

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 86/Del/2016 : Asstt. Year : 2006-07

M/s Kanha Enterprises Pvt. Ltd., 1170, Kucha Mahajani, Chandani Chowk, Delhi-110006	Vs	Income Tax Officer, Ward-5(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACR6935N		

Assessee by : Sh. Sandeep Sapra, Adv.

Revenue by : Sh. Neeraj Kumar, Sr. DR

Date of Hearing : 07.09.2016	Date of Pronouncement : 30.11.2016
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ORDER

This is an appeal by the assessee against the order dated 18.11.2015 of Id. CIT(A)-XVII, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the action of the Id. A.O. to issue notice u/s 148 of the Income Tax Act, 1961 and upholding the jurisdiction of the Id. A.O. to complete impugned assessment u/s 147/143(3) of the Income Tax Act, 1961 for various reasons including the following:-

i) Because, the Id. A.O. did not apply his mind so as to come to an independent conclusion to form a belief regarding escapement of income.

ii) Because, the Id. A.O. did not allege any failure on the part of the appellant to disclose fully and truly all

material facts necessary for his assessment ignoring the requirements of first proviso to section 147 of the Income Tax Act, 1961.

iii) Because, the Id. A.O. had alleged the escapement of income of Rs.62 lacs in the reasons recorded before issuance of notice instead of the amount of ultimate addition of Rs. 42 lacs only, which fact establish that the Id. A.O. did not apply his mind.

iv) Because, no material whatsoever was brought on record so as to allege that the money used for the investment in share capital had actually gone out of the coffer of the appellant.

2. Without prejudice to above, the Id. CIT(A) has erred in law as well as on the facts by upholding the action of the Id. A.O. to issue notice u/s 148 without making any allegation in the reasons recorded by him to the effect that the alleged escapement was for the reason of failure on the part of the appellant to disclose fully & truly all the material facts necessary for its assessment and thereby contravening the provisions contained in the first proviso to section 147 of the Income Tax Act, 1961.

3. Without prejudice to above, the Id. CIT(A) has erred by confirming the addition of Rs.42 lacs u/s 68 of the Income Tax Act, 1961, without considering the submissions of the appellant in right perspective thereof and the findings and observations made are totally unjust and unlawful and the judicial pronouncements relied upon by the Id. CIT(A) are not applicable to the appellant's case being distinguishable on facts and the impugned addition

has been made and confirmed without following the process of natural justice by allowing cross examination of the parties involved and without confronting the material collected behind the back of the appellant.

4. That the addition of Rs.84,000/- u/s 69C towards hypothecated/assumed payment of commission @ 2% on the alleged amount of Rs.42 lacs being alleged accommodation entries is totally unjust, unlawful & unwarranted as the alleged mediator has never been confronted to the appellant even after a specific request from the appellant and therefore the same deserves to be deleted.

5. The appellant craves leave to add, modify and/ or delete any grounds of appeal.”

3. From the above grounds, it is gathered that the main grievance of the assessee is related to the confirmation of the action of the AO in reopening the assessment u/s 147 r.w.s. 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and in making the addition of Rs.42,84,000/-.

4. Facts of the case in brief are that the original assessment in this case was completed u/s 143(3) of the Act on 23.12.2008 at an income of Rs.2,38,040 as against the declared income of Rs.2,04,241/-. Later on, the AO noticed that an investigation was conducted by the Investigation Wing of the department on certain persons engaged in providing accommodation entry to

the beneficiaries to their services in return of commission and many persons were using services of accommodation entry operators to channelize their unaccounted money in their regular books of accounts by routing the same through the accounts of accommodation entry providers and that the findings of the Investigation Wing of the department were brought to the knowledge of all the Assessing Officer. The AO thereafter started the reassessment proceedings u/s 147 of the Act and issued notice dated 28.03.2013 u/s 148 of the Act to the assessee. The AO vide notice u/s 142(1) of the Act dated 26.08.2013 asked the assessee to furnish the documents and details. In response, the assessee vide letter dated 06.09.2013 requested for supply of reasons recorded for initiation of the proceedings u/s 147 of the Act. The AO supplied the reasons to the assessee and subsequently issued notice u/s 133(6) of the Act to M/s Hillridge Investment Ltd., M-11, South Extension, Part-2, New Delhi, which was served but no reply was received. Another notice was issued to M/s Stellar Investment Ltd., B-5/8, Double Story, Ramesh Nagar, New Delhi, which was received back with the remarks "locked". The AO asked the assessee to produce the Directors of the aforesaid companies with complete books of accounts for verification. The assessee raised objections for proceedings u/s 147 of the Act. The AO however asked the assessee to show-

cause as to why the amount received from the aforesaid two concerns be not treated as unexplained within the meaning to Section 68 of the Act. The AO rejected the objection raised by the assessee and observed that the information was received that assessee had taken accommodation entries of Rs.62,00,000/-. He also observed that the assessee had actually received 8,00,000/- from m/s Stellar Investment Ltd. instead of Rs.28,00,000/-. He, therefore made the addition of Rs.42,00,000/- instead of Rs.62,00,000/- and also added Rs.84,000/- on the basis that the report of Investigation Wing mentioned that entry operators provided the services of channelizing fund of beneficiaries against a charge of commission of 2%. Accordingly, the assessment was framed at Rs.45,22,040/- by making the addition of Rs.42,84,000/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

“The facts of the case in brief are that the assessment of the assessee was completed u/s 143(3) on 23.12.2008 at a total income of Rs. 2,38,040/- against declared income of Rs. 2,04,241/- after considering, examining and accepting the allotment of fresh share capital of Rs. 2,49,65,000/- allotted during the year. Photocopy of the assessment order u/s 143(3) dated 23.12.2008 is enclosed at pages 1-2 of the paper book.

The Ld. A.O. on the basis of alleged letter from DIT-Investigation-II, Delhi, giving information about extensive accommodation entry racket being operated by some Mr. S.K. Jain group of entry operators, allegedly containing the name of the appellant as a beneficiary of accommodation entries of Rs. 62 Lacs, issued notice u/s 148 for the captioned year.

The Ld. A.O. on the basis of the said report/information/letter alleging that the appellant has taken accommodation entry of Rs.62 lacs from two companies namely Stellar Investment Ltd., and Hillridge Investment Ltd. of Rs. 50 lacs & 12 lacs respectively, recorded reasons for issuance of notice dated 28.03.2013 u/s 148. The copy of reasons recorded was issued to the assessee along with letter dated 21.10.2013 (copy placed at pages no.56-57 of the paper book). Objections against the reasons so supplied were filed vide letter dated 16.01.2014 (Copy placed at page no. 58-59 of paper book) & the objections so raised were rejected vide order dated 23.01.2014 (Copy placed at page no.60-63 of paper book). During reassessment proceedings, the Id. A.O. after rejecting the submissions and documentary evidences filed by the appellant during original assessment proceedings as well as reassessment proceedings, made addition of Rs. 42 lacs u/s 68 (as against proposed addition of Rs. 62 lacs) and also made an addition of Rs. 84,000/- u/s 69C holding the same as an unexplained expenditure incurred by way of alleged assumed commission paid to the mediator for obtaining accommodation entries of Rs. 42 lacs.”

6. It was further submitted as under:

“The first ground of appeal is against the very initiation of the re-assessment proceedings by issuance of notice dated 28.03.2013 u/s 148 (Copy placed at page no. 55 of paper book). The ld. A.O. has issued notice only on the basis of an alleged letter received from DIT-Investigation-II, Delhi, stating that the appellant has received accommodation entries. No supporting evidence for receiving accommodation entries is stated to have been received by the Ld. AO. from the investigation wing. It is true that the assessee received share application money from the two companies under reference to the tune of Rs.42 lacs but there is nothing on record to suggest that the said share capital money was not in actual received but was an accommodation entry.

No material what so ever has been brought on record to say that the money used for investment in share capital under reference has actually gone out of the coffer of the appellant.

On these facts it is submitted that the information received from the DIT-Investigation-II, Delhi as is referred to herein above did not lead to formation of reasonable belief regarding escapement of income in the hands of the appellant and therefore the very initiation of the re-assessment proceedings and issuance of notice u/s 148 is without jurisdiction. The reasons recorded by the Ld. A.O. before issuance of notice u/s 148 do not suggest, that the Ld. A.O. has applied his independent mind at all before issuance of notice u/s 148 and there is nothing to suggest in his recording as to what material made him to have reason to believe the escapement of income in the

hands of the appellant. This submission further find support from the facts that the Ld. A.O. has simply on the basis of the information from DIT-Investigation doubted the escapement of Rs.62 lacs in the hands of the appellant, while in fact only a sum of Rs.42 lacs was received from the companies under reference. The Ld. A.O. did not even enquire in to the correctness of the amount alleged to have been received by the appellant as accommodation entry before recording reasons u/s 148, this fact alone shows the non application of independent mind by the Ld. A.O. before issuance of notice u/s 148 of the Income Tax Act, 1961.

Under the circumstances, where own mind is not applied by the Ld. A. O., while recording reasons for issuance of notice u/s 148 so as to come to an independent conclusion that he has reason to believe that income has escaped assessment, the reassessment order framed under such proceedings deserves to be annulled.”

7. As regards to the merits of the case, the assessee submitted to the ld. CIT(A) as under:

“Without prejudice to the above submissions on merits, it is prayed that the appellant has duly proved & established the receipt of share capital of Rs.42 lacs from the two companies under reference during the original assessment proceeding to the satisfaction of the ld. AO by producing & submitting the following documentary evidences:-

1. Affidavits of the directors of the companies under reference accompanied by the details of cheques received by the assessee company from the said

companies. Copies of deponent's PAN cards, photocopies of Forms 18 showing their office address and copies of Forms 32 in support of the fact that the deponents were the directors of the investing companies as placed at page no.30-41 of the paper book.

2. Form 2 of assessee Company for allotment of shares as placed at page no.42-44 of the paper book.

3. Master details and Form 23AC (being the gist of balance sheet) in respect of the two companies under reference as placed at page no. 14-27 of the paper book.

4. Bank statements of the assessee company highlighting the transactions received from the companies under reference as placed at page no.45-46 of the paper book.

5. Photocopies of share application forms from the two companies applying for allotment of assessee's shares as placed at page no.47-50 of the paper book.

6. Relevant bank statements of the two share subscribing companies were also filed along with letter dated 24.11.2003 and are on original assessment record as placed at page nos.51-54 of the paper book. Otherwise also receipt of the amount under reference from subscribers' bank account has also been reported by the investigation wing of the department leaving no doubt about the fact that the share application money was received

from the bank accounts of the share allottee companies under reference.

The present re-assessment proceedings tantamount to reconsideration of the issue already considered and decided in the assessment proceedings, which is not permissible u/s 147/148 of the Income Tax Act, 1961.”

8. The reliance was placed on the following case laws:

- *G&G Pharma India Ltd. Vs ITO (2015) 43 CCH 0018 (Del Trib)*
- *Signature Hotels (P) Ltd. Vs IT & Anr. (2011) 338 ITR 0051 (Del)*
- *ACIT Vs Dhariya Construction Co. (2010) 328 ITR 515 (SC)*
- *Wel Intertrade (P) Ltd. & Anr. Vs ITO (2009) 308 ITR 0022 (Del)*
- *Consultating Engineering Services (India) Pvt. Ltd. Vs DCIT & Anr. (2015) 94 CCH 0023 (Del)*
- *HCL Technologies Ltd. Vs DCIT & Anr. (2015) 93 CCH 0146 (Del)*
- *Oracle System Corporation Vs DCIT (2015) 94 CCH 0045 (Del)*
- *Sri Sakthi Textiles Ltd. Vs JCIT & Anr. (2012) 340 ITR 0144*
- *CIT Vs Arvind Remedies Ltd. (2015) 93 CCH 0121*
- *CIT Vs Insecticides (India) Ltd. (2013) 357 ITR 0330*

9. As regards to the addition of Rs.84,000/- on account of commission @ 2%, on estimate basis. It was stated that no material whatsoever had been brought on record by the AO in support of the alleged addition and that the alleged mediator

namely Sh. Sandeep Garg had never been confronted to the assessee after raising specific objection vide letter dated 16.01.2014.

10. The Id. CIT(A) after considering the submissions of the assessee observed that in this case assessment u/s 143(3) was completed on 23.12.2008 but later on an information was received from the Income Tax Department, Investigation Wing, Delhi that they had conducted/carried out an investigation and found that there was an extensive accommodation entry racket being operated by Sh. Surender Kumar Jain groups of entry operators from whom the assessee was also got benefitted as he had also taken accommodation entries in the garb of share application money shown to have been received from the impugned entry operators for which the assessee paid certain percentage of commission in lieu of their services rendered in the garb of accommodation entries. The Id. CIT(A) further observed that the AO applied his mind on the material/details received by him from the Investigation Wing and thereafter recording the reasons, the case was reopened u/s 147 of the Act for which notice u/s 148 was issued with the prior approval of the Commissioner of Income Tax, Delhi-2, on the reason recorded in this regard. The Id. CIT(A) pointed out that the information received by the AO

from the Investigation Wing was not there with him during the original assessment proceedings u/s 143(3) of the Act. Therefore, the issue of notice after expiry of 4 years was justified. The Id. CIT thereafter referred to various judgment of the ITAT as well as the Honorable High Courts at pages no. 11 to 16 of the impugned order, for the cost of repetition, the same were not reproduced herein. The Id. CIT held that the AO was justified for issuing the notice u/s 148 of the Act based on the reopening of the case u/s 147 of the Act. As regards to the addition of Rs.84,000/- on account of commission, the Id. CIT observed that it was established through the investigation carried out that the two persons i.e. M/s Stellar Investment and M/s Hillridge Investment were engaged in giving accommodation entries and they provided entries to the assessee amounting to Rs.42,00,000/- in the garb of share application money whereas they did not have the creditworthiness to invest such amount and thereby the transaction was not genuine. A reference was made to the following case laws:

- *Riddhi Promoters (P) Ltd. CIT, Delhi-7 reported in (2015) Taxmann.com 367 (Del)*
- *CIT, Central-I, Kolkata Vs Maithan International reported in 56 Taxmann.com 283 (Cal.)*
- *Navodaya Castle Pvt. Ltd. Vs CIT reported in 56 Taxmann.com 18 (SC)*

- *Y. M. Singla Vs CIT reported in 56 Taxmann.com 17 (SC)*
- *CIT Vs N.R. Portpolia (P) Ltd. (Del)*

11. The ld. CIT(A) held that the assessee entered its own unaccounted income in the garb of share application money in its books of accounts which was otherwise not genuine and that it was a colourable device adopted by the assessee just to give colour of investment made by the impugned two persons but the device adopted by the assessee was established to be non-genuine and that he AO rightly held that the assessee had made payment of commission @ 2% as per prevailing market rate to the entry operators. Accordingly, the additions made by the AO were confirmed.

12. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO issued the notice u/s 148 of the Act after 4 years of completing the assessment u/s 143(3) of the Act. Therefore, the reopening beyond 4 years of completing the original assessment was bad in law. The reliance was placed on the decision of the ITAT Delhi Bench -Dø New Delhi in ITA No. 5346/Del/2014 for the assessment year 2005-06 in the case of Light Carts Pvt. Ltd. Vs ITO, Ward-1(4) (Meerut) order dated 10.12.2015. It was further

submitted that the AO reopened the assessment already completed u/s 143(3) of the Act vide order dated 23.12.2008 only on the basis of information received from the Investigation Wing which is also evident from the copy of the reasons recorded placed at page nos. 41, 42 of the assessee's paper book. It was stated that the AO did not apply his mind, he merely acted upon the information received from the Investigation Wing, therefore, the reopening was bad in law.

The reliance was placed on the following case laws:

- *CIT Vs Vinyas Finance and Investment Pvt. Ltd. 357 ITR 646 (Del)*
- *CIT Vs Suren International Pvt. Ltd. 357 ITR 24 (Del)*
- *Haryana Acrylic Manufacturing Co. Vs CIT 308 ITR 38 (Del)*
- *Light Carts Pvt. Ltd. Vs ITO in ITA 5346/Del/2014 order dated 10.12.2015*
- *M/s Star Finvest (P) Ltd. Vs Dy. CIT in ITA No. 2081/Del/2009 order dated 21.10.2009*
- *G&G Pharma India Ltd. Vs ITO in ITA No. 3149/Del/2013 order dated 09.01.2015*
- *CIT Vs G&G Pharma India Ltd. order dated 08.10.2015 by the Hon'ble Delhi High Court*

13. It was further submitted that the AO did not apply his own mind while reopening the assessment already completed and even he has mentioned that an amount as Rs.28,00,000/- was received from M/s Stellar Investment on 22.08.2005 instead of Rs.8,00,000/- which was the actual amount received

vide cheque no. 000281. A reference was made to page no. 41 which is the copy of the reasons recorded by the AO. It was contended that the assessee clearly mentioned in Schedule No. 10 which are the accounting policy and notice attached to the Balance Sheet and Profit & Loss Account (copy of which is placed at page nos. 32 to 35 of the assessee's paper book) which revealed that the assessee company had allotted its 249650 equity shares having face value of Rs.10/- per share at a premium of Rs.90/- per share during the Financial Year 2005-06, to finance its expansion plans and to enlarge its capital base and that the company has calculated its premium of Rs.90/- per share on the basis of its working and profitability for last some Financial Years and strength of the companies in which the assessee company had made investments. In this regard, a reference was made to page no. 33 of the assessee's paper book. It was further stated that the assessee furnished the copy of affidavit of Sh. Virendra Kumar Jain, Director of M/s Steller Investment Ltd. alongwith the detail of share application money before the AO during the course of assessment proceedings and also filed photocopies of identity proof of Sh. Virendra Kumar Jain, photocopies of Form Nos. 18 & 32 as filed with ROC in support of the location of registered office, copy of share application form of M/s Steller Investment Ltd. and copy of relevant bank

statement of M/s Steller Investment Ltd. as well as the assessee. A reference was made to page nos. 49 to 60 of the assessee's paper book. It was further stated that similar documents as stated above, relating to M/s Hillridge Investment Ltd. alongwith affidavit of Sh. Rajesh Kumar Mishra, Director of that company were filed during the course of original assessment proceedings, which are placed at page nos. 61 to 70 of the assessee's paper book. It was further stated that the assessee also furnished copy of Form No. 2 for allotment of shares to the applicant and Form No. 23AC with the ROC during the course of original assessment proceedings. A reference was made to page nos. 71 to 87 of the assessee's paper book. It was contended that the AO after applying his mind framed the assessment u/s 143(3) of the Act vide order dated 23.12.2008 and added Rs.33,800/- to the income which was already processed u/s 143(1) of the Act. Therefore, the assessment framed was on the basis of non-application of mind. As such the reopening only on the basis of information from the Investigation Wing was bad in law.

14. In his rival submissions the Id. DR strongly supported the orders of the authorities below and further submitted that the AO clearly mentioned the name of the entry provider in the reasons recorded and applied his mind after receiving the

information from the Investigation Wing. As regards to the mistake in the amount mentioned as investment from M/s Steller Investment Ltd. i.e. Rs.28,00,000/- instead of Rs.8,00,000/-, it was stated that it was a typographical mistake. Therefore, the reopening done by the AO was after proper application of mind as the income escaped assessment. The reliance was placed on the following case laws:

- *CIT Vs Usha International Ltd. (2012) 25 Taxmann.com 200 (Del)*
- *ITO, Ward-7(4) Vs M/s SBS Properties & Finvest Pvt. Ltd. in ITA Nos. 378 & 2164/Del/2008 order dated 30.05.2016*

15. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is noticed that the case of the assessee was selected for scrutiny and original assessment was framed u/s 143(3) of the Act. The assessee furnished the books of account which was test checked by the AO which is evident from the assessment order dated 23.12.2008. In the present case, the assessee furnished the relevant details relating to allotment of shares to M/s Steller Investment Ltd. and M/s Hillridge Investment Ltd. in the form of PAN card of the director for the identity proof, copy of share application form, relevant bank statement from where the amount was withdrawn to make the

payment to the assessee, copy of Form No. 2 furnished to the ROC for allotment of shares to the aforesaid companies and Form No. 23AC filed with the Registrar of company (copy of which are placed at page nos. 49 to 87 of the assessee's paper book). The AO after making the proper inquiry framed the assessment u/s 143(3) of the Act. Thereafter, the AO received the information from the Investigation Wing of Income Tax that the flow of funds from/between the dummy entities/concerns of the beneficiaries did not represent any genuine or actual business transactions and that those dummy entities were not carrying out any actual business other than the activity of providing accommodation entries in the garb of some ostensible business transaction. The AO mentioned that the assessee had received entries from the entry operators through mediators Sh. Sandeep Garg. He also mentioned that the assessee had received entries amounting to Rs.62,00,000/- which included one entry of Rs.28,00,000/- received from Steller Investment Ltd. on 22.08.2005. However, while framing the assessment that amount was considered as Rs.8,00,000/-. It, therefore, appears that the AO had not applied his own mind. He simply acted upon the information received from the Investigation Wing while reopening the assessment of the assessee which was already framed u/s 143(3) of the Act. It is also noticed that the AO in para 4 of

the reasons recorded (copy of which is placed at page nos. 41 to 42) stated as under:

“4. The total of the above accommodation entries taken by the assessee company comes to Rs.62,00,000/-. Taking, on a conservative basis, the rate of commission paid to entry operators (@ 2%), the assessee has also paid the said amount of commission (Rs.1,24,000/-) to the entry operator out of undisclosed sources. Having perused and considered the information received from the Investigation Wing, as discussed above and in the circumstances of the case, I have reason to believe that income of the assessee to the extent of Rs.63,24,000/- has escaped assessment and the case is fit for issuing notice u/s 148 of the Income Tax Act, 1961.”

16. From the above noting of the AO in the reasons recorded, it is clear that he had reason to believe only on the basis of the information received from the Investigation Wing that the income of the assessee to the extent of Rs.63,24,000/- had escaped assessment and the case was fit for issuing the notice u/s 148 of the Act. However, the assessment was framed after reopening of the earlier assessment by making the addition of Rs.42,84,000/- only which clearly shows that the AO acted only on the information received from the Investigation Wing and did not apply his own mind while issuing the notice u/s 148 of the Act.

17. On a similar issue the Honorable Jurisdictional High Court in the case of Principal Commissioner of Income Tax-4 Vs G & G Pharma Ltd. (supra) vide order dated 08.10.2015 (now reported at 384 ITR 147) held as under:

“The basic requirement of law for reopening an assessment is application of mind by the Assessing Officer, to the materials produced prior to reopening the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.”

It has further been held as under:

“Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the Assessing Officer to the material produced before issuing the notice for reassessment. Without analysing and forming a prima facie opinion on the basis of material produced, it was not possible for the Assessing Officer to conclude that he had reason to believe that income had escaped assessment.”

18. Similar issue was also a subject matter of the adjudication by the ITAT Delhi Bench -A, New Delhi in the case of Sh. Ashok Arora, New Delhi Vs ITO, Ward-37(3), New Delhi for

the assessment year 2001-02 in ITA No. 377/Del/2010 wherein by following the earlier order in ITA No. 1894/Del/2012 for the assessment year 2002-03 in the case of the said assessee, the initiation of the proceedings u/s 147 r.w.s. 148 of the Act was set aside by observing in para 6 of the order dated 04.11.2016 as under:

“6. We have considered the submission of both the parties and perused the material available on the record it is noticed that an identical issue having similar facts related to the re-opening u/s 147/148 of the Income-tax Act, 1961 was a subject matter of adjudication before this Bench of the Tribunal in ITA No. 1894/Del/2012 for the Assessment Year 2002-03 in assessee’s own case wherein vide order dated 18th May 2016, the issue was decided in favour of the assessee and the relevant findings have been given at paras 8 to 10 which read as under:-

8. “Hon'ble Supreme Court decided the identical issue as to the validity of the notice issued u/s 147 of the Act for reopening of the assessment in the case entitled Chhugamal Rajpal vs. S.P. Chaliha - (1971) 79 ITR 603 by returning the following findings:-

"The Supreme Court was dealing with a case where the AO had received certain communications from the Commissioner of Income Tax showing that the alleged creditors of the Assessee were "name-lenders and the transactions are bogus." The AO came to the conclusion that there were reasons to believe that income of the Assessee had escaped

assessment. The Supreme Court disagreed and observed that the AO "had not even come to a prima facie conclusion that the transactions to which he referred were not genuine transactions. He appeared to have had only a vague feeling that they may be "bogus transactions." It was further explained by the Supreme Court that:

"Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a) or cl. (b) of S. 147 are satisfied, the ITO has no jurisdiction to issue a notice under S. 148."

The Supreme Court concluded that it was not satisfied that the ITO had any material before him which could satisfy the requirements under Section 147 and therefore could not have issued notice under Section 148."

9. Similar issue has been decided by Hon'ble jurisdictional High Court in case of Pr. Commissioner of Income Tax-4 vs. G & G Pharma Limited in ITA 545/2015 order dated 08.10.2015 by relying upon the

Hon'ble Supreme Court judgment cited as Chhugamal Rajpal vs. S.P. Chaliha (supra). The operative part of the judgment in case of G & G Pharma Limited (supra) is as under :

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "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." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must

apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case."

10. Now, adverting to the case at hand, in view of the law laid down by the Hon'ble Supreme Court in Chhugamal Rajpal vs. S.P. Chaliha (supra) and Hon'ble jurisdictional High Court in G & G Pharma Limited (supra) discussed in the preceding paras, we are of the considered view that initiation of the proceedings u/s 147 of the Act by the AO in this case on the basis of tax evasion petition are itself bad in law as the AO has not satisfied himself before initiating the proceedings that income of the assessee has escaped assessment for the following reasons:-

(i) that AO has merely proceeded to initiate proceedings u/s 147 of the Act on the basis of tax evasion petition that the assessee has provided loan of Rs.2,50,000/- and Rs.3,00,000/- to Mr. Deepak and Mr. Sanjay respectively;

(ii) that the AO has merely forwarded the intimation contained in the tax evasion petition to the assessee without recording any reasons whatsoever;

(iii) that the AO has not even come to prima facie conclusion that the alleged loan transaction between the assessee and Deepak and Sanjay were genuine transactions and as to what are the findings returned by the Id. Civil Court in the alleged suit filed by the assessee;

(iv) that the AO has admittedly not recorded that he has reason to believe that the income of Rs.5,50,000/- has escaped assessment and he has satisfied himself before initiating the proceedings u/s 147 of the Act;

(v) that when the AO without recording any reason for reopening forwarded the information received by way of tax evasion petition, according of approval by CIT for reopening is also a mechanical exercise without applying the mind and as such, approval accorded by the CIT is also not sustainable. Reliance in this regard is placed upon judgment in case of Vijay Rameshbhai Gupta vs. ACIT - (2013) 32 taxman.com 41 (Guj.).

(vi) that even after initiation of the proceedings u/s 147/148, the AO has failed to lay hand on the evidence if Sanjay has received a sum of Rs.2,50,000/- in cash as advance from Amita Arora, w/o Ashok Arora, rather resorted to the best judgment assessment u/s 144 of the Act;

(vii) that neither the AO has applied his mind to satisfy himself to reopen the case nor he has investigated the matter during reassessment proceedings nor CIT had applied his mind before according approval for reopening.”

19. In the present case also the AO issued the notice u/s 148 of the Act only on the basis of information received from the Investigation Wing. Therefore, by following the aforesaid referred to orders, the legal issue relating to reopening the

assessment is decided in favour of the assessee and the assessment framed on the basis of notices issued u/s 147 r.w.s. 148 of the Act is quashed.

20. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 30/11/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 30/11/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR