

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' NEW DELHI  
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.6398/Del/2016**  
**Assessment Year 2006-07**

<b>Zurassic Properties Pvt. Ltd., Shreekunj, Opp. Dabar Farms, Bijwasan Road, New Delhi. PAN: AAACZ 0068J</b>	Vs.	<b>ITO, Ward-18(4), New Delhi.</b>
(Appellant)		(Respondent)

Revenue by :	Ms. Bedobani Chaudhuri, Sr.D.R.
Assessee(s) by :	Shri Ashok Malik, Adv.

सुनवाई की तारीख/Date of Hearing : 25/04/2017  
घोषणा की तारीख /Date of Pronouncement: 28/04/2017

**ORDER**

This appeal of the assessee arises from the order of learned CIT(A)-22, New Delhi dated 26.10.2016 for the assessment year 2006-07. The assessee has raised the following grounds of appeal.

*“1. The CIT (A) has grossly erred in law in upholding that reopening of assessment completed under section 143(3) after 4 year by issuing notice u/s 148 read with Section 147 is valid.*

*2.The CIT (A) has grossly erred in upholding the addition of Rs 24,03,120/- by the AD in the income of the Assessee.*

*3.The CIT (A) has erred in law in dismissing the Ground No. 2(b) of the Grounds Of Appeal, on wrong facts and confirming the addition of Rs. 45,600/- made by the AO for the first time in the income of the Assessee on presumption while passing the order u/s 143(3)/147.*

*4.The CIT (A) has grossly erred in law and on facts of the case in dismissing the Ground No 2(c) of the grounds of appeal and confirming the disallowance of Rs.77,515/- against Rs.61,580/- u/s.14A of the Income Tax Act 1961.*

*5.The learned CIT (A) has grossly erred on the facts of the case and not directing the AO to adjust the brought forward losses against current income as per law.”*

2. The assessee in its grounds of appeal apart from the grounds on merit has raised legal grounds against the initiation of proceedings u/s.147 of the Act.
3. The brief facts of the case as argued by the ld. counsel for the assessee are that the Assessing Officer while recording the reasons has not applied his mind, therefore, the Assessing Officer does not acquire any jurisdiction to assess/re-assess u/s.147 of the Act. The legal ground raised by the assessee was dismissed by the learned CIT(A).
4. I have heard the rival contentions and perused the facts of the case. The reasons recorded at page 4 of the paper book are reproduced hereunder:

*“M/s Zurassic Properties P. Ltd is assessed to tax with Ward-18(4). New Delhi Enquiries of Investigation Wing Delhi of the Department have unearthed huge accommodation entry racket being operated by accommodation entry operator Sh. Surendra Kr. Jain by way of more than 100 companies/firms etc. The investigation wing has compiled a report & data of the beneficiaries of such entries. The name of the assessee figures in the list of beneficiaries of Share capital/Premium/Loan*

*I have gone through the report and data sent by the investigation wing. The report clearly indicates that accommodation entries have been taken to plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form share application money loans etc and even describes the modus operandi of this scam.*

*The Investigation Wing's list of Beneficiaries (of such accommodation entries) gives comprehensive details of Beneficiaries Name. Entity from where entry received, bank, cheque/RTGS, date and even the middleman through which such entry is received.*

*This list contains the name of M/s Zurassic Properties P. Ltd which has taken such accommodation entries. Two entries of Rs.4.6 lakhs each have been received vide instrument numbers 48085 & 979852 on 5.12.2005. The entries have been received from M/s Hilridge investments Ltd & M/s. Pelicon Finance & Lease Ltd. respectively from their accounts in Bank of India. Copies of handwritten papers seized from residence of Sh. S.K. Jain have also been forwarded' from the wing. The middleman involved in helping the assessee take these entries has been named as YKG.*

*Thus, the assessee has ploughed back unaccounted money of Rs.9.2 lakhs in its business through the channel of accommodation entry. The assessee has also paid 'commission of 1.75% in cash on the same. Therefore, it is failure on the part of the assessee to disclose fully and truly all material facts necessary assessment, for the assessment year 2006-07 and has not paid tax on such amount the unaccounted moneys which should have been charged to tax are being ploughed back to business without paying dues tax on it. In view of the above facts*

*have reasons to believe that income to the tune of Rs.9.2 lakhs, of the assessee company for Assessment year.2006-07 has escaped assessment. Therefore in accordance with provisions of Section 151(2) of IT Act, sanction for issue a notice u/s.148 of the Act is being sought.”*

4.1 The said reasons recorded are undated and the notice issued u/s.148 was dated 26.03.2013. The assessee raised an objection to the said reasons on which order by the Assessing Officer has been passed and the same is placed at the back side of the page 8 is as under:

*“It will not be out of context to mention that what is required at the time of reopening of assessment is mere reasons to believe and not genuiner.ess of esccpement of income. The fact whether income has actually escaped assessment is a matter of verification & investigation which needs to be done at the time of reassessment., The investigation report permits the reopening of the assessment and is a starting point for the enquiry. Further, Investigation Wing is an arm of department itself. The genuineness of the inquiry specifically conducted by it cannot be doubted by the Assessing Officer, otherwise it may hamper the efficient functioning of the department itself”*

4.2 From the decision of the Assessing Officer while disposing of the reasons, the report of the investigation wing is final for initiation of reassessment proceedings u/s.147 of the Act. It is evident that the Assessing Officer has not applied his mind independently to the fact of the case and in such circumstances of the case, the Assessing Officer does not acquire any jurisdiction to assess or reassess the matter in the present case. The reliance is placed upon the decision of Hon’ble Delhi High Court in the case of Signature Hotels P. Ltd. vs. Income Tax Officer and Another, reported in (2011) 338 ITR 51 (Delhi) where the relevant decision is reproduced hereinunder:

*“Held, allowing the petition, that the reassessment proceedings were initiated on the basis of information received from the Director of Income Tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not*

*satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid up capital of Rs.90 lakhs and was incorporated in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed.”*

5.1 Reliance is also placed upon the decision of Hon’ble Delhi High Court in the case of Sarthak Securities Co. P. Ltd. Vs. ITO, reported in (2010) 329 ITR 110 (Del).

6. In the circumstances and facts of the present case and the decision relied upon hereinabove the AO does not acquire jurisdiction to assess or re-assess the matter in the present case and accordingly the assessment / re-assessment are directed to be quashed.

7. In the result, the legal ground of the assessee is allowed.

8. Since the assessee succeeds on legal ground, therefore, the grounds on merit become academic in nature and do not require any adjudication.

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

Order pronounced in the open court on this day 28<sup>th</sup> April, 2017

**Sd/-**

**(B.P. JAIN)**

**ACCOUNTANT MEMBER**

Dated: 28/04/2017

*Prabhat Kumar Kesarwani, Sr.P.S.*

Copy forwarded to:

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

**Asstt. Registrar, ITAT, New Delhi**