

assessment made under section 147/143(3) of the Act at an income of Rs.63,38.770/ as against returned income of Rs.18,38.770/-.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and. further completion of assessment under section 147/143(3) of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and. completion of assessment under the Act.

3. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in sustaining the initiation of proceedings u/s 147 of the Act on the basis of information received from DCIT Central Circle - 18, Delhi, mechanically and without independent application of mind.

3.1 That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceeding initiated under section 148 was a mere pretence.

4. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 45,00,000/- as alleged accommodation entry and brought to tax under section 68 of the I.T. Act, 1961, the breakup of which is as under :

| | |
|----------------------------------|----------------|
| (a) M/s. Omni Farms (P) Ltd. | Rs.15,00,000/- |
| (b) M/s. Vasudev Farms Pvt. Ltd. | Rs.20,00,000/- |
| (c) M/s. Giriasho Co. Pvt. Ltd. | Rs.10,00,000/- |

4.1 That further the learned Commissioner of Income Tax (Appeals) has ignored the basic fact that no amount was ever

received from Sh. S.K. Gupta (the alleged accommodation entry operator), rather :

Rs.15.00, 000/- was received on sale of shares of M/s Global Buildwell India Pvt. Ltd. to M/s Omni Farms Pvt. Ltd.

Rs.20,00,000/- was received on sale of shares of M/s Diligent Developers Ltd. to M/s Vasudev Farms Pvt. Ltd. and,

Rs.10,00,000/- were received on sale of shares of M/s Business Park Construction Ltd. to M/s.Giriasho Co.Pvt.Ltd.

and all the necessary details regarding the said transactions were filed before learned ACIT and CIT (A) as well, which were totally ignored and arbitrarily brushed aside by both the low^{er} authorities without any investigation and enquiries, thus, addition so made and sustained was clearly based on suspicion and surmises and is liable to be deleted as such.

5. That the learned Commissioner of Income Tax (Appeals) has ignored the basic fact that reliance placed on the statement made by Sh. D.N. Taneja on 07.01.2009 and surrender made of Rs. 6.23 crores is an irrelevant and extraneous consideration, as Sh. D.N. Taneja has himself not accepted the surrender made by himself during the course of search operations, thus, his statement cannot be relied upon for making any addition.

5.1 That in doing so. the learned Commissioner of Income Tax (Appeals) has ignored the basic fact that Sh. D.N.Taneja was never a director in the appellant company and nor he had any shareholding in the appellant company, and thus, the surrender made by him on behalf of appellant company cannot be relied upon, as he is not aware of the facts of the appellant company.

6. That further the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by ignoring the fact that no opportunity was provided to the assessee to cross-examine Shri S.K. Gupta and thus, the addition so made and sustained on

the basis of his alleged statement has no legs to stand and is liable to be deleted as such.

7. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining additions in the hands of assessee company, without giving any fair and proper opportunity of being heard to the appellant company, thereby, violating the principles of natural justice.

8. That the learned Commissioner of Income Tax (Appeals) has further erred by sustaining levy of interest u/s 234B of the Act, which is not leviable on the facts of the appellant company.”

2. The Ground No. 1 is general in nature and in ground Nos. 2 to 3 and 3.1 the assessee has questioned validity of initiation of reopening proceedings and framing of assessment in furtherance thereto under section 147/143(3) of the Act. Since the issue raised goes to the root of the matter, we prefer to adjudicate upon it first.

3. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

4. The facts in brief are that the assessee, a Pvt. Ltd. company is in the business of construction and development of properties. It filed its return of income on 3.03.2006 at Rs.18,38,770/-, which was accepted by the Revenue in the assessment framed under section 143(3) on 17.09.2007. Subsequently, on the basis of information received from the Investigation Wing of the Department, the assessee recorded its

reason to believe and issued notice under section 148 of the Act. In compliance, the assessee adopted its return of income originally filed on 3.03.2006. The assessee raised the objections against the initiation of reopening proceedings, but could not succeed. The Assessing Officer accordingly made addition of Rs.45,00,000/- i.e. the receipt from Shri D.N. Taneja treating the same as accommodation entry under section 68 of the Act. The ld. CIT (A) also rejected the contentions of the assessee on the validity of initiation of reopening proceedings and assessment framed in furtherance thereto and upheld the addition made by the Assessing Officer.

4.1 In support of the ground Nos. 2, 3 and 3.1 questioning the validity of initiation of reopening proceedings and the assessment framed in furtherance thereto, the ld. AR, Shri Salil Aggarwal, Advocate, referred the reasons recorded by the Assessing Officer made available at page No. 22 of the paper book and submitted that it is vague and the Assessing Officer has initiated the reopening proceedings simply on the basis of information received from the Investigation Wing of the Department without application of his independent mind after examining the same. He pointed out that the issue is squarely covered in favour of the assessee by the decision of Delhi Bench of the Tribunal in the case of Hitashi Estates Ltd. Vs. ITO, ITA. No. 622/Del/2014 (assessment year

2005-06) – order dated 30.11.2015 under the similar set of facts. He also placed reliance on the following decisions :-

- “ (i) Signatures Hotel (P) Ltd., vs. ITO (2011)
338R 51 (Del.);
- (ii) Sarthak Securities Co. (P) Ltd. vs. ITO (2010)
329R 110 (Del.);
- (iii) Pr. CIT vs. G & G Pharma India Ltd.,
ITA 545/2015 [order dated 08.10.2015 (Del.)];
- (iv) ITO vs. Rajat Export Imports (P) Ltd.,
ITA No. 282o/Del/20ii (A.Y. 2003-04)
[order dated 27.11.2015];
- (v) Rasalika Trading & Investment Co.(P) Ltd., Vs. ITO,
ITA No. 3103/Del/2013
(A.Y. 2004-05) [order dated 27.11.2015];
- (vi) RKG International Pvt. Ltd. vs. ITO,
ITA No., ioi/Del/2013 (A.Y. 2004-05) -
order dated 14.11.2014.
- (vii) ACIT Vs. Gulshan International (P) Ltd. ITA. 115/Del/2012
(A.Y. 2003-04) [order dated 22.04.2016]. ”

4.2 The ld. Sr. DR, on the other hand, placed reliance on the orders of the authorities below on the issues. He submitted that there was specific information from the Investigation Wing of the Department regarding involvement of the assessee in accommodation entries. The assessee was a beneficiary of accommodation entries received from

certain established entry operators during the period relevant to assessment year 2005-06. As per information of the Investigation Wing the accommodation entries were received through the concerns of entry operators Shri S.K. Gupta and the assessee was beneficiary of accommodation entry from such entry operators, as per transaction totaling a sum of Rs.45,00,000/- was offered as additional income by Shri D.N. Taneja in his statement recorded on 7.01.2009.

4.3 The Id. AR rejoined with this submission that while rejecting objections of the assessee, the Assessing Officer did not even care to look at the records of the assessee company and has just mechanically alleged that the amount of Rs.45,00,000/- have been received from one alleged accommodation entry provider, Mr. S.K. Gupta, through his companies, whereas, no effort was made by the Assessing Officer to verify the said information received from Investigation Wing, as no cheque number or from which party, the said amount was received by the assessee company, was mentioned by the Assessing Officer in his reasons recorded. He submitted further that Shri D.N. Taneja has no locus standi with respect to the assessee company as he was never a director nor a share holder in the assessee company and thus, no reliance could have been placed on his general statement. He submitted

that it is apparent from the balance sheet of the company that Rs.45,00,000/- was received by the assessee company on sale of shares and all these transactions were duly disclosed as sale consideration.

4.4 Having gone through the above cited decisions, we find that under similar set of facts the Tribunal in the case of Hitashi Estates Ltd. Vs. ITO (supra) has decided an identical issue in favour of the assessee. There also the Assessing Officer had initiated reopening proceedings against the assessee Hitashi Estates Ltd. by recording reasons on the basis of information received from the Investigation Wing of the Department based on statements of Shri D.N. Taneja, recorded during the course of search, who stated that the transactions done with the company controlled by Shri S.K. Gupta has been duly reflected in their books. For a ready reference the reasons recorded in the present case, made available at page No. 22 of the paper book is being reproduced hereunder :-

“ Reasons for reopening the case u/s 147 of the Income Tax in the case of M/s Novaity Developers Pvt. Ltd. : A.Y. 2005-06

Return of income declaring Total income of Rs. 18,38,770/- was originally filed by the assessee for the above assessment year 2005-06 on 03.03.2006 and the case was processed u/s 143(1) of the IT. Act on 28.07.2006 at returned income.

Information has been received from the DC I T. Central Circle 18, New Delhi that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Investigation Wing during the period relevant to A.Y. 2005-06. It has been informed that Search & Seizure operation u/s 132(1) was carried out in M/s Taneja - Puri Group of cases on 05.01.2009. During the course of search and seizure proceedings in Taneja group of cases, the main controlling person of the group Sh. D.N. Taneja in his statement recorded on 07.01.2009 offered the entries done with Mr. S.K. Gupta's companies amounting to Rs. 6.23 crores as additional income in the respective financial years and in respective companies of his group (there are 15 such companies and include M/s Novelty Developers (P) Ltd in which accommodation entries of Rs.45 lacs for assessment year 2005-06 have been offered as additional income by Sh. D.N. Taneja in his above mentioned statement).

| S. No. | Name of the Beneficiary company/assessee | PAN | Amount of Accommodation Entries provided (in Rs.) |
|---------------|---|------------|--|
| 1 | M/s. Novelty Developers (P.) Ltd. | AAACN2349A | Rs.45 lakhs. |

Since Shri D. N. Taneja in his statement admitted receipt of accommodation entry to the extent of Rs. 45 Lakh, from the companies of Mr. S.K. Gupta, therefore it is clear that the Assessee has introduced his own undisclosed income in the garb of share application money/Gifts/unsecured loans/unaccounted, purchases. sales etc. through companies of Sh. S.K. Gupta. I therefore have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for the above assessment year, the income Rs. 45,00,000/- chargeable to tax to the extent of accommodation entry mentioned above, has escaped assessment within the meaning of proviso to Section 147 of the Act.

Sd/-

(Shankar Gupta)
Asst. Commissioner of Wealth-tax,
Circle 13(1), New Delhi, ”

4.5 The very perusal of the above stated reasons supports the contention of the assessee that there was total non-application of mind on the part of the Assessing Officer as he mentioned about the statement recorded of Shri D.N. Taneja on 7.01.2009, wherein he surrendered the said amount of Rs.45,00,000/- on company's account to buy peace of mind and in doing so, the Assessing Officer has not examined the basic facts about the locus standee of Shri D.N. Taneja with respect to the assessee company. The Assessing Officer has also not made any effort to look into the return of income filed by the assessee company nor any attempt has been made by him to verify the facts of alleged accommodation entry from assessee's record kept with the Department. The Assessing Officer has simply relied upon the information received from the Investigation Wing of the Department and recorded reasons to proceed under section 148/147 of the Act to frame assessment. The relevant Para Nos. 12 and 13 of the decision of Hon'ble jurisdictional High Court of Delhi in the case of Pr. CIT Vs. G & G Pharma India Ltd. (supra) on the issue are being reproduced hereunder :-

“ 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.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity . ”

4.6 We thus, respectfully following the ratio laid down by the Hon'ble jurisdictional High Court of Delhi in the case of Pr. CIT Vs. G & G Pharma India Ltd. (supra), hold that the initiation of reopening proceedings in the present case in absence of application of its independent mind by the Assessing Officer, while recording a vague reason, is not valid and as such, the assessment framed in furtherance thereto is also not valid and the same is quashed as void ab initio.

5. In result, ground Nos. 2, 3 and 3.1 involving the issue are allowed.

6. In view of the above finding, holding the very assessment order itself as void ab initio, the remaining grounds questioning the addition of Rs.45,00,000/- under section 68 of the Act, have become infructuous. Charging of interest under section 234B questioned in ground No. 8 is consequential in nature.

7. In result, the appeal is allowed.

8. The order is pronounced in the Open Court on : 02nd March, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(I. C. SUDHIR)
JUDICIAL MEMBER

Dated: the 02nd March, 2017.

MEHTA

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals);
5. DR; ITAT, ND.

By Order

ASSISTANT REGISTRAR

| | Date |
|--|------------|
| Draft dictated on | 02.03.2017 |
| Draft placed before author | 02.03.2017 |
| Draft proposed & placed before the second member | |
| Draft discussed/approved by Second Member. | |
| Approved Draft comes to the Sr.PS/PS | |
| Kept for pronouncement on | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |