,000,000.00	Karishma	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
51	7/31/2009	1,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
52	11/11/2009	2,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
53	11/11/2009	2,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
54	11/12/2009	2,000,000.00	Hum Tum	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
55	11/12/2009	2,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
56	11/13/2009	2,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
57	11/13/2009	2,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
58	11/14/2009	2,000,000.00	Attractive	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
59	11/14/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
60	11/14/2009	1,000,000.00	Zenith	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
61	11/17/2009	1,000,000.00	Aasheesh	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
62	11/17/2009	1,000,000.00	Apoorva	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
63	11/17/2009	1,000,000.00	Mega Top	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal
64	11/17/2009	1,000,000.00	Victory	Axis	RTGS	Behat Holdings Pvt. Ltd.	P K Aggarwal

70,000,000.00

5. **Summary of evidences relating to the assessee:**

(a) **Return of income:** The return of income in this case was filed on 15-10-2010 for the assessment year 2010-11 declaring income/loss of Rs. 95,916/-. Thereafter the return was processed under 143(1) of the I.T. Act on 13-04-2011. The case was not selected for scrutiny for A.Y. 2010-11. The assessee has declared in its return of income that it has received share application money of Rs. 2,81,00,000/- which is more than the amount mentioned in the information received from the investigation wing, which prima facie indicates that the information is reliable because the amount of share capital and premium is not less than the amount of accommodation entry mentioned in the information.

(b) **Relevant seized documents:** I have gone through various documents (relevant to the instant case) seized from the premises of Shri S.K. Jain Group during the course of search. These documents

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have been supplied by the Investigation Wing in the form of scanned copies of seized document in a CD. It is noted from the perusal of the copy of seized document that the name of the assessee appeared on these documents along with details of accommodation entries amounting to Rs. 7,00,00,000/- from various companies controlled by S.K. Jain Group through intermediary, Shri P.K. Aggarwal as evident from above discussion.

- (c) The analysis of cash book and ledger maintained by the SK Jain Group, seized during the course of search operation of S.K. Jain Group, revealed that M/s. S.K. Jain Group (Accommodation entry operator) received the certain payments in cash through intermediary, P.K. Aggarwal. It has been noticed from this table that S.K. Jain Group had received Rs. 7,00,00,000/- from the intermediary – P.K. Aggarwal, during the period from 26.06.2009 to 17.11.2009. A part of cash was used to issue cheque to the assessee i.e. accommodation entries. The difference in the cash received from intermediary and cheque amount issued to assessee was on account of the intermediary acting on behalf of many beneficiaries including the instant assessee. The detail of seized copies of cheque book and cash book is placed on record.
- (d) 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 findings of the Investigation Wing on the basis of documents seized during the search operation and post search enquiries, as discussed above. Considering all these material in totality there is enough credible material on record to have a reason to believe that share application money / loan received by the assessee company during the year under consideration are merely accommodation entries for which the assessee company has paid cash from its coffer and commission thereon.

6. **Reason for formation of belief:** I have carefully perused and considered the return of income of assessee, information received from Investigation Wing, copies of incriminating documents seized from custody and control of Jain Brothers.

- a. That S.K. Jain Group was engaged in the business of providing accommodation entries to beneficiaries in lieu by entities controlled by them in cash.
- b. During the course of search operation and S.K. Jain Group various incriminating documents were been seized which showed that all the companies/entities controlled by the group do not have any known business activities and lack of independent existence as a separate entity and were a part of group of companies engaged in providing accommodation entries.
- c. The above conclusion was corroborated with the following evidences found and seized during the course of search from their custody and control S.K. Jain Group:
 - Seizure of passbooks and/or cheque books in the name of approx. 200 persons/firms/companies i.e. entry provider companies.
 - Computer hard disks containing confidential details namely user name, password, id of various companies etc.
 - Documents containing the details of funds transferred through cheque/ RTGS/pay order to various entities/persons through these entries provider.
 - Seizure of daily cash books wherein details of cash received from beneficiary companies/ persons through various middlemen/agents by Jain Brothers in lieu of accommodation entries provided to beneficiary on different dates.

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- That entry provider companies were running their activities from the residential and the other premises of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain through entry provider companies.
 - That third party correspondence with entry provider companies were seized from the custody of Sh. Surendra Kumar Jain and Sh. Virendra Kumar Jain.
 - That S.K. Jain / Virendra Jain and their close associates were directors of these entry provider companies during relevant but different time period.
 - Seizure of documents had revealed that commission income were earned by Jain Brothers and mediator.
- d. It was further proved that evidence relating to all the steps involved in providing accommodation entries by entry provider companies in lieu of cash payment to Jain Brothers on charging commission were seized from custody and control of Jain Brothers.
- e. A perusal of documents as seized from the premises of Shri S.K. Jain Group and enclosed along with this note as-Annexure has revealed that accommodation entry amounting to Rs. 7,00,00,000/- by the assessee from S.K. Jain Group Companies were noted on the seized documents.

7. A careful scrutiny of information received from the investigation wing and subsequent analysis of report of investigation wing, copies of seized document and verification of assessment and appeal order in case of Jain Brothers lead to an irresistible conclusion that the assessee had received share capital/amount shown in general reserve of Rs. 7,00,00,000/- from various companies/ entities engaged in business of providing accommodation entries in lieu of cash payment by beneficiary including assessee by charging commission, accordingly, an amount of Rs. 7,00,00,000/- represents unexplained credit u/s 68 of the Act in books of A/c of the assessee.

Income Chargeable to tax escaping assessment

8. Considering the above referred credible information, incriminating seized document u/s 132 of the Act and enquiries and investigation subsequent to the information, I have reason to believe that an amount of Rs.7,00,00,000/- has escaped assessment in case the of M/s Behat Holdings Pvt. Ltd. Ltd for the A.Y 2010-11 within the meaning of Section 147/148 of Income-tax Act, 1961.

9. Prior to 1989, section 147 provided for two grounds to reopen concluded assessments:

- (i) On basis of information received by the Assessing Officer assessment could be reopened. This had to be within four years.
- (ii) Where facts material for assessment are not disclosed in the course of assessment, whether within or beyond four years.

Supervening these two requirements in the alternative, the initial condition is that the Assessing Officer has reason to believe that there is escapement of income. The first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only requirement is "reason to believe". For a period beyond 4 years further requirement was the non-disclosure of material facts necessary for assessment by the assessee. For period beyond four years, the information received from the

investigation wing is that transactions are in the nature of accommodation entries, are non disclosure of material facts pertaining to such transactions which has not been disclosed by the assessee in the return of income or during the assessment proceedings of this relevant year. Thus, this specific condition for reopening is hereby fully filled in the instant case as assessee has failed to disclose such material facts on its own earlier. The case is squarely covered under provisions of section 147 of income- tax Act, 1961.

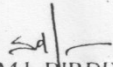
10. The assessment/re-assessment proceedings in this case for A.Y. 2010-11 pertain to period beyond four years but before the expiry of six years from the date of issue of notice. In view of the same, as no assessment has been made in this case for A.Y. 2010-11 u/s. 143(3) or u/s 147, the proviso to section 147 (as re-produced below) is not applicable to the case.

“Provided that where an assessment under sub section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”

11. In other words, the assessing officer is not bound by the restriction imposed by the proviso that no action can be taken unless any income chargeable to tax has escaped income by reason of failure as the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”

12. Moreover, as the case pertains to a period beyond four years from the end of relevant assessment years at the time of issue of notice, necessary sanction has to be obtained from Pr. Chief Commissioner of Income Tax or Pr. Commissioner of Income Tax or Commissioner of Income Tax, in view of the amended provision of section 151 w.e.f 01.06.2015. The necessary sanction in this regard is being obtained separately from Pr. Commissioner of Income Tax-02, Delhi before the issue of notice u/s. 148 for reopening of assessment under section 147 in the case of assessee company.

If approved, notice u/s 148 of the Act may be issued.


(M L BIRDI)
Income Tax Officer,
Ward 4 (3), New Delhi

(M. L. BIRDI)
Income Tax Officer,
Ward-4(3), New Delhi

5.1. *The reasons are un-dated. The A.O. in the assessment order has reproduced the same reasons without application of his mind to the relevant material and thereafter by referring to notice under section 133(6) and non-production of the Directors of the Investor Companies made the addition against the assessee. The A.O. in the reasons has mentioned that information was forwarded by Serious Fraud Investigation Office, Delhi which were received through Pr. CIT vide Letter Dated 05.01.2017. The A.O. has also referred to such report based on search and seizure in the case of third parties. The assessee made a request to the A.O. to supply complete copy of the reasons along with Annexures and Report of SFIO Dated 05.01.2017 and approval granted by Pr. CIT. The A.O, however intimated that since SFIO report is confidential, therefore, same cannot be provided to the assessee. Thus, the complete Annexures to the reasons were not provided to the assessee and A.O. has also failed to provide copy of the report dated 05.01.2017 to the assessee which is the basis for reopening of the assessment. Assessee cannot be given surprise to file objections without providing*

all the relevant material. The report Dated 05.01.2017 is the basis for reopening of the assessment and since it is not confronted and provided to assessee, the assessee may not be able to file proper objections to the reopening of the assessment. Thus, the direction given in the case of SABH Infrastructure Ltd., vs., ACIT (supra), have not been applied because it is the duty of the A.O. to provide all the documents and reports which are part of the reasons to the assessee before taking steps into the matter. Further the Addl. CIT while granting or forwarding copy of the reasons to the Pr. CIT for his approval did not mention any fact in the proforma which is blank and no remarks have been mentioned by him despite his signature appeared thereon. The Pr. CIT while granting sanction/approval to reasons recorded for reopening of the assessment has simply mentioned "Yes, I am satisfied". Such type of approval was not found valid in many cases. The ITAT Delhi C-Bench 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 for the A.Y. 2010-2011 vide Order Dated 07.11.2019 quashed the reopening of the

assessment in the similar circumstances. The entire order is reproduced 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**

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

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

<i>Date of Hearing :</i>	<i>10.10.2019</i>
<i>Date of Pronouncement :</i>	<i>07.11.2019</i>

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.1, 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,	Yes

	<i>please state</i> <i>(a) Whether any voluntary return has already been filed.</i> <i>(b) If so, the date of filing of return</i>	<i>Yes</i> <i>04.02.2011</i>
<i>9.</i>	<i>If answer to item 8 is negative, please state</i>	
<i>(a)</i>	<i>Income originally assessed</i>	<i>NA</i>
<i>(b)</i>	<i>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.</i>	<i>NO</i>
<i>10.</i>	<i>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 proceedings u/ s. 147.</i>	<i>NO</i>
<i>11.</i>	<i>Reasons for the belief that the income has escaped assessment.</i>	<i>As per annexure.</i>

Dated: 29.03.2017.

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

12.	<i>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.</i>	<i>In view of the facts notice u/s.148 to be issued.</i>
13.	<i>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.</i>	<i>Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.</i>

*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 expert 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.	<i>PCIT vs., Paramount Communication (P.) Ltd., 2017-TIOL-253-SC-IT.</i>
2.	<i>PCIT vs., Paramount Communication (P.) Ltd., [2017] 392 ITR 444 (Del.) (HC)</i>
3.	<i>Aradhna Estate (P.) Ltd., vs. DCIT [2018] 91 taxmann.com 119 (Gujarat) (HC).</i>
4.	<i>Pushpak Bullion (P.) Ltd., vs. DCIT [2017] 85 taxmann.com 84 (Gujarat) (HC).</i>
5.	<i>Ankit Financial Services Ltd., vs. DCIT [2017] 78 taxmann.com 58 (Gujarat) (HC).</i>
6.	<i>Aaspas Multimedia Ltd., vs. DCIT [2017] 83 taxmann.com 82 (Gujarat) (HC).</i>
7.	<i>Ankit Agrochem (P.) Ltd., vs. JCIT [2018] 89 taxmann.com 45 (Rajasthan) (HC).</i>
8.	<i>Yogendrakumar Gupta vs., ITO [2014] 227 Taxman 374 (SC).</i>

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 assesseees 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.

*Dated : 27.03.2017. Sd/- H.K. Sharma,
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.	<i>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.</i>	<i>Yes I am satisfied that it is a fit case for issue of notice u/s.148 of the I.T. Act, 1961.</i>
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*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 aforesaid 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 Overseas*

(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.”*

5.2. *Considering the facts of the case in the light of above decisions, it is clear that all the documents and Annexures referred to in the reasons have not been supplied to the assessee and that approval granted by Pr. CIT is invalid. Therefore, reopening of the assessment is wholly*

invalid and void abinitio. Resultantly, the reopening of the assessment is liable to be quashed. Following the reasons for decision in the case of M/s. Ganesh Ganga Investments Pvt. Ltd., vs., ITO, Ward-10(1), New Delhi (supra), we set aside the Orders of the authorities below and quash the reopening of the assessment. In the result, all the additions stand deleted.

6. *In the result, appeal of Assessee allowed.”*

6.4. *Considering the totality of the facts and circumstances of the case and that wrong Section have been mentioned in the reasons and some of the Columns material for re-assessment are left ‘Blank’ and that Addl. CIT did not record how he was satisfied on wrong facts and wrong reasons would clearly show that reopening have been done in the matter without application of mind based on wrong facts and as such the reopening of the assessment cannot be justified. It may also be noted here that the Learned Addl. CIT, Range-12, Delhi while granting sanction under section 151 of the I.T. Act has mentioned in the reasons that “Yes, I am satisfied that this is a fit case for reopening under section*

147.” Such a satisfaction was not found valid by ITAT, Delhi Benches in the cases of Shree Balkishan Agarwal Glass Industries Ltd., Delhi vs., DCIT (supra) and M/s. Behat Holdings Ltd., Delhi vs., ITO, Ward-4(3), New Delhi (supra), based on several decisions of the Hon’ble High Courts. Thus, the issue is covered against the Revenue by the above decisions of the Tribunal as well. The A.O. has thus no justification to assume jurisdiction under section 147 of the I.T. Act, 1961, in a Lawful manner and as such the same are liable to be quashed. In view of the above discussion, we set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, all additions stand deleted. Since we have quashed the reopening of the assessment, therefore, there is nothing to decide the issue of addition on merits. Appeal of the Assessee allowed.

7. In the result, appeal of the Assessee allowed.”

6.1. The form for recording reasons was also same in this case as is mentioned by the A.O. in the case of assessee. Thus, the issue is squarely covered in favour of the assessee by the aforesaid decision of the Delhi Tribunal

in the case of VRC Township Pvt. Ltd., Delhi (supra). Following the reasons for the same, we set aside the Orders of the authorities below and quash the reopening of the assessment under section 147/148 of the I.T. Act. Resultantly, all additions stand deleted. In view of the above findings, the other grounds are left with academic discussion only. Accordingly, appeal of the Assessee allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 17th December, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-II' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.