

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 400/JP/2016  
निर्धारण वर्ष/ Assessment Years : 2010-11

M/s Shivalik Kinema Pvt. Ltd., E-822, Road No. 14, VKI, Jaipur	बनाम Vs.	DCIT, Circle-04 Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAACS6572L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 09/04/2018  
उदघोषणा की तारीख / Date of Pronouncement : 24/04/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 26.02.2016 for Assessment Year 2010-11 wherein the assessee has taken the following grounds of appeal:-

- "1. The Id. CIT(A) has erred on facts and in law in upholding the validity of the order passed by the AO u/s 147 of the I.T. Act, 1961.*
- 2. The Id. CIT(A) has erred on facts and in law in confirming an addition of Rs. 30 lakhs u/s 68 by treating the share capital money received from the following parties as unexplained:-*

<i>S. No.</i>	<i>Name of the company</i>	<i>Amount</i>
<i>1.</i>	<i>M/s Zenith Automotive Pvt. Ltd.</i>	<i>Rs. 10 lacs</i>
<i>2.</i>	<i>M/s Ashish Cap. Services Pvt. Ltd.</i>	<i>Rs. 10 lacs</i>
<i>3.</i>	<i>Ultimate IT Solution</i>	<i>Rs. 10 lacs</i>
	<i>Total</i>	<i>Rs. 30 lacs</i>

*3. The Id. CIT(A) has erred on facts and in law in confirming the lump sum disallowance of Rs. 31,171/-, being 25% of various expenses of Rs. 1,24,682/-."*

2. The facts of the case are that assessee has filed its return of income u/s 139(1) on 26.09.2010 declaring Nil income. Thereafter, the AO issued noticed u/s 148 dated 28.03.2013 after recording the reasons and seeking the necessary approval from the CIT Jaipur. The copy of the reasons so recorded were made available to the assessee and the objections so received by the assessee were disposed off by an order dated 14.03.2014. Thereafter, after considering the submission of the assessee, an addition at Rs. 30,00,000/- was made u/s 68 of the Act. Further, certain expenses amounting to Rs. 62,341/- were also disallowed.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the AO in initiating the proceedings u/s 147 and has also confirmed the addition made u/s 68 of the Act. However, regarding disallowance of expenses, certain relief was provided to the assessee company. Now, the assessee is in appeal before us.

4. In Ground No. 1, the assessee has challenged the action of the Id. CIT(A) in upholding the validity of the order passed by the AO u/s 147 of the Act. It was submitted by the Id AR that the primary condition for initiating action u/s 147 is that the AO must have reason to believe that any income chargeable to tax has escaped assessment. This satisfaction should not be vague but must be specific. In the present case, the reasons simply states that the assessee is a beneficiary of the accommodation entry provided by Sh. S.K Jain group as per the information received from Investigation wing, Delhi. Neither the name/address of the persons from whom the alleged entry is received is mentioned nor the quantum of same was mentioned in the reasons recorded. This shows that the AO simply on the basis of the information received from the Investigation wing, Delhi recorded the reasons without reference to the return and the financial statements. He has simply relied on the information received from the Investigation wing, Delhi without applying his own mind to information received to arrive at the belief that income of the assessee has escaped assessment. The AO has further mentioned that the transaction is not reflected in the return of income filed. If this is so, then there is no question of income escaping assessment. Hence, the reopening of assessment is not justified as the same is reopened only at the instance of Investigation wing, Delhi.

5. It was further submitted that the AO has relied on various decisions. In those decisions, it was held that where the AO has not applied his mind to the return filed, there cannot be a change of opinion. However, in the present case, the issue is not about change of opinion rather the issue is that the AO has not independently recorded

his own satisfaction but has simply acted on the vague information received from the Investigation wing, Delhi without relating it with the return filed by the assessee.

6. It was further submitted that the Id. CIT(A) has incorrectly held that AO has brought out all the relevant and necessary facts and circumstances to show that the share application money of Rs.30 lacs received by the appellant from the number of companies is not genuine and is in the nature of accommodation entries in as much as the same is not coming out from the reasons recorded. The subsequent information would not validate the vague reasons recorded at the time of reopening of the assessment. The validity of the reopening is to be seen with reference to what is mentioned in the reasons recorded and not the subsequent information which the AO has gathered or the information which is not a part of reasons recorded. Therefore, the cases relied by CIT(A) are not applicable to the facts of the present case.

7. In support of his contentions, the Id. AR placed reliance on the decision of Hon'ble Bombay High Court in case of Hindustan Lever Ltd. Vs. R.B. Wadkar (2004) 268 ITR 332 (Bom) where it was held that "It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the AO to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the AO to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the

concerned assessment year. It is for the AO to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the AO. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The AO, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the AO cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”

8. The Id. AR further placed reliance on the decision of Hon'ble Bombay High Court in case of Nivi Trading Ltd. Vs. UOI & Ors. (2015) 375 ITR 308 (Bom.) (HC) wherein it was held that “If more details were sought or some verification was proposed that could not be a substitute for reasons which led AO to believe that an income chargeable to tax had escaped assessment. Revenue does not state that any income chargeable to tax has escaped assessment. All that Revenue desires is verification of certain details pertaining to gift. That is not founded on

belief that any income which is chargeable to tax has escaped assessment and hence, such verification is necessary. That belief is not recorded which alone would enable AO to proceed. Thus, reasons must be founded on satisfaction of the Assessing Officer that income chargeable to tax has escaped assessment. Reasons ought to be recorded on the date of the issuance of the notice and which must disclose the requisite satisfaction. Reasons as recorded cannot be substituted or supplemented by filing an affidavit in Court. Thus, additional reasons cannot be supplied on affidavit. Impugned notice u/s 148(1) quashed and set aside.”

9. Per contra, the Id. DR has vehemently argued the matter and relied upon the order of the lower authorities. She also referred to the relevant finding of the Id. CIT(A) and submitted that the AO while assuming the jurisdiction u/s 147 has applied his mind and has not acted on borrowed satisfaction. Once information was received by the Assessing Officer from Investigation Wing, Delhi on the basis of search and survey operation conducted in case of S.K. Jain Group of cases, the AO thereafter examined all the relevant and necessary facts and circumstances of the case and there is a definite nexus between the material and formation of belief by the AO that income has escaped taxation within the meaning of section 147 of the Act. Further, the Id DR relied upon the decision of Hon'ble Delhi High Court in case of Rajat Export Import (P.) Ltd. 18 taxmann.com 311 (Del.). It was submitted that the Assessing Officer has brought out all the relevant and necessary facts and circumstances to show that share application money of Rs. 30,00,000/- received from the number of companies was not genuine and is in the nature of accommodation entries. It was

further submitted that merely because the information was received from the Investigation Wing, Delhi would not vitiate this satisfaction arrived at by the Assessing Officer. Regarding whether an inference can be drawn that the assessee has obtained accommodation entries with respect to share capital received during the year, the Id. DR draws our reference to the findings of the Id. CIT(A) wherein it was held that "I have perused the copies of the seized document, assessment order and contention of the appellant and find that Assessing Officer has drawn the correct inference regarding income chargeable to tax having escaped assessment on the basis of information which was in his possession".

10. In order to appreciate the rival contentions so raised by both the parties, it would be relevant to refer to the reasons which have been recorded by the AO before issuance of notice u/s 148 and the contents thereof reads as under:-

*"It has come to notice from the information received from DIT(Inv-II), New Delhi that the assessee is a beneficiary of accommodation entry provided by Sh. Surendra Kumar Jain group during that financial year i.e. 2009-10 relating to AY 2010-11 but the transaction is not reflected in the return of income filed.*

*In view of above, I have reasons to believe that income has escaped 147 of the assessment for the AY 2010-11 within the meaning of provisions of section 147 of the I.T Act, 1961, therefore a notice u/s 148 of the I.T Act, 1961 is required to be issued and served upon the assessee to re-assess the income escaped as stated above for the AY 2010-11."*

11. On perusal of the reasons recorded before issuance of notice under section 148, it talks about certain information received from DIT(Inv-II), New Delhi that the assessee is a beneficiary of certain accommodation entry provided by Sh. Surendra Kumar Jain group during that financial year i.e. 2009-10 relating to AY 2010-11. The reasons so recorded also talks about the fact that the said transaction of accommodation entry is not reflected in the return of income filed. In view of the same, it was held by the AO that he has reasons to believe that income has escaped assessment within the meaning of section 147 of the Act. During the course of hearing, the Id DR referred to the assessment records and submitted that the AO had the necessary information and material prior to the issuance of notice u/s 148 that the assessee is one of the beneficiaries of the accommodation entries provided by Shri Surendra Kumar Jain Group and has obtained accommodation entry to the tune of Rs 30 lacs and on the basis of said information, he has reasons to believe that the income has escaped assessment. It was accordingly submitted by the Id DR that the belief formed by the AO is after due examination of the material on record that the income of the assessee chargeable to tax during the impugned assessment year has escaped assessment therefore, it cannot be said to be arbitrary or irrational. In our view, the formation of belief by the AO that the income has escaped assessment is thus clearly based on certain specific information received from DIT(Inv-II), New Delhi and therefore, it cannot be said that there exists no rational and intelligible nexus between the reasons and the belief. At the same time, the question that arises for consideration is whether the satisfaction so

recorded by the AO that the income has escaped assessment has to emerge in clear, unambiguous, and self-explanatory terms and discernable from the reasons so recorded itself or the same can be explained and supplemented subsequently where so challenged by the assessee. In the instant case, we find that there is no mention of nature of the accommodation entry whether in form of share capital, loans and advances or any other transaction. There is no mention of the name of the entities from whom the assessee has obtained the so called accommodation entry. And, a more glaring fact that we found is that there is no mention of quantum of such accommodation entry or entries which the assessee has obtained and which, as per the AO, is the income of the assessee which has escaped assessment. It was submitted by the Id DR that even though in the reasons, the quantum of accommodation entry has not been explicitly stated, at the same time, while disposing off the assessee's objections to the reasons so recorded, the quantum of accommodation entry was made known to it. In this regard, we refer to the decision of the **Hon'ble Bombay High Court in case of Hindustan Lever Ltd (supra)** which though rendered in the context of proviso to section 147 where the assessment was initially completed u/s 143(3) and failure on part of the assessee to disclose fully and truly all material facts necessary for the assessment, in our view, the legal proposition laid down therein in so far as it relates to clear and unambiguous recording of reasons before the issuance of notice u/s 148 is equally applicable in the instant case and the same reads as under:

**"20.** *The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly*

*all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. **No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons.** It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. **The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence.** The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were*

*lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”*

12. In light of above discussions and respectfully following the decision of the Hon'ble Bombay High Court referred supra, we are of the view that even though the AO was in receipt of specific information that the assessee was beneficiary of accommodation entry, the fact remains that the information so received from the Investigation wing was not supplied to the assessee along with the reasons recorded before the issuance of notice u/s 148 of the Act and even the reasons so recorded are extremely scanty and vague and there is no mention of nature and quantum of accommodation entries which has escaped assessment. We also wonder as to how the Id CIT has accorded his approval on such scanty reasoning by the AO. Merely by stating that certain information has been received from the Investigation wing that the assessee is beneficiary of certain accommodation entry is not sufficient enough for the AO in assuming jurisdiction under section 147 in the instant case and the order so passed by the AO is hereby quashed and set-aside. In the result, ground no. 1 of the assessee's appeal is hereby allowed.

13. Now, coming to the merits of the case, briefly stated, the facts of the case are that during the year, assessee received share capital/share application money of Rs.30 lacs from three parties. In course of assessment proceedings, assessee vide letter dated 10.12.2013 filed the confirmation, share application form & bank statement of these parties. Further, vide letter dated 13.01.2014, assessee filed the audited

financial statements of these parties and Form No. 2 being return of allotment filed with ROC.

14. The AO observed that on the basis of information received from Investigation Wing, New Delhi it was found that the assessee was one of the beneficiaries of accommodation entry provided by Shri Suresh Kumar Jain group. Number of companies were running from the residential as well as business address of Sh. S.K Jain and his brother Sh. V.K. Jain. These companies were found to be run and controlled by these two persons through dummy directors. Survey was carried out by the investigation wing at the given addresses of these dummy companies and at many places no proper offices were found functioning. From a single address, a number of companies were shown to have been registered and these addresses were mostly the residential address of directors of different dummy companies/ proprietors of various firms. Survey u/s 133A was conducted by the department in Delhi at the office premises of one Sh. Assem Kumar Gupta. In his statement, he has clearly stated that he was engaged in providing accommodation entries as per the requisition of the beneficiaries and the work of accommodation entry is brought to him by Sh. S.K. Jain. A search operation was carried out u/s 132 by the Investigation Wing in New Delhi on 18.01.2011 at the residential and business premises of Sh. Rajesh Aggarwal. In his statement, he stated that he was in constant touch with Sh. S.K Jain and Sh. V.K Jain and he knew that they are known accommodation entry operator who provides cheques against payment of cash after deducting specific premium from the parties. The AO, thereafter, issued letters u/s 133(6) for calling information from all these parties. However, no such information was

received. The AO then required the assessee to produce Sh. G.L. Gupta, the middleman and Sh. Ghanshyam Agarwal, the director of assessee company. The assessee's AR vide letter dt.28.02.2014 and 08.02.2014 submitted that none of the director of the assessee company is in touch with or aware about Sh. G.L. Gupta and thus he cannot be produced. Further, Sh. Ghanshyam Agarwal has undergone a surgery on 06.01.2014 at Fortis Hospital and he is still not well and feeling problem in moving outside the house and thus he is unable to attend the hearing. The AO, however, observed that Sh. G.L. Gupta was not only a mediator of the assessee company for providing accommodation entries but he was also a relative of the directors of the company. It is not known as to how a person can deny to be in touch with his relatives even. So far as personal examination of Sh. Ghanshyam Agarwal is concerned agreed he was ill but there were other directors as well who could have been produced but of no avail. On the same date i.e. 28.02.2014, it was gathered that Sh. Ghanshyam Agarwal was attending all his routine work himself. Thus, it is proved beyond doubt that the assessee was knowingly or intentionally avoiding the personal presence of any of the directors and relative Sh. G.L. Gupta for the reason that has any director been to the department, the modus operandi for taking accommodation entries would be stamped confirmed thereby leading to payment of legitimate tax along with interest and penalties. Accordingly, the AO made addition of Rs.30 lacs u/s 68 of the IT Act, 1961.

15. The Ld. CIT(A) confirmed the addition so made by the AO. The Ld CIT(A) held that perusal of the bank statement of the companies reveals frequent money being received on transfer from one of the

company named by the entry operator as his own and a paper company and the same being issued to other company that is the ones receiving the accommodation entry. In spite of the adequate opportunity neither the directors nor the middleman who was also a relative appeared before the AO. The company who have allegedly applied for share investments are not carrying on any business activity and the only activity is providing entries. The bank account shows inflow and outflow amounts by receiving through company which belongs to the alleged entry operator. They are investing huge amounts in a company about which they do not know and from where no dividend or interest is being received. It is surprising that investments are being made but no benefit on these investments seems to accrue to these investing companies. Further in privately held limited companies, shares are issued to known persons and usually by private placement or request but in these cases these are completely unrelated parties and even though huge investments are made but the assessee is not aware of their correct address available to produce the directors to testify regarding their own investments. Therefore, the AO was justified in holding these amounts as unexplained. He further relied on the decision of Delhi High Court in case of N.R. Portfolio P. Ltd. and CIT Vs. Navodaya Castels Pvt. Ltd.

16. During the course of hearing, the Id. AR submitted that from the facts stated above, the main reason for the addition is that the investment made by the above three companies in the shares of the assessee company, are paper companies which belong to Sh. S.K. Jain Group of companies. However, the lower authorities have neither provided nor confronted the assessee of any material in support of their

assumption even when the assessee specifically requested the AO vide letter dt. 10.12.2013 to provide the copy of statement of all the persons of Sh. S.K. Jain Group and the investigation report and other documents suggesting that this group was engaged in providing accommodation entries. Further, the AO has not provided any opportunity to the assessee to cross examine any of the persons namely Sh. S.K Jain or Sh. V.K. Jain or Sh. Assem Kumar Gupta or Sh. Rajesh Aggarwal whose statements has been referred/relied in the assessment order. In fact the AO without providing any opportunity to the assessee to rebut the so called information available with the department or providing any opportunity to cross examine these persons has made the addition which is against the principle of natural justice and illegal & bad in law as held by Supreme Court decision dated 02.09.2015 in case of Andaman Timber Industries Vs. CCE 127 DTR 0241 wherein it was held that denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity in as much as it amounted to violation of principles of natural justice. Even from the assessment order, it is not discernible that any of these persons had stated that investment made by these companies in the share capital of the assessee is bogus/ accommodation entries.

17. It was further submitted by the Id AR that another reason given by the AO is that information u/s 133(6) was called from the above companies but no information was received. In this regard, it was submitted that it is not the case of the AO that the enquiry letter issued by him was not served on them. If they have not responded, AO should have taken necessary action against them. The Ld. CIT(A) has wrongly

held that assessee was asked to produce the director/persons managing these companies when there is no such requirement from the AO. In any case, once the assessee has established the identity of these companies, addition cannot be made in the hands of the assessee as held by Supreme Court in case of CIT Vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195.

18. It was further submitted that in respect of the above three companies, the assessee has furnished the following documents to establish the identity, genuineness of the transaction and the creditworthiness of these entities:

Name, address and PAN no.	Shares applied/ allotted	Share Capital	Evidences produced before the AO
M/s Zenith Automotive P. Ltd. 106, Palco House, T-10, Main Patel Road, Patel Nagar, New Delhi-110008 PAN No.: AAACZ0283B	20,000	Rs.10,00,000/-	Copy of share application money, Confirmation, bank statement, balance sheet, ROC return.
M/s Aasheesh Cap.	20,000	Rs.10,00,000/-	Copy of share

Services P. Ltd.  Royal palace, G-55, LaxmiMarg, Vikas Nagar, New Delhi- 110092  PAN No.: AAACA6633N			application money, Confirmation, bank statement, balance sheet, RO C return.
M/s Ultimate IT Solution  U-23, Arvind Nagar, Ghonda, Delhi-53  PAN No.: AAACU9005G	20,000	Rs.10,00,000/-	Copy of share application money, Confirmation, bank statement, balance sheet, ROC return.

From the above table it can be noted that the above companies are assessed to tax, their PAN No. is provided, the transaction is through banking channel and the shares has been allotted to them as is evident from Form 2 – Return of Allotment filed with ROC. From the Balance Sheet of these companies, their creditworthiness and genuineness of the transaction can be perceived in as much as they have substantial shareholders funds and the name of the assessee company is appearing in the detail of investment made by them. Thus, the assessee has discharged the onus which lay upon it u/s 68. Therefore, solely on the basis of the information received from Investigation Wing, Delhi, the

share capital received by the assessee from these companies cannot be presumed to be accommodation entries.

19. The AO observed that director of the assessee company, Sh. Ghanshyam Agarwal was not produced. In this connection, it was submitted that the director had undergone a surgery on 6/01/2014 at Escorts Hospital and the Doctor advised him to take rest and not to take any stress. Therefore, there was a reasonable cause for not producing him. Further finding of the AO that Sh. Ghanshyam Agarwal was attending all his routine work or other directors could have attended the office or that Sh. G.L. Gupta is relative of the director of the assessee company is without basis more particularly when it was specifically mentioned to the AO that the directors are not aware of G.L. Gupta. Further, when assessee has filed all the evidences to prove the genuineness of the share capital, no adverse inference is called for simply because the other director of the assessee company is not produced when their presence was not required by the AO.

20. In support, reliance was placed on following cases:-

- CIT Vs. Vacmet Packaging (India) Pvt. Ltd. 367 ITR 0217 (All.) (HC)
- ACIT Vs. VIP Growth Fund Pvt. Ltd. 46 CCH 0231 (Del.) (Trib.)
- CIT Vs. Supertech Diamond Tools Pvt. Ltd. 229 Taxman 62 (Raj.)
- ITO Vs. Rakam Money Matters P. Ltd. (2014) 41 CCH 0155 (Del.) (Trib.)
- Jadau Jewellers & Manufacturing (P) Ltd. Vs. ACIT 45 CCH 0442 (Jpr.) (Trib.) decision dt. 14.12.2015

- Ganga Projects (P) Ltd. and B.S. Traders (P.) Ltd. in ITA No. 175 & 176/JP/15 and 179/JP/15 and CO No. 15 & 16/JP/15 and 19/JP/15 order dated 22.06.2016
- Anchal Fintrade Pvt. Ltd. Vs. ITO in ITA No. 131/JP/16 for A.Y. 05-06.
- M/s Choice Buildstate Private limited vs ITO in ITA No. 431/JP/2016 dated 28.03.2018

21. In case of M/s Choice Buildstate Private limited vs ITO (supra), we have recently examined an identical matter and we find that our findings therein applies equally in the instant case. The relevant findings are reproduced as under:

*"10. Now, coming to the merits of addition of Rs 35 lacs made by the AO under section 68 of the Act. On careful examination of material available on record, we find that it is a case where the AO has relied blindly on information supplied by the Investigation Wing Mumbai without carrying out any further examination of documents submitted during the course of assessment proceedings and independent investigation of these investor companies. As we have noted above, the information so received from the Investigation Wing, Mumbai and after due examination thereof, the AO has formed a prima facie view and a reason to believe that the income has escaped assessment and has thus assumed jurisdiction u/s 147 of the Act. At the same time, such a prima facie view has to be finalized and a firm view has to be taken on basis of examination of documents so brought on record and further investigation to be carried out before any tax liability is fastened on the assessee. In the instant case, we find that the assessee*

*company has submitted detail documentation in regard to these companies from whom a total amount of Rs.35 lakhs was received namely (i) share application form (ii) copy of Board Resolution (iii) Copy of Bank Statements reflecting payment through cheque (iv) Audited Statement of Accounts and Acknowledgement of ITR (v) Copy of certificate of Incorporation and Certificate of Commencement of Business (vi) Copy of PAN Card. Where the assessee furnishes the documentation and necessary explanation, the AO should examine whether the documents so submitted and explanation so offered establishes the three ingredients i.e. identity of the investor company, creditworthiness of investor company and genuineness of the transaction. Whether explanation of the assessee is reliable or acceptable? If yes, no further action is required and the sum so credited may not be charged to income tax. If the explanation so offered by the assessee is not acceptable or reliable, the AO should give a detailed reasoning in the assessment order for not accepting the same. The order passed by the AO should be speaking one bringing on record all the facts, explanation furnished by the assessee in respect of nature and source of the credit in its books of accounts and reasons for not accepting the explanation of the assessee. In the instant case, we find that the AO has not taken any efforts to examine these documents so submitted by the assessee company during the course of assessment proceedings and has simply gone by his prima facie view formed at the time of assumption of jurisdiction u/s 147 and such a prima facie view without further examination/investigation cannot be a basis for forming a final view of making the addition in the hands of the assessee company. It is a case where the AO was in receipt of material information from the Investigation Wing, Mumbai that the assessee*

*company has received accommodation entries in form of share application/investment from seven companies who are not doing genuine business activities as divulged during the course of search and seizure operations in case of Praveen Jain group. In these situations, the Courts have held that the Assessing Officer cannot sit back with folded hands and then come forward to merely reject the explanation so made, without carrying out any verification or enquiry into the material placed before him by the assessee. If the Assessing Officer harbours any doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company. We therefore agree with the contentions of the Id AR that in absence of any falsity which have been found in the documents so submitted by the assessee company to prove the identity, creditworthiness and genuineness of the share transaction, these documents cannot be summarily rejected as has been done by the AO in the instant case. Further, we find that there is no action taken by the AO in terms of calling information from these companies under section 133(6) and/or issuing summons to directors of these companies under section 131 of the Act. Further, where the AO relies upon the statement of third parties (Praveen Jain and others) recorded u/s 132(4), without getting into controversy whether the said statement was retracted subsequently, the fact remains that the assessee deserves an opportunity to cross examine such persons as held by the Hon'ble Supreme Court in case of Andaman Timber Industries (supra). During the course of assessment proceedings, the assessee company has made specific request to the AO to allow cross*

*examination of these persons which has however not being provided to the assessee company. In light of above discussions, we don't find any basis for making addition under section 68 of the Act. In the result, ground no.2 taken by the assessee company is allowed."*

22. In the instant case, we find that the assessee has requested the AO vide letter dt. 10.12.2013 to provide the copy of statement of all the persons of Sh. S.K. Jain Group and the investigation report and other documents suggesting that this group was engaged in providing accommodation entries, however, there is nothing on record that the same have been provided to the assessee. Being reassessment proceedings, where the AO is ceased of certain information and documents, it is incumbent upon him to confront the same to the assessee and allow the latter to file its objections and rebuttal. The additions made, merely relying on these information and documentation, without confronting the assessee cannot be accepted. Further, where the AO relies upon the statement of third parties, the fact remains that the assessee deserves an opportunity to cross examine such persons as held by the Hon'ble Supreme Court in case of Andaman Timber Industries (supra).

23. Further, we find that in the instant case, the assessee company has filed copies of the share application form, return of allotment filed with ROC, copies of the bank statements, copies of the financial statements and confirmations of these parties. We also find that the AO has issued letters u/s 133(6) to these parties and has also called for personal appearance of Sh G.L Gupta and one of the directors of the assessee company. It is also a fact that there notices have not

returned back undelivered and at the same time, there has been no compliance. It is therefore a case which is shade different than the one we decided supra. At the same time, the fact remains that inspite of non-compliance of these notices and non-appearance which cannot be a sole basis for disallowance, the AO has to give a specific finding and record his satisfaction regarding non-acceptance of documents so submitted by the assessee. We are therefore of the view that that in absence of any falsity which have been found in the documents so submitted by the assessee company to prove the identity, creditworthiness and genuineness of the share transaction and any satisfaction to that effect recorded by the AO, these documents cannot be summarily rejected as has been done by the AO in the instant case.

24. In light of above discussions and in the entirety of facts and circumstances of the case, we don't find any basis for making the addition under section 68 of the Act. In the result, ground no.2 taken by the assessee company is allowed.

25. In Ground No. 3, the assessee has challenged the sustenance of disallowance of Rs. 31,171/- in respect of various expenses claimed by it. In this regard, the Id. AR submitted that during the course of proceedings, the assessee filed the complete details of these expenses and also produced the supporting evidences. It was further submitted that lower authorities have not pointed out any specific instances of expenses which are not properly vouched or are not genuine. It was submitted that the AO only on surmises made a lump sum disallowance of 50% of these expenses and the Id. CIT(A) without any basis restricted it to 25%. It was submitted that these are regular business

expenditure which are required to be incurred even if no business is carried out during the year. In support, reliance was placed on the following cases:-

- ACIT vs. Ganpati Enterprises Ltd. (2013) 142 ITD 118 (Delhi)(Trib.)
- CIT vs. Oracle India (P) Ltd. 199 Taxman 181 (Del) (HC) (Mag.)
- Seasons Catering Services (P) Ltd. vs. DCIT 43 DTR 397 (Del) (Trib)

26. We find that it is a case of adhoc disallowance of expenses which is not permissible in the eye of law. No finding has been given by the lower authorities that these are bogus expenditure or the expenditure has not been incurred for the purposes of the business. It is not the case of the Revenue that the business of the assessee has not been set up. In light of the same, the disallowance so confirmed by the Id CIT(A) is hereby deleted. The ground taken by the assessee is thus allowed.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 24/04/2018.

Sd/-

(विजय पॉल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/04/2018

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Shivalik Kinema Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-04, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 400/JP/2016 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar