IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A' CHANDIGARH

BEFORE SHRI. SANJAY GARG, JUDICIAL, MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.96/Chd/2016
Assessment Year: 2005-06

M/s Bassi Steel Ltd. Vill- Gholu Majra Mohali PAN No. AABCB2610D	Vs.	The Dy. CIT Circle-6(1) Mohali C-81, Industrial Area Phase-VI, Mohali
(Appellant)		(Respondent)

Assessee By : Sh. Ashok Goel
Department By : Smt. C. Chandrakanta

Date of hearing : 23/01/2018
Date of Pronouncement : 27/03/2018

ORDER

PER DR. B.R.R.KUMAR, AM

The present appeal has been filed by the assessee against the order of the Ld. CIT(A)-2, Chandigarh dt. 14/12/2015.

2. In the present appeal assessee has raised the following grounds:

1. That the Ld. CIT(A) has erred in confirming the action of the AO for issue of notice U/s 148 of the Income Tax Act. When the reason are not as per law.
2. That Ld. CIT(A) has erred in confirming the addition of Rs. 10 Lacs U/s 68 of the Income Tax Act, when all the relevant documents have been produced. Further the order of the Hon'ble ITAT Chandigarh Bench has not been followed.

During the hearing held on 23/01/2018, the Ld.AR has pleaded for permission to withdraw the ground number one raised on the issue of notice under section 148 which has been permitted. Accordingly the Ld.AR has signed on the ground of appeal to that effect .Hence this ground of appeal is treated as not pressed.

3. Brief facts on the issue are that Assessing Officer received investigation report from the Investigation Wing of the department that on the basis of searches conducted on the premises of Sh. Tarun Goyal, CA, Karol Bagh, New Delhi, it was alleged that he had floated number of bogus Pvt. Ltd Companies and Firms for providing accommodation entries. It was held by the Assessing Officer that Sh. Tarun Goyal admitted this in his statement on oath. It was further revealed that share capital of Rs. 5 Lacs each has been given by these two

companies namely M/s. Mahanivesh India Ltd. and M/s Geefcee Finance Ltd. of Tarun Goyal groups to the assessee company.

4. Ground of appeal No. 2 is directed against the addition of Rs. 10,00,000/- u/s 68 of the Act confirmed by the Ld. CIT(A).

5. Before us the Ld. AR reiterated the submissions made before the lower authorities. He has submitted that the bank statements have been provided in case of GEEFCEE Finance Ltd. for the relevant period showing the DD made from Bank of Punjab Ltd. on 19/12/2003, in case of Mahanivesh India Ltd. as provided a copy of the balance sheet reflecting the investment in the assessee's company. The Ld. AR submitted that he has provided copies of the ITR of the parties alongwith balance sheet.

Before us the Ld. AR has relied on the following judgments:

1. CIT Vs. G.P. International Ltd. 186 Taxman 229
2. CIT Vs. Fair Finvest Ltd. 357 ITR 146
3. CIT Vs. Ganeshwari Metal (P) Ltd. 214 Taxman 423
4. CIT Vs. Five Vision Promoters (P) Ltd. Hon'ble Delhi High Court
5. CIT Vs. Vrindavan Farms(P) Ltd. Hon'ble Delhi High Court
6. CIT Vs. First Point Finance Ltd. 286 ITR 477
7. CIT Vs. LLIACE Investment (P) Ltd. 287 ITR 135

6. In the paper book he has submitted the copies of share application form, copy of incorporation, copy of ITR first page bank statement pertaining to these two companies.

7. The Ld. AR relied on the judgment in the case of Kisco Castings Pvt. Ltd. 152 TTJ 629 on the proposition that mere assertions are not enough to demolish the written document. He submitted that identity, creditworthiness of the parties, and genuineness of the transaction has been proved before the lower authorities which has been ignored. He argued that copy of balance sheets have also been filed and therefore all the necessary requirement for compliance u/s 68 have been made. The appellant have placed reliance on

various judicial pronouncements including the case of Delhi High Court in Finlease Pvt. Ltd. 342 ITR.

8. Ld. DR relied on the order of the Ld. CIT(A), the relevant portion of the order of the Ld. CIT(A) is as under:

> "……..A transaction does not become genuine merely because a paper trail has been created/filed. The AO while exercising his power as an investigating officer has a right to go beyond what is apparent. The mere filing of affidavit, gift deed etc shall not make the gift genuine ….Merely because a paper trail has been filed will not by itself make the transaction genuine. Hon'ble Delhi Court in the case of Ashok Mahendru & Sons (HUF) vs. CIT (2008) 9 DTR (Delhi) 222: (2008)173 TAXMAN 178 has held that even though the documentation may be in order, if there is enough material to raise a very strong suspicion that there is something not quite right with nature of transaction, the authority under the act may reject the document and require the assessee to show that the transaction is really one which is above board…..
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> 7.4 The material fact is thus that the financial strength of the person who has allegedly made the investment has not been established. The appellant has failed to discharge the primary onus of proving their capacity to purchase the shares and to prove the genuineness of the transactions. The appellant Company has not discharged its onus and identity and the creditworthiness of the investors has not been established. The facts of the case have also been examined in light of the judgment of Hon'ble Delhi High Court in the case of - Indus Valley Promoters Ltd. v. Commissioner of Income-tax [2008] 305 ITR 0202- wherein it has held as under:
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> *"The assessee must discharge the burden of proving the identity of the creditors and also give the source of the deposits in order to avoid an addition under section 68 of the Income-tax Act, 1961. The creditworthiness of the depositors must be established to the satisfaction of the Assessing Officer. Where there is an unexplained cash credit it is open to the Assessing Officer to hold that it is the income of the assessee and no further burden lies on the Assessing Officer to show that the income in question comes from any particular source.*
> *The assessee-company filed a return declaring a loss of Rs. 4,93,218/-. During the course of assessment proceedings, the Assessing Officer noticed an increase in the share application money account as compared to the preceding assessment year and that a sum of Rs. 11.82 lakhs had been deposited in the account of the director. He further noticed that no shares were allotted during the previous year and in the year under consideration and that the share application money retained the same form and character even in two subsequent years. Thus the Assessing Officer treated this amount as unsecured amount and not as share application money. As the assessee had not produced any evidence in respect of the source of the deposits, the Assessing Officer added the sum ofRs. 11.82 and also added Rs. 5 lakhs as shown in the company's books as deposits made against bookings for flats in the scheme of the company but which were cancelled by the parties. The Commissioner (Appeals) as well as the Tribunal _Held,_ dismissing the appeal, (i) that as no shares were allotted to the director during the year in question and for the subsequent two assessment years and the shares were allotted after enquiry done by the Assessing Officer, the amount of Rs. 11.82 lacs could be treated as unsecured loan. The amount had been deposited in cash and in spite of enquiry; the source of the deposit was not explained. The creditworthiness of the creditors to make the payment*

was not clear from the income shown by them. There was no infirmity in the reasoning given by the Tribunal for upholding the action of the tax authorities in bringing to tax the sum of Rs. 11.82 lacs.

(ii) That the assessee had not been able to prove the creditworthiness of the creditors with respect to the cash credit of Rs. 5 lakhs. All the persons involved failed to respond to the summons. The assessee received all the payments in cash even though most of the persons had bank accounts and they had not entered the transactions through their bank accounts. No substantial question of law arose."

7.5 The Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Nova Promoters and Finlease (P) Ltd. [2012] 342 ITR 0169- has distinguished the case of CIT v. Oasis Hospitalities P. Ltd. [2011] 333 ITR 119 (Delhi) and has held as under:

"Even where a reference of a question of law is made to the High Court in its advisory jurisdiction, and not the appellate jurisdiction, where normally the findings of fact recorded by the Tribunal are binding on the High Court, the findings are not binding on the High Court if they are perverse or if the findings are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. The position in an I appeal under section 260A of the Income-tax Act, 1961 is "a fortiori".

For the assessment year 2000-01, the assessee-company filed a return of loss which was processed under section 143(1) accepting the loss. Subsequently, based on a letter from the Director of Income-tax (Investigation) regarding entry operators/ accommodation providers, informing the Assessing Officer that there were 16 entry operators who had given accommodation entries to several persons of which the assessee was one, that there were statements recorded from persons confirming the facts, that the assessee had obtained accommodation entries of Rs. 1,18,50,000 from these persons in the garb of share application monies during the relevant year, the Assessing Officer issued notice under section 148 of the Act reopening the assessment of the assessee. In the course of the reassessment proceedings, the Assessing Officer issued a questionnaire to the assessee. The assessee sought copies of the documents/material in the possession of the Assessing Officer and opportunity to cross-examine the person in charge of the 16 companies with regard to the contents of the statements recorded from them. The Assessing Officer issued summons to two individuals and to the companies, some of which were received back unserved and the other summons remained un-complied with. The ***Assessing*** *Officer sent an Inspector to the addresses to which summons were* ***issued****. The Inspector reported that no such person or company was available or existing at the addresses to which summons were issued. On the basis of the report of the Inspector, the Assessing Officer issued notice to the assessee to produce the persons and companies from whom it had received share applications monies. This also was not complied with by the assessee. The assessee later filed affidavits of the two individuals, R and M, in which both stated that the transactions with the assessee were genuine and the earlier statements recorded from them by the investigation wing were given under pressure. The Assessing Officer came to the conclusion that the independent enquiries carried out by him disclosed that the assessee was unable to prove the genuineness of the transactions with the companies and that it also proved that the*

assessee-company had introduced its own monies through non-existing companies using the banking channel in the shape of share application monies. He accordingly invoked section 68 of the Act and added the amount of Rs. 1,18,50,000/- to the income of the assessee and a sum of Rs. 2,96,250 representing commission. On appeal the Commissioner (Appeals) rejected the assessee's contention against the validity of the reopening of the assessment but, taking note of the statement of the assessee that the affidavits from R and M, who were directors in the three companies as well as the affidavits of the directors in other companies which provided the share capital, were not considered by the Assessing Officer, the Commissioner (Appeals) directed the Assessing Officer to examine the contents of the affidavits and verify the veracity and genuineness thereof. The Assessing Officer was also directed to examine the genuineness of the transactions. The Assessing Officer submitted a remand report to the effect that the transactions had not been proved genuine and were only instruments used by the assessee to mislead the income-tax authorities. The Commissioner (Appeals) concluded that ^he Assessing Officer was not justified in making the addition of Rs. 1,18,50,000/-under section 68 of the Act, Consequently, he also deleted the addition of Rs. 2,96,250/- made for commission paid to the entry providers for obtaining the entries, which had been added under section 68. The Tribunal confirmed the deletion of the additions made under section 68 of the Act. On appeal by the Department:

Held, that the assessment was reopened on the basis of information received from the investigation wing of the Department about the existence of accommodation entry providers and their modus operandi in which the assessee was also found to be involved. The Tribunal had recorded, while dealing with the assessee's cross-objections challenging the jurisdiction of the Assessing Officer to reopen the assessment, that the information was specific, not general or vague, and referred to transactions entered into by the assessee during the year under consideration, that as per the information of the investigation wing, the names of the persons issuing the cheques, the cheque amounts, dates, etc., were also mentioned providing a link between the entry providers and the assessee. In the statements recorded from R and M by the investigation wing, they had implicated the assessee-company also, inter alia. A perusal of the names of the entities from whom the assessee had received share application monies showed that 15 names appeared in the list of 22 companies mentioned in the letter of M and R to the Additional Commissioner. This established the link between the^ materials which was present before the Assessing Officer both at the time when reasons for reopening the assessment were recorded and when the reassessment proceedings were made. In finding fault with the Assessing Officer for not accepting the identically worded affidavits of R and M to the effect that the transactions of giving cheques to the assessee-company were genuine and that the cheques were issued to the assessee-company for share application money for allotment of shares and subsequently shares were also issued, both the Commissioner (Appeals) as well as the Tribunal had committed a serious error in appreciating the evidence. The Assessing Officer in his remand report stated that despite repeated opportunities the deponents of the affidavits were not produced before him for examination and that summons issued to all the deponents of the affidavits remained un-complied with and none of the persons attended before him. The assessee had nothing to

say as to why the deponents of the affidavits, which were all in its favour, could not present themselves before the Assessing Officer for being examined on the affidavits. In the light of the facts, the evidentiary value of the affidavits was open to serious doubt. The affidavits retracting their earlier statements, filed by M and R were filed more than three years after they wrote letters admitting to their role as entry providers. No reason had been advanced by the assessee for such long delay in retracting the earlier letters. The observation of the Commissioner (Appeals) that if summons had been served it would mean that the parties were present at the addresses and even if they were not found by the Inspector at the addresses furnished by the assessee, it was for the Assessing Officer to have made enquiries from the post office regarding the whereabouts of the addressees was not proper. There was, in this case, no such duty cast on the Assessing Officer. The assessee had been blocking any enquiry by the Assessing Officer at every stage on some plea or the other, including a frivolous plea that no cross-examination was allowed, overlooking that once they filed the affidavits retracting from their earlier statements the plea lost force. The findings of the Tribunal were based on irrelevant material or had been entered ignoring relevant material. The finding that the share application monies had come through account payee cheques was, at best, neutral. The question required a thorough examination and not a superficial examination. The fact that the companies which subscribed to the shares were born on the file of the Registrar of Companies was again a neutral fact. That these companies were complying with such formalities did not add any credibility or evidentiary value. In any case, it did not ipso facto prove that the transactions were genuine. Material was gathered by the investigation wing and made available to the Assessing Officer, who in turn had made it available to the assessee. The Tribunal had ignored relevant material. The Tribunal also erred in law in holding that the Assessing Officer ought to have proved that the monies emanated from the coffers of the assessee-company and came back as share capital. Section 68 permits the Assessing Officer to add the credit appearing in the books of account of the assessee if the latter offers no explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. It places no duty upon him to point to the source from which the money was received by the assessee. Even if one were to hold that the Assessing Officer was bound to show that the source of the unaccounted monies was the coffers of the assessee, in the facts of the present case such proof had been brought out by the Assessing Officer. The statements of the entry providers referred to the practice of tatting cash and issuing cheques in the guise of subscription to share capital, for a consideration in the form of commission. The names of several companies which figured in the statements given by the above persons to the investigation wing also figured as share-applicants subscribing to the shares of the assessee-company. These constituted materials upon which one could reasonably come to the conclusion that the monies emanated from ***the coffers of the assessee-company.*****"**

Thus the Ld. CIT(A) held that the assessee has been unable to explain the source from which the assessee has allegedly received the amounts in its bank account. Ld. CIT(A) held as the explanation offered by the assessee about the nature and source of the sums found credited in the books was not satisfactory

there was, prima facie, evidence against the assessee, viz., the receipt of money. Ld. CIT(A) held that the burden was on the assessee and since it was not discharge to the satisfaction the amount has been treated under section 68.

9. The Ld. DR further submitted her argument in the written form which are as under:

Written submission in the case of M/s Bassi Steel Ltd. in I.T.A no 96/chd/2016

1. The assessee took accommodation entries as share capital for face vale Rs 10 per share from following companies controlled by Sh Tarun Goyal, an entry provider based at Delhi during the A.Y.2004-05

- Mahanivesh India Ltd
- Geefcee Finance Ltd

2. Before Honble INCOME TAX APPELLATE TRIBUNAL,DELHI BENCH: 'B'.Sh Tarun Goyal in I.T.A. Nos. 4636 & 4637/Del/2012 for Assessment Years: 2003-04 & 2004-05, M/s Tejasvi Investments Pvt. Ltd in I.T.A. Nos. 2524 to 2533/Del/2012 for Assessment Years: 2003-04 to 2009-10, and 90 other group companies took the plea that they were in the business of providing accommodation entries for commission.
Honable ITAT, Delhi vide order dated 18/10/2013 held that:

20. ***The undisputed fact accepted by the assessee is that Mr. Tarun Goyal was running a racket of providing accommodation entries by floating numerous companies. The modus operandi brought out by the AO in the assessment order, is not disputed by the assessee. The only issue before us is the quantification of the income in the hands of Mr. Tarun Goyal and each of the entities formed by him.*** *Each company is an assessee and an assessment order has to be passed separately in each case. The credits appearing in the books of each assessee have to be explained by that assessee. The Identity, creditworthiness and genuineness of the creditor has to be proved by that particular assessee and if the same is not proved, addition may be made u/s68. The argument of the ld. counsel for the assessee that all the additions have to be made only in the hands of Mr. Tarun Goyal is not correct and hence cannot he accepted.*

21. The contention that the totality of the circumstances have to be considered by arriving at the assessable income and that when the finding is that the assessee has indulged in circular and multiple transactions, by layering, what can be taxed is the peak credit and that too at the first point is acceptable and should be the manner of determining the correct income. If each of the layer is brought out tax, then it would be case of levy of income tax, multiple no. of times, on the same amount. Such levy of double or multiple taxes is against law and it would not be the right method of arriving at the correct amount of income. If income is taxed in the hands of Mr. Tarun Goyal, the taxed amount, when transferred to another company should be treated as explained credit. The multiple transfer of this amount should also be treated as explained. But the burden of proof lies on the assessee.

22. Admittedly certain assessment of Shri Tarun Goyal, the kin pin are at various stages and have not reached the Tribunal. Under these circumstances, it would not be possible to have in over all view of the matter and eliminate chain / multiple transaction, for arriving at the correct assessable amount. Thus we have no other alternative but to set aside all these appeals to the file of the AO for fresh adjudication in accordance with law.

23. The AO shall after examining the evidence submitted by the assessee, consider all the cases together and;

a) restrict the addition u/s 68 to only the peak unexplained credit in each case after elimination circular transaction.

b) To eliminate taxation of the same amount multiple times, due to the chain transactions which resulted due to layering indulged by the assessee.

c) Consider the material on record and the precedence available on the issue and determine the percentage of commission, which the assessees would have earned and bring the same to tax.

24. Before parting we make it clear that the burden of proof lay on the assessee. It is for the assessee to demonstrate the chain of transaction, the layering indulged by him, the calculation of peak unexplained credit etc. and to prove each credit in the books of each assessee. In the result all these appeals are set aside to the file of the AO for fresh adjudication in accordance with law.

Order pronounced in the open Court on 18/10/2013

3.. Also, in the case of Sh Promod Kumar (employee of Sh Tarun Goyal and so called director of group paper companies) in ITA No 6126/del/2013 for A.Y.2004-05, vide order dated 17/04/2015 Hon'ble ITAT Delhi followed its earlier decision dated 18/10/2013.

4. Thus it has been conclusively held by Hon'ble ITAT Delhi that the share capital invested by Tarun Goyal and his group companies is not a genuine transaction and is in nature of accommodation entry. It is hence requested that the addition made U/s 68 and 69 of IT Act in this case may kindly be upheld as the transaction is not genuine and there is nexus between the assessee and Tarun Goyal for evading tax.

5. In the case of Om Machines Pvt Ltd in ITA no 5779/del/2012., Hon'ble ITAT Delhi ^de order dated 25/6/2015 has upheld the addition made u/s 68 by the Assessing Officer in the hands of the assessee company which had taken accommodation entry from Sh Tarun Goyal and his group paper comapanies. This case is very similar to the present facts of the case.

6. The assessee has filed paper book before the Hon'ble bench in support of its claim. From the analysis of these documents, certain important facts emerges which are detailed as under which shows that the share applicants are shell companies of Tarun Goyal and that the transction is not genuine:

- Address of the 2 applicant companies is same as that of Sh Tarun Goyal.
- The assessee could not produce the directors of the companies to prove the identity and genuineness of transaction.
- The share applicants have similar pattern of transaction which are as under and support the finding of the department that these are shell companies of Tarun Goyal and that the transaction of share application is not genuine.

> As per the P/L a/c the gross turnover is minimal. The expenses are almost same resulting in nominal income. (page 33)
> As per the Balance Sheet the source of investment is share capital/premium received from other paper companies. (page 32,45)
> As per the Balance Sheet there are no fixed assets. (page 45) _ -
> The cash in hand and bank balance/deposits is minimal. (page 40)

> The bank statements show deposits and immediate withdrawal of the same amount (page 4,5).
> *The* ROI of Geefcee is signed by Tarun Goyal. (page 5)

7. In the grounds of appeal and the paper book filed by the ssessee before the Hon'ble bench, the assessee has relied upon the decision of Honble ITAT Chandigarh in the case of Kisko Casting in which Tarun Goyal is an entry provider. With due respet it is submitted that in Kisko Casting the decision of Hon'ble ITAT 'B' Bench Delhi in the case of Sh. Tarun Goyal Group & his 91 shell co. in I.T.A. Nos. 4636 & 4637/Del/2012 has not been considered and is hence not applicable in the present facts.

8. Reliance is placed on following decisions which are squarely applicable in the present circumstances.

(i) In Nova Promoters & Finlease, Hon'ble Delhi HC held that in view of the link between the entry providers and incriminating evidence, mere filing of PAN number, acknowledgement of income tax returns of the entry provider, bank account statements etc. was not sufficient to discharge the onus.
(ii) Delhi HC in the unreported case of CIT v. NR Portfolio (P.) Ltd (Income Tax Appeal No. 1018 OF 2011 And 1019 OF 2011) vide Judgment dated 22.11.13 have held that:

- Mere production of incorporation details, PAN Numbers or income tax returns may not be sufficient when surrounding and attending facts predicate a cover up. The production of incorporation details, PAN numbers or income tax details may indicate towards completion of paper work or documentation but genuineness, creditworthiness and identity of investment and the investors are deeper and obtrusive than mere completion of paper work or documentation.(para30)
- Held that the contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. Thus when there is an unexplained cash credit, it is open to the Assessing Officer to hold that it was income of the assessee and no further burden lies on him to show the source. (para23). Various judgments of the Supreme Court A. *Govindarajulu Mudaliarv*. C/Tf 19581 34 ITR 807 (SO, C/7~v. *M. Ganapathi Mudaliar* M9641 53 ITR 623 (SO *and CIT v. Devi Prasad Vishwanath Prasad* [19691 72 ITR 194 (SO were referred to.

(iii) Delhi HC decision in the case of CIT v. NR Portfolio (P.) Ltd 263 CTR 456 have held that, the concept of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, or during proceedings, the AO cannot contact the share applicants, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the assessee.
(iv)In CIT v. Nipun Builders and Developers f20131 350 ITR 407 (Delhi), this principle has been reiterated holding that the assessee and the Assessing Officer have to adopt a reasonable approach and when the initial onus on the assessee would stand discharged depends upon facts and circumstances of each case. In case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call monies, dividends, warrants etc. have to be sent and the relationship is/was a continuing one. In such cases, therefore, the assessee cannot simply furnish details and remain quiet even when summons issued to shareholders under Section 131 return unserved and uncomplied. This approach would be unreasonable as a general proposition as the assessee cannot plead that they had received money, but could do nothing more and it was for the assessing officer to enforce share holders attendance. Some cases might require or justify visit by the Inspector to ascertain whether the shareholders/subscribers were functioning or available at the addresses, but it would be incorrect to state that the assessing officer should get the addresses from Registrar of Companies' website or search for the addresses of shareholders and communicate with them.

Similarly, creditworthiness was not proved by mere issue of a cheque or by furnishing a copy of statement of bank account. Circumstances might require that there should be some evidence of positive nature to show that the said subscribers had made a genuine investment, acted as angel investors, after due diligence or for personal reasons. Thus finding or a conclusion must be practicable, pragmatic and might in a given case take into account that the assessee might find it difficult to unimpeachably establish creditworthiness of the shareholders.

(v) Delhi HC in the case of CIT vs Maf Academy P. Limited, 361 ITR 258 in para28 held that in the case of private limited companies, generally person known to the directors or shareholders directly or indirectly buy or subscribe to shares. The share subscribers post investment do not lose touch or become incommunicado. In the case of private limited companies where normally there is close proximity between the company, i.e., the directors and shareholders and the investors the Assessee cannot simply furnish details and remain quiet.

(vi) Delhi HC decision in the case of CIT Vs Jansampark Advertising & Marketing Pvt. Ltd., (2015)(375 ITR 373) has been held that CIT(A) and Tribunal are also forums of fact finding and that in event of AO failing to conduct proper inquiry on facts, the obligation to conduct proper inquiry on facts would naturally shift to the appellate authorites when they have noticed want of proper inquiry, it cannot close the chapter simply by allowing the appeal and deleting the addition made and that much deficiency should be cured by the appellate authorities. (vii)Delhi HC in a most recent decision in the case of ITO Vs Paramount Intercontinental pvt Ltd (2017-LL-0207-80) vide order dated 7/2/2017 dismissed the assessee's appeal and held that the assesse was unable to satisfactorily explain the correctness of entries as the share applicants appeared to be not in existence and did not answer the summons issued u/s 131 of IT Act. In this case also accommodation entries were taken and details such as confirmation letters, PAN, bank details etc had been produced.

9. With regards to the reopening u/s 147 it is submitted that the AO received information from Investigation Wing and so issued notice u/s 148 after recording of reasons. The action u/s 147 is justified and reliance is place on following case laws :

(i) The Hon'ble Supreme Court in Raymond Woolen Mills vs. ITO (1999) 236 ITR 34 (SC) has held that there should be reason to believe about the escapement of income at the stage of initiation of reassessment proceedings. Sufficiency or correctness of such material cannot be considered at that stage.

(ii) The Hon'ble Apex Court has held in ACIT vs. Rajesh Jhaveri Stock Broker (P) Ltd. (2007) 291 ITR 500 (SC) that: The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion'. Explaining the position further, it laid down that: *at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction.'

(iii) Hon'ble Supreme Court in Phoolchand Bajrang Lai and Anr vs. ITO and Anr(1993) 203 ITR 456 (SC), in which AO's jurisdiction to initiate reassessment was challenged. Repelling the assessee's arguments, the Hon'ble Supreme Court held that an ITO acquires jurisdiction to reopen assessment under s. 147(a) r/w s. 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission of failure on the part of the assessee to make a true and full disclosure of all material

facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In that case, the ITO was held to have rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable.

(iv) In Rajat Export Import Pvt. Ltd. vs. ITO (2012) 341 ITR 135 (Del), the AO received report from the Investigation Wing made by the DIT (Inv.), indicating that the assessee in that case received accommodation entries. The assessee challenged notice u/s 148 as well as all the subsequent proceedings emanating therefrom. Dismissing the writ petition, the Hon'ble High Court upheld the view point of the Revenue by holding that the material before the AO afforded a live link or nexus to the formation of the prima facie belief that income chargeable to tax had escaped assessment in the assessee's hands and, hence, the reopening of the assessment was declared as valid.

(v) Similarly, in AGR Investment Ltd. vs. Addl.CIT and Anr (2011) 333 ITR 146, the Hon'ble Delhi High Court upheld the validity of initiation of reassessment proceeding when a specific information was received from the office of the DIT (Inv.) as regards the transactions entered into by the assessee with several companies which had given accommodation entries. It was held that the fresh information received by the AO was a valid material on the basis of which notice u/s 148 was issued.

(vi) The Hon'ble Delhi High Court dealt with an identical fact situation in CIT vs. Nova Promoters And Finlease (P) Ltd. (2012) 342 ITR 169 (Del), wherein the initiation of reassessment was made on the basis of report of Investigation Wing about the assessee being a beneficiary of accommodation entry. The Hon'ble High Court found that the assessment was reopened on the basis of information received from the investigation wing of the Department about the existence of accommodation entry providers and their "modus operandi" in which the assessee was also found to be involved. Upholding the initiation of reassessment, the Hon'ble High Court held that : 'at the stage of issuing the notice under section 148 the merits of the matter are not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax at escaped assessment'.

(vii) In AG Holdings Pvt. Ltd. vs. ITO(2013) 352 ITR 364 (Del), the Hon'ble jurisdictional High Court has upheld the initiation of reassessment proceedings under similar circumstances when the assessee therein was beneficiary of some accommodation entries about which the report of Investigation Wing was received by the Assessing Officer.

(viii) In CIT vs. Jansampark Advertising and Marketing (P) Ltd. (2015) 375 ITR 373 (Del), the assessment was reopened and addition u/s 68 was made on the ground that the assessee was in receipt of accommodation entries. Setting aside the order passed by the Tribunal, the Hon'ble High Court held that the initiation of reassessment was valid.

(ix) In Bright Star Syntex Pvt. Ltd. VS. ITO (2016) 387 ITR 231 (Bom), the AO initiated the reassessment on the basis of some information indicating the assessee as a beneficiary to accommodation entry. The assessee challenged the initiation of reassessment by way of a writ. Dismissing the petition, the Hon'ble High Court held that at the stage of initiation of reassessment, the AO is not required to have conclusive evidence that income chargeable to tax has escaped assessment. As the reasons recorded for reopening established a link between the material available and the conclusion reached by the AO for reopening the assessment, the Hon'ble High Court refused to interfere by observing that the expression 'reason to believe' cannot be read to mean that the AO should have finally established beyond doubt that income chargeable to tax has escaped assessment.

(x) In Yogendra Kumar Gupta vs. ITO (2014) 366 ITR 186 (Guj), the Assessing Officer obtained information contained in the report of DCIT, Central Circle, Calcutta that the assessee therein obtained accommodation entry in the form of

loan. The assessee filed writ petition challenging the notice of reopening. The Hon'ble High Court dismissed the petition by holding that there was a live link between the material coming into the possession of the Assessing Officer in the form of report of the Department and the formation of belief about the escapement of income. Relying on the judgment of the Hon'ble Supreme Court in the case of Phoolchand Bajranglal (supra), the Hon'ble High Court held that sufficiency of reasons recorded by the Assessing Officer need not be gone into. At this juncture, it is pertinent to mention that the SLP filed by the assessee against the judgment stands dismissed by the Hon'ble Supreme Court in Yogender Kumar Gupta vs. ITO (2014) 227 Taxman 374 (SC). (xi) In a very recent judgment of the Hon'ble jurisdictional High Court in Paramount Intercontinental vs. ITO (2017) 392 ITR 505 (Del), the initiation of reassessment proceedings has been upheld under similar circumstances.

10. It is hence requested that the order of AO and that of CIT(A) may be kindly upheld and the addition made u/s 68 may kindly be confirmed.

11. We have gone through the facts of the transactions entered by the assessee through the two entities and also the order in the case of Chequer Marketing Pvt. Ltd. & Others Vs. ACIT the Hon'ble ITAT has confirmed the fact of the operation of accommodation entries by Shri. Tarun Goyal and the entities which contributed the share capital to the assessee. In the case of Om Machines Pvt Ltd in ITA no 5779/del/2012., Hon'ble ITAT Delhi vide order dated 25/6/2015 has upheld the addition made u/s 68 by the Assessing Officer in the hands of the assessee company which had taken accommodation entry from Sh Tarun Goyal and his group paper companies.

12. In the backdrop of the overall operation of the entry operators in general and the case laws quoted by Ld. Representatives of both the parties, the facts of the present case have been examined with reference to the enquiries conducted by the Revenue and replies filed by the assessee. We observe that the assessee has submitted ITR's, balance sheets and the relevant bank statement for the short period of the contribution of share capital. The Assessing Officer has observed that the bank balance and returned income are meager and are not in a position to purchase the share of the assessee company. No direct enquiries about the directors or the share holders of the companies who contributed to the share capital to the assessee company which are required for examination of the case. Major reliance was given to the report of the investigation wing.

In our view, the matter requires deeper scrutiny so as to arrive at the correct conclusion. We, therefore set aside the impugned order and restore the matter to the file of the Assessing Officer to frame the assessment "*denovo*" after conducting proper and necessary enquiries including summoning and examining of witness, if so required with opportunity to the assessee to cross examine them.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 27/03/2018

Sd/-	**Sd/-**
(SANJAY GARG)	**(DR. B.R.R. KUMAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 27/03/2018
AG
Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR