

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.5962/Del/2016
Assessment Year : 2007-08**

ACIT, Central Circle- 30, New Delhi.	Vs.	Quality Sales Promotion Pvt. Ltd., 13, Ground Floor, Room No.5, B.B. Ganguli Street, Punarnava, Kolkata.
		PAN : AAACQ0466F
(Appellant)		(Respondent)

**C.O. No.80/Del/2017
(In ITA No.5962/Del/2016)
Assessment Year : 2007-08**

Quality Sales Promotion Pvt. Ltd., 13, Ground Floor, Room No.5, B.B. Ganguli Street, Punarnava, Kolkata.	Vs.	ACIT, Central Circle- 30, New Delhi.
PAN : AAACQ0466F		
(Appellant)		(Respondent)

Department by	:	Ms. Rachna Singh, CIT-DR,
Assessee by	:	Shri Ajay Vohra, Sr. Adv. Ms. Deepashree Rao, CA Mr. Vibhu Gupta, CA
Date of hearing	:	08-05-2018
Date of pronouncement	:	24-05-2018

ORDER

PER R. K. PANDA, AM :

The appeal filed by the Revenue is directed against the order dated 16.09.2016 of CIT(A)- 30, New Delhi relating to assessment year 2007-08. The

assessee has also filed the Cross Objection against the appeal filed by the Revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is a company and is engaged in the business of investment & finance. It filed its return of income on 17.10.2007 declaring income of Rs.12,347/-. The return was processed u/s 143(1) of the I.T. Act, 1961 on 11.08.2008 and thereafter the assessment was completed vide order passed u/s 143(3) on 22.04.2009 determining the total income at Rs.20,978/-. Subsequently, search and seizure operation u/s 132 of the I.T. Act was conducted at various business and residential premises of M/s Jindal Group of cases. The business premises of the assessee was surveyed u/s 133A of the I.T. Act, 1961. The case was centralized with Central Circle- 14 through order dated 31.12.2012 passed u/s 127 of the I.T. Act by the CIT, Kolkata-II, Kolkata vide No.F.No.CIT-KOL-II/Cent./12-13/6708. With effect from 15.11.2014 erstwhile Central Circle-14, New Delhi was re-designated as Central Circle-30, New Delhi.

3. The Assessing Officer issued notice u/s 148 dated 20.02.2015 by recording the following reasons :-

“Reasons for issue of Notice U/s 148 in the case of M/s Pavitra Trexim Pvt. Ltd. for the A Y 2007-08”

A search and seizure action in Jindal group of cases was carried out on 14/11/2011. As part of the search action, a survey u/s 133A was carried out in the case of Assessee Company at 13, Aunarnava, BB Ganguli Street, Room No. 05,

Ground Floor, Born Bazar, Kolkata. During the course of survey statement of one Sh Kamal Kumar Sharma who claimed to be service provider to the company on outsourcing basis for general administrative work like e-filing of ROC returns etc was recorded. He informed that one of the Directors of the company was Shri Naval Bihari Bhut. Thereafter statement of Sh. Naval Bihari Bhut the Director of the company was also recorded on the same date. He stated that he does not know about the nature of activities of the company and have never attended board meetings. He also did not know about the share holding of the company. He was also asked about the manner in which the share capital of the company was raised. In response to that he stated that he did not know anything about this matter. He further stated that he simply signs whatever documents are given to him like audited account reports, cheque books etc. The documents were stated to be sent by Sh. SS Jindal through his employee Sh. Vasudev Aggarwal having mobile no. 9873113888 & a director of M/s Sagar Fintrade Pvt. Ltd. M/s Sagar Fintrade Pvt. Ltd is a company in which SS Jindal has substantial interest.

During simultaneous search at his residence at P-106, C-Block, Bangur Avenue, statement of Sh. Babu Lal Bank an entry operator stated that he was director of M/s Quality Sales Promotion Co. Pvt. Ltd. and had arranged accommodation entries in the form of Share Capital for Jindal Group of Companies on commission basis. He further stated the sale of shares of Jindal Group was only accommodation entry.

During the search & afterwards information was gathered that the various companies including the assessee company were acquired by SS Jindal group in order to realize and make use of bogus capital credited in this company. This company was a paper company without having any tangible assets and its investments were also in paper companies. So the share capital & share premium was introduced in books was bogus. After raising share capital & share premium the investments were made in 46 paper companies which did not have any sustentative business activities and some of them were found nonexistent at the addresses given.

From the examination of accounts of the company, it is found that the share capital of the company increased from Rs. 1,29,30,000/- to Rs. 1,88,22,500/- alongwith share premium of Rs.22,98,07,500/- during financial year 2006-07 and in aggregate Rs.23.57 crore were raised during the year. The funds by way of share capital & premium are shown to be received from 20 companies which are paper companies & run by entry operators. Hence the source of funds is non-genuine. The said amount is liable to be added u/s 68 of I.T. Act.”

4. In response to the said notice, the assessee filed return of income on 21.03.2014 declaring income of Rs.12,347/-. The assessee asked for the copy of the reasons which was supplied to the assessee. The objection of the assessee vide letter dated 29.05.2014 was disposed of by the Assessing Officer after due

consideration and its request to drop the proceedings was rejected. During the course of assessment proceedings, the Assessing Officer observed that the assessee has received new share capital of Rs.58,92,500/- along with a share premium of Rs.22,98,07,500/-. He observed that the shares having a face value of Rs.10/- each has been allotted to 20 share applicants @ Rs.400/- each including premium of Rs.390/- per share. During the course of assessment proceedings, the Assessing Officer asked the assessee to furnish complete details of new share applicants in the company and to furnish the register of minutes of meetings of board of directors, Share allotment registers, correspondences between allottee & allotting company, bank statements of all such share applicants to prove the genuineness of the funds credited in its books of accounts as shown in the balance sheet. The assessee filed the requisite details. However, rejecting the various explanations given by the assessee and observing that the assessee was unable to justify the ingredients of section 68 of the I.T. Act and further observing that these companies are paper companies who have invested in the shares of the company, the Assessing Officer made addition of Rs.23,57,00,000/- to the total income of the assessee being share application money and share premium received during the year.

5. Before the Id. CIT(A), the assessee apart from challenging the addition on merit challenged the validity of the initiation of re-assessment proceedings. It

was argued that during the course of original assessment proceedings, the assessee had furnished full details to justify the issue of 5,89,250 shares each having face value of Rs.10 with premium of Rs.390 to 20 companies amounting to Rs.23,57,00,000/-. The Assessing Officer has issued notice u/s 133(6) to the share applicants on random basis which were duly complied with. After due satisfaction, the Assessing Officer had accepted such share capital raised during the year. Subsequently, during the search and seizure action u/s 132 that took place on 14.11.2011 in the B.C. Jindal Group of cases, survey was conducted in the business premises of the assessee. Notice u/s 153C was issued on 18.12.2013 and the assessee in response to such notice u/s 153C filed a letter dated 30.12.2013 to consider the original return filed as return filed in response to this notice. However, the Assessing Officer vide letter dated 14.03.2014 communicated to the assessee for dropping the proceedings initiated u/s 153C of the I.T. Act by withdrawing the above notice.

5.1 It was submitted that the notice issued u/s 148 on 20.03.2014 for the assessment year 2007-08 was void ab-initio since the assessment was completed u/s 143(3) and there was no allegation by the Assessing Officer that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Various decisions were also cited.

6. Based on the argument advanced by the assessee, Id. CIT(A) held that the reopening of the completed assessment u/s 148 of the I.T. Act as well as re-assessment u/s 147 of the I.T. Act is not as per law and, therefore, action of the Assessing Officer is void ab-initio. The relevant observation of the Id. CIT(A) from para 5.4 onwards read as under :-

“5.4 I have carefully considered assessment order, written submissions, statements recorded by the Investigation Wing, case laws relied upon and oral arguments of Ld.AR. The objections/arguments of the appellant are discussed as under:-

(i) In this case the original return of income was filed on 17.10.2007, declaring total income at Rs.12,347/-. The assessment u/s 143(3) of the Act was completed vide order dated 22.4.2009, at total income of Rs. 20,978/-.

(ii) Subsequently, search and seizure action u/s 132 of the Act, took place on 14.11.2011 in Shri B.C. Jindal group of cases and also survey u/s 133A of the Act, in the case of the appellant. Notice u/s 153C of the Act, was issued on 18.12.2013 and in response to this notice, return of income was filed on 03.01.2014, declaring total income of Rs.12,347/-, by way of filing a letter dated 03.01.2014 to consider the original return of income filed in response to this notice. However, the A.O. vide letter dated 14.3.2014, communicated to the assessee for dropping the proceedings initiated u/s 153C of the Act, by withdrawing the above notice.

(iii) However, the A.O. recorded the reasons for reopening the assessment u/s 147 of the Act on 19.3.2014 and issued the notice u/s 148 of the Act on 20.3.2014, after obtaining approval from Commissioner of Income Tax. In response to this notice, assessee vide letter dated 21.3.2014, submitted to the A.O. to considered the original return filed u/s 139(1) of the Act, as filed in response to this notice, i.e. declaring total income at Rs.12,347/-.

(iv) The assessee vide letter dated 21.3.2014, requested the A.O. to provide the reasons recorded before issuing notice u/s 148 of the Act and in response to this request, the A.O. vide letter dated 22.4.2014, communicated the reasons recorded. Subsequently, assessee vide letter dated 29.5.2014, filed various objections before the A.O. and the A.O. disposed off these objections by a speaking order dated 18.3.2015 and rejected all the objections.

(v) Reassessment u/s 147/143(3) of the Act was completed vide order dated 27.3.2015, at total income of Rs. 23,57,12,347/-, after making the following addition on account of:

(a) Share application money/share premium u/s 68 of the Act : Rs.23,57,00,000/-

(vi) In the appellate proceedings, the appellant has submitted that at the time of original assessment u/s 143(3) the Act, the A.O. had obtained necessary documents and evidences in support of fresh share capital subscribed during the period relating to A.Y. 2007-08, by raising specific queries. Subsequently, on test check basis, A.O.

issued notices u/s 133(6) of the Act, to some of the share applicants and replies were received from all of them.

(vii) In the appellate proceedings, the appellant has also submitted that A.O. first issued notice u/s 153C of the Act, on 18.12.2013 and continued the assessment proceedings till the date of withdrawal of this notice vide letter dated 14.3.2014. Accordingly, AR has submitted that this action of the A.O. shows that there was no material was found at the time of search action u/s 132 of the Act, in the case of any other person.

(viii) In the appellate proceedings, the appellant has also submitted that subsequently, A.O. initiated the proceedings u/s 147 of the Act, by issuing notice u/s 148 of the Act on 20.3.2014, on the change of opinion for the reasons recorded (which have been reproduced in the written submission by the appellant, supra) on the following basis:

- statement of Shri Kamal Kumar Sharma, was recorded on 14.11.2011 during the survey action u/s 133A of the Act, at the business premises of the appellant, who is a service provider,
- statement of director of the appellant company, Shri Naval Bihari Bhoot, recorded u/s 131 of the Act, on 14.11.2011, since he does not know anything about the appellant company and simply signs the documents,
- statement of Shri Babu Lal Banka, was recorded u/s 132(4) of the Act, at the time of search action at his residence on 14/15.11.2011, who is an entry operator,
- the information gathered during search and afterwards in the case of S.S. Jindal group, regarding bogus share capital taken at premium from 20 paper companies and invested in the 46 companies, which do not have substantive business activities.

On the basis of above facts, the A.O. was having reason to believe that the source of funds in share capital/ share premium, is non genuine and therefore, issued the notice u/s 148 of the Act.

(ix) In the appellate proceedings, the appellant has also submitted that the statement of Shri Kamal Kumar Sharma, was recorded during the survey action u/s 133A of the Act on 14.11.2011, taken on oath, which is invalid, as there is no provision u/s 133A of the Act to record the statement on oath. Therefore, it is submitted by the AR that this alleged statement on oath cannot be considered as evidence against the appellant for action u/s 148 of the Act. In the case of Shri Naval Bihari Bhoot, statement recorded u/s 131 of the Act, on 14.11.2011, nothing adverse was stated, except ignorance of activities of the appellant company.

(x) In the case of Shri Babu Lal Banka, statement was recorded u/s 132(4) of the Act, at the time of search on 14/15.11.2011, who had stated that shares of the appellant company and M/s Canton Traders Pvt. Ltd., were sold around 3 years back to Jindal Group of Companies. Therefore, it is submitted by the AR that period relating to year under consideration is F.Y. 2006-07, whereas the transactions referred in the statement pertain to F.Y. 2008-09 and therefore, this statement is of no relevant to the period under consideration.

For the above arguments, for reopening the assessment after expiry of 4 years u/s 147 of the Act read with proviso to section 151(1) of the Act, the case of the

appellant had already assessed u/s 143(3) of the Act and there is no failure on the part of the appellant to disclose fully & truly all the material facts to complete the assessment. Therefore, reopening of assessment u/s 148 of the Act, only on the basis of change of opinion or reviewing his own assessment, is bad in law and reassessment u/s 147 of the Act, is liable to be quashed. The AR has submitted that the following decisions of Hon'ble Supreme Court and various High Courts, supports the above arguments, which are worth reporting:

- *M/s Haryana Acrylic Manufacturing Co. v Commissioner of Income-tax [2008] 175 TAXMAN 262 (HC - Delhi)*
- *M/s Calcutta Discount Co. Ltd. V. ITO [1961] 41 ITR 191 (Supreme Court)*
- *Assistant Commissioner of Income-tax (OSD) v. M/s Parixit Industries (P.) Ltd. [2012] 25 taxmann.com 301 (Supreme Court)*
- *Commissioner of Income tax v. M/s Multiplex Trading & Industrial Co Limited [2015] 63 taxmann.com 170 (HC - Delhi)*
- *Commissioner of Income-tax v M/s Viniyas Finance & Investment Private Limited [2013] 33 taxmann.com 86 (HC - Delhi)*
- *Commissioner of Income Tax v M/s Kelvinator of India [2010] (187 TAXMAN 312) (Supreme Court).*

(xi) It is further submitted by the AR that in the case of the appellant, the assessment u/s 143(3) of the Act, has already been completed vide order dated 22.4.2009 and the appellant has disclosed fully and truly all the material facts necessary for completion of assessment for the A.Y. 2007-08. It is further submitted by the AR that the A.O. has specifically mentioned in the assessment order u/s 143(3) of the Act, that AR filed necessary documents and evidences in support of fresh Share Capital received during the year and submission of the AR has been cross checked with reference to the books of accounts produced during the course of hearing. The A.O. further mentioned that notices u/s 133(6) of the Act, were cross checked with submissions of the AR and same were found in order. Therefore, it is submitted by the AR that the A.O. had verified all the details / documents / evidences furnished by the appellant with the details documents furnished by the share applicants in response to notices issued u/s 133(6) of the Act and then passed the assessment order, after satisfying himself that share. capital raised during the year, is from genuine sources and accepted the share capital/share premium, as explained, after due application of mind. The facts of the appellant's case are identical to the facts in the case of M/s Haryana Acrylic Manufacturing Co. v CIT [2008] 175 Taxman 262, and ratio of this judgment is squarely applicable in the case of the appellant, in which its held that if the assessee had disclosed fully and truly all material facts necessary for its assessment, then no action under section 147 of the Act, could have been taken after expiry of 4 years period. Relevant portion of this judgment is reproduced as under:

"..... We have already noted above that in the assessment order itself the Assessing Officer has recorded that the details as required were filed and verified. This in itself indicates that the Assessing Officer had applied his mind to the issue of the share application money and had accepted the assessee's claim after due verification. Furthermore, in the impugned order dated 2-3-2005 itself the Assessing Officer has indicated that during the course of assessment proceedings, the petitioner had filed

details in respect of share application money of Rs. 5 lakhs in the name Hallmarks Healthcare Limited. However, the Assessing Officer has now sought to wriggle out of his remarks in the assessment order by stating that only photocopies for the application for equity shares were filed and that the copy of the bank account with the Indian Bank which was available did not indicate that verification had been done incorrectly and that the facts as presented by the petitioner had been accepted in the normal course of assessment proceedings. The Assessing Officer cannot be permitted to retract from the position that he did ask for specific information and that the information was supplied by the petitioner. And, more importantly, that the Assessing Officer had examined and verified the information before finalizing the assessment under section 143(3) of the said Act. In this background also, we feel that the petitioner had not failed to disclose fully and truly all material facts necessary for its assessment in respect of the assessment year 1998-99. "

(xii) It is further submitted by the AR that it will not be out of place to mention here that even during reassessment proceedings u/s 153C of the Act, till dropping on 14.3.2014, in order to verify the genuineness of the fresh share capital, the information was directly collected by the present A.O. by issuing notices u/s 133(6) of the Act, from all the share applicant. It is further submitted that all these share applicants have confirmed the transactions, which were also verified by the erstwhile A.O. in the assessment proceedings. The copies of information collected by the A.O. from all the share applicants, have been filed by the appellant, in the paper book volume - III (pages from 1 to 334), after obtaining the same from the A.O.

In view of the above facts, it is submitted by the AR that the A.O. dropped the proceedings u/s 153C of the Act, after not finding any adverse material collected during search and survey action and also subsequently.

(xiii) It is further submitted by the AR that the action initiated by the A.O. u/s 148 of the Act, by forming reason to believe is not as per law and at the best, can be considered as reason to suspect, in absence of any specific information/ material. For this argument, appellant has relied upon the following decisions of Hon'ble Supreme Court, which support the contention of the appellant:-

- M/s Ganga Saran & Sons Private Limited v Income tax officer [1981] 130 ITR 1 (Supreme Court)
- Income tax officer v Lakhmani Mewal Das [1976] 103 ITR 437 (Supreme Court)
- Commissioner of Income Tax v M/s Kelvinator of India [2010] (187 TAXMAN 312) (Supreme Court)

In view of the above, the AR has submitted that the subject matter of alleged action u/s 148 of the Act, i.e. fresh share capital, was already inquired by the A.O. in the assessment proceedings u/s 143(3) of the Act and the same were considered as genuine/explained. However, the subsequent action initiated by the A.O. u/s 148 of the Act, forming reason to believe on the basis of statements and in absence of any cogent material, is not as per law and at the best, can be considered as reason to suspect, in absence of specific information/ material.

From the above, following facts emerged:

- The original assessment u/s 143(3) of the Act, was completed vide order dated 22.4.2009, at total income of Rs. 20,978/-,

- *In the original assessment completed u/s 143(3) of the Act, the A.O. was satisfied for the fresh share capital subscribed, only after getting confirmations, other evidences and also collecting information directly u/s 133(6) of the Act, from some of the share applicants,*
- *The A.O. recorded the reasons u/s 148 of the Act, on 19.3.2014 and issued the notice u/s 148 of the Act, on 20.3.2014, on the basis of statements/affidavit recorded during search and survey action, and*
- *information u/s 133(6) of the Act, was also collected by the A.O. during pendency of proceedings u/s 153C of the Act, from all the share applicants.*

From the above, it is clear that the period for action u/s 148 of the Act, pertains beyond 4 years for A.Y. 2007-08, which is under consideration and the original assessment was completed u/s 143(3) of the Act and there was no failure on the part of the assessee to disclose fully and truly, all the material facts necessary for the assessment. Therefore, the A.O. has wrongly resorted to re-opening u/s 148 of the Act, whereas assessment u/s 143(3) of the Act, had already completed, where fresh share application money/share premium was found as genuine.

*In view of the above, I am of the considered opinion that the A.O. was not having any cogent and definite material on record to form the reason to believe on the information in his possession, for re-opening of the completed assessment and further, there was no failure on the part of the appellant to disclose fully and truly all the material facts necessary for completion of assessment. Therefore, the action of the A.O. for initiating reassessment proceedings u/s 148 of the Act, is not correct and this view is also supported by the decision of jurisdictional High court of Delhi in the case of *M/s Haryana Acrylic Manufacturing Co. vs. CIT [2008] 175 Taxman 262*. In these facts and circumstances, the re-opening of the completed assessment u/s 148 of the Act, as well as reassessment u/s 147 of the Act, is not as per law and therefore, action of the A.O. is void ab-initio.*

Accordingly, ground no. 2,3 and 4, are hereby allowed.”

7. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal and the assessee has filed the Cross Objection against the appeal filed by the Revenue by raising the following grounds :-

ITA No.5962/Del/2016 (Revenue) :

“1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that reassessment u/s 147/143(3) of the I.T. Act, is void ab-initio.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating that notice u/s 148 of the Act was issued after recording reasons u/s 147 of the Act and following proper procedure of law and the*

objections raised by the assessee company were duly disposed off during assessment proceedings.

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating that the assessee company is a paper company without having any tangible assets with investments in paper companies and also failed to prove the credits in the books of account in the shape of share capital.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating that the directors of the company were not traceable and during the enquiries of bank account of assessee/ investor companies, cash deposits were found in bank accounts.*

5. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*

6. *That the grounds of appeal are without prejudice to each other.*

7. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

C.O. No.80/Del/2017 (Assessee) :

“1. *That on facts and circumstances of the case, the grounds of appeal preferred by the Department does not arise out of the order of the CIT(A).*

2. *That the CIT(A) erred on facts and in law in not appreciating that the assessing officer does not obtain proper sanction as required under section 151 of the Act.”*

8. The Id. DR strongly challenged the order of the Id. CIT(A) and submitted that all the preconditions for invoking the provisions of section 147 are fulfilled in the instant case. Relying on various decisions, she submitted that Id. CIT(A) was not justified in holding the re-assessment proceedings as void ab-initio. So far as merit of the case is concerned, she submitted that that the assessee has not satisfactorily explained the identity and creditworthiness of the shareholder and the genuineness of the transactions. The Assessing Officer had given justifiable reasons for making the addition u/s 68 of the I.T. Act. She accordingly

submitted that the order of the Id. CIT(A) be reversed and that of the Assessing Officer be sustained.

9. The Id. counsel for the assessee on the other hand heavily relied on the order of the Id. CIT(A). He submitted that the original assessment was completed u/s 143(3) wherein the Assessing Officer after satisfying himself regarding the issue of 5,89,250 shares of Rs.400/- with premium of Rs.390/- to 20 companies had accepted the share capital of Rs.23,57,00,000/- raised during the year. Referring to the notice issued u/s 148, he submitted that there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Therefore, the proviso to section 147 of the I.T. Act is applicable. Relying on the decision of the Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. vs. CIT reported in 308 ITR 38 and various other decisions, he submitted that the re-assessment proceedings are void ab-initio.

10. He accordingly submitted that the order of the Id. CIT(A) be upheld and the grounds raised by the Revenue should be dismissed.

11. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the order passed u/s 143(3) on

22.04.2009, copy of which is placed at page 50 and 51 of the Paper Book, has discussed the issue of fresh share capital received during the year. He has categorically observed the increase in paid-up share capital from Rs.1,29,30,000/- to Rs.1,89,22,500/- with premium of Rs.22,98,07,500/- in the year of scrutiny. The relevant observation of the Assessing Officer in the order passed u/s 143(3) on 22.04.2009 reads as under :-

“The assessee filed Return of Income for the A.Y. 2007-08 through e-filing on 17.10.2007 showing Total Income Rs.12,347/-. The Return was processed u/s 143(1) on 19.08.2006. The case was selected for scrutiny as per Central Action Plan. Accordingly Notice u/s 143(2) & 142(1) were issued to the assessee. In response to the said notices, Shri Manohar Lal Nangalia, A.R. of the assessee company appeared time to time and explained the Return. The A/R filed necessary documents and evidences in support of Fresh Share Capital received during the year. Submission of the A/R has been cross checked with reference to the books of accounts produced during the course of hearing. Notices u/s 133(6) were issued to some of share applicants and replies received from all of them. The same are also cross checked with the submission of the A.R., it is seen from the Balance Sheet filed along with the return of income that the assessee-company increased paid-up share capital from Rs.1,29,30,000/- to Rs.1,88,22,500/- with premium of Rs.22,98,07,500/- in the year of scrutiny.

.....

12. We find the Assessing Officer in the original assessment order has not made any addition on account of raising of share capital during the year amounting to Rs.23,57,00,000/-. A perusal of the notice issued u/s 148 which has been reproduced in the preceding paragraph does not show any allegation by the Assessing Officer regarding any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the

assessment. Therefore, the 1st proviso to section 147 are clearly applicable to the facts of the present case.

13. We find the proviso to section 147 reads as under :-

“Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

xxxxx”

14. We find the Hon’ble Delhi High Court in the case of Wel Intertrade P. Ltd. and Another vs. ITO reported in 308 ITR 22 has observed as under :-

“A plain reading of the said proviso makes it more than clear that where the provisions of section 147 are being invoked after the period of four years from the end of the relevant assessment year, in addition to the Assessing Officer having reason to believe that any income chargeable to tax has escaped assessment, it must also be established as a fact that such escapement of assessment has been occasioned by either the assessee failing to make a return under section 139, etc., or by reason of failure on the part of the assessee to disclose fully and truly all material facts

necessary for his assessment, for that assessment year. In the present case, the question of making of a return is not in issue and the only question is with regard to the second portion of the proviso, which relates to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. In so far as this pre-condition is concerned, there is not a whisper of it in the reasons recorded by the Assessing Officer. In fact, as indicated above, the Assessing Officer could not have made this a ground because the Assessing Officer had required the petitioner to furnish details with regard to loss occasioned by foreign exchange fluctuation which the petitioner did by virtue of the reply dated February 5, 2002. Since the petitioner had fully and truly disclosed all the material facts necessary for the assessment, the pre-condition for invoking the proviso to section 147 of the said Act had not been satisfied.

In this connection, it may be relevant to note one decision, although there are several others. The said decision is that of the Punjab and Haryana High Court in the case of Duli Chand Singhanian v. Asst. CIT [2004] 269 ITR 192. In the said decision, the High Court of Punjab and Haryana was faced with a similar situation. The court noted that there was not even a whisper of an allegation that the escapement in income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The court observed that absence of this finding, which is the sine qua non for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, makes the action taken by the Assessing Officer wholly without jurisdiction. We agree with these observations of the Punjab and Haryana High Court and are of the view that in the present case also, the Assessing Officer has acted wholly without jurisdiction. The invocation of section 147, the issuance of the notice under section 148 and the subsequent order on the objections are all without jurisdiction. The impugned notice as well as the proceedings pursuant thereto are quashed.”

15. We find the Hon’ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co. (supra) has observed as under :-

“In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the

said four year period remains unfulfilled. In our recent decision in Wel Inter trade Private Ltd. [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania [2004] 269 ITR 192 that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above.”

16. Since the original assessment in the instant case was completed u/s 143(3) on 22.04.2009 and the Assessing Officer had accepted the raising of share capital to the tune of Rs.23,57,00,000/- on the basis of various details furnished by the assessee and since the notice has been issued after a period of four years from the end of the relevant assessment year and in the said notice there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, therefore, in view of the decisions cited (supra) we do not find any infirmity in the order of the Id. CIT(A) in holding that the reopening of the completed assessment u/s 148 and re-assessment u/s 147/143(3) is not as per law and are void ab-initio. The various decisions relied on by Id. DR as per written synopsis are distinguishable and not applicable to the facts of the present case. The grounds raised by the Revenue are therefore dismissed.

C.O. No.80/Del/2017 (Assessee) :

17. The ld. counsel for the assessee did not press the Cross Objection filed by the assessee for which ld. DR has no objection. Accordingly, the same is dismissed.

18. In the result, the appeal filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order pronounced in the open Court on this 24th day of May, 2018.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 24-05-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi