

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 177/JP/2015
निर्धारण वर्ष / Assessment Year : 2005-06

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| Income Tax Officer, Ward-2(2), Jaipur. | बनाम Vs. | M/s Land Mark Dealers (P) Ltd., 411, 3 rd Floor, Shalimar Complex, Church Road, M.I. Road, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL 2002 N | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

प्रत्याक्षेपण / C.O. No. 17/JP/2015
(Arising out of आयकर अपील सं./ITA No. 177/JP/2015)
निर्धारण वर्ष / Assessment Year 2005-06

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| M/s Land Mark Dealers (P) Ltd., 411, 3 rd Floor, Shalimar Complex, Church Road, M.I. Road, Jaipur. | बनाम Vs. | Income Tax Officer, Ward-2(2), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL 2002 N | | |
| प्रत्याक्षेपक / Objector | | प्रत्यर्थी / Respondent |

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

सुनवाई की तारीख / Date of Hearing : 05/06/2018
उदघोषणा की तारीख / Date of Pronouncement : 08/06/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

The appeal by revenue and cross objection by assessee arise from the order dated 30/12/2014 of Ld. CIT (A)-I, Jaipur pertaining to the A.Y. 2005-06.

2. The assessee filed its return of income on 29/10/2005 declaring a loss of Rs. 38,565/- with ITO, Ward 6(1), Jaipur. Alongwith the return, the assessee filed financial statements including the details of the share capital. The return was processed U/s 143(1) of the Income Tax Act, 1961 (in short the Act) on 30/12/2005. Notice U/s 148 of the Act was issued on 29/03/2012 by the ITO, Ward 4(3), New Delhi on the basis of information received from Investigation Wing. During the year, the assessee has raised share capital of Rs. 51,60,000/- (16000 Equity shares of Rs. 10 each and 50000 Equity shares of Rs. 100 each) from various companies. The Assessing Officer has considered Rs. 50.00 Lacs share capital received from these companies as unexplained and made the addition.

3. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id. CIT(A), who after considering the facts and submissions of the case, deleted the addition by holding as under:

“3.3.2 The case was re-opened on 29/03/2012 on the basis of information received from Investigation Wing Delhi, with regard to share application money received by the assessee. Assessee has filed its objection for re-opening of assessment on 20.02.2013 but AO was unconvinced with that and rejected the same. During the reassessment proceeding, assessee provided all prima facie details such as Name with complete address, PAN, confirmation, bank statement, share application form & allotment etc. it is also a fact that out of 7 letters sent by speed post except in case of M/s Suma Finance and Pvt. Ltd., all were served.

Assessee vide letter dated 05.03.2013 has requested AO to provide an opportunity to cross-examine Sh. Aseem Gupta and other directors of these beneficiary companies. However, the same was not offered by the AO. In view of these facts, the reference to the statements made by some of the persons related with the said investing companies is of no effect/use because such statements could not have been utilized against the assessee-company without providing an opportunity of cross-examination, which was not afforded by the AO in this case. It is also found that the AO could not bring out any material to disapprove the genuineness of confirmations along with other prima facie details filed by the assessee. Therefore, the decision given by the Hon'ble Supreme Court, in the case of CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195, will apply here and addition made by the AO is uncalled for.

- 3.3.3. Burden of proof is not static. Once the assessee has provided relevant evidences then the burden shifts on the AO to disapprove their genuineness with new facts. However on the basis of documentary evidences such as (i) PANs of all Seven (7) concerns who have subscribed to the share capital (ii) Bank statements (iii) cheque details (iv) confirmations received from share holders (v) Copy of ROC return filed and (vi) Share allotment details, it can be concluded that assessee had been able to prove its case and that AO could not shift the burden back on to the assessee without producing any tangible material to doubt the veracity of documents furnished by the assessee. Therefore, assessee has been able to discharge its burden to establish their identity, creditworthiness and genuineness as regards the transactions concerning the allotment of shares. From ROC return, it is also seen that once share allotment is done, whole process of share capital subscription starting from share capital application received from aforementioned seven (7) concerns, has reached its finality. Even in view of these documentary factual evidences, AO was not able to prove his contention that assessee's own money was ploughed back in form

of share capital received from these seven (07) concerns whose references were found in the search & seizure report of SK Jain group. The immediate source in the bank account of the shareholders is through transfer, not by cash.

Apart from these facts, assessee has also relied upon ratio of following decisions which are directly in its favour:

Ambreshwar Grih Nirman Samiti 84 ITD 139

Starptex India P Ltd 84 ITD 320

T.S Venketation 74 ITD 298

Amarjit Singh Bakshi (HUF) 263 ITR 75

SMC Share Broker Ltd 159 Taxman 306

Jafferli K Rattonse 53 SOT 220

Nipuan Auto P Ltd 89 DTR 342

Kamdhenu Steel & Alloys Ltd and others 68 DTR 38

Dolphine Marbles (P) Ltd 57 DTR 58

Dadhimati Syntex P Ltd 259/Jodh/2013 Dt 31/7/13. Hon'ble ITAT Jodhpur Bench

Bharti Syntex Ltd 52 DTR 73 (Hon'ble ITAT Jaipur Bench)

3.3.4 Further, I also find that the established legal position on the subject under consideration as adopted in a large number of case laws is as follows:-

(i) As held in the case of R.B. Mittal v. CIT 246 ITR 283 (AP) in an enquiry u/s 68 of the Act, the rule of *audi alteram partem* has to be observed and the assessee must be given a fair and reasonable hearing to discharge the burden cast on him u/s 68 of the Act.

(ii) Jurisdictional ITAT Bench Jaipur in case of Bharti Syntex Ltd 52 DTR 73 has held inter alia as under:

“Held that certificate of incorporation of investor companies was placed on record. It means that they were registered companies under the Companies Act. PANs of all the three parties had been given and surprisingly no enquiry had been made by the Department from its own department whether the PANs allotted to these parties were correct or not

*or these companies were assessed to tax or not. The assessee-company had filed copy of its balance sheet also showing the shares of the assessee-company in their books of account on said assets. Year-wise these shares had been shown in their balance sheet and they had stated that they were regularly assessed to tax. Copy of confirmation along with affidavit and share certificates issued were also placed on record. Therefore, by merely saying that these parties were not traceable and treating the share application money as unexplained money under section 68 was not correct. The assessee had filed necessary details for the purpose of proving that it had received actual share application money and the shares had been allotted. Shares had been allotted to the respective companies. The assessee-company was showing the shareholders in its balance sheet and these companies were also showing the assets in their balance sheet in the shape of shares in the assessee-company. **All these companies were assessed to tax and, therefore, the addition sustained by the Commissioner (Appeals) was not justified.....”(Stress supplied)***

Further, ITAT Jodhpur Bench in case of Dadhimati Syntex P Ltd 259/Jodh/2013 Dt 31/7/13 has also endorsed this view.

- (iii) It is also settled law that it is mandatory for the AO to confront the assessee with any material collected by the AO at the back of the assessee, and in case of statement of third party recorded at the back of the assessee, opportunity of cross examination has to be offered to the assessee, failing which the said material/statement etc. will be rendered on unreliable and additions made on the basis of such material/statement etc. shall be rendered illegal. It is fact that AO did not provide any opportunity 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 Agrawal whose statements have referred / relied in the assessment order. Reference in this regard can be made to the decisions in the case of R.B. Shreeram Durga Prasad 176 ITR 169 (SC), 125 ITR 713 (SC), Jindal Vegetable (order of Hon'ble Delhi High Court in ITA no. 428 of 2007, 174 Taxmann 440 (Raj.) and Laxman Bhai Patel (order of Hon'ble Gujarat High Court dated 22/07/2008 in ITR no. 41/1997).

Admittedly, these statements were not recorded by the AO but were recorded by the Investigation Wing Delhi at the back of the assessee. AO has even not referred to the relevant portion of such statement so as to establish the collusive arrangement the assessee company had with these persons.

- (iv) Further, in the case of N.P. Garodia (order dated 13/01/2009 of Hon'ble P & H High Court in ITA no. 808 of 2008) and in the case of Brij Pal Sharma (order dated 17.02.2009 in ITA no. 685 of 2008 of Hon'ble P & H High Court) it was held that where the assessee provides identity and details pertaining to the lenders/creditors but is unable to produce them and requests the AO to issue summons u/s 131 of the Act for their attendance, it is the duty of the AO to issue such summons, failing which the addition would get deleted. It is also held in CIT v. Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC) and Anis Ahmed 297 ITR 441 (SC) that mere non-production of the lender/shareholder cannot be a ground for making addition u/s 68 of the Act.
- (v) Similarly as held in the case of CIT v. Metachem Industries (2000) 245 ITR 160 (MP) where a credit is shown to have come from a person other than the assessee, there is no further responsibility of the assessee to show that it has come from accounted source of the lender, as long as the fact that he had made the advance and was capable of making the advance are established. It was held by the Hon'ble Madras High Court in Hastimal (S) v. CIT (1963) 49 ITR 273 that after a lapse of decade, the assessee should not be placed upon the rack and called upon to explain not merely the origin and source of a capital contribution, but also the origin of origin and source of the source.
- (vi) Further, I find that the Hon'ble Apex Court in CIT v Lovely Exports (P) Ltd. (2008) 216 CTR 195 has held that the even if the share application money received by the appellant company is from alleged bogus

shareholder, whose identity is produced by the appellant company, the revenue can always proceed against such shareholders and if necessary reopen their individual assessment. Similar decision is also taken in the case of CIT v. Steller Investment Ltd. (1991) 192 ITR 287 (Del.), (2000) 251 ITR 287 (SC), CIT v. Sophia Finance Ltd., 205 ITR 98 (Del.)(FB), CIT v. Divine Leasing & Finance Ltd. (SLP no. CC 375/2008 arising out of ITA no. 53/2005 of the High Court of Delhi), CIT (Kolkata) v. M/s Shipra Retailers (P) Ltd. SLP no. CC 451/2008 arising out of ITA no. 576/2004 of the High Court Of Calcutta), CIT v. Pondy Metal & Rolling Mills (P) Ltd. (SLP no. CC 12860/2007 arising out of ITA no. 788/2006 of the High Court of Delhi) and CIT v. General Exports Ltd. (SLP no. 21349/2007 arising out of ITA No. 880/2006 of the High Court of Delhi). Following the aforesaid decision of the Apex Court in CIT v. Lovely Exports (P) Ltd. (supra), the Hon'ble Bombay High Court in the recent judgment in the case of CIT v Creative World Telifilms Ltd. (order dated 12.10.2009 in ITA(L) no. 2182 of 2009) has held inter alia as under:

"The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to follow the judgment of the Apex Court in the case of CIT vs. Lovely Exports (P) Ltd. reported in (2008) 216 CTR 195 (SC) wherein the Apex Court observed that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the assessing officer, then the department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee has given the details of name and address of the shareholders, their PANIGIR number and had also given the cheque number, name of the bank. It was expected on the part of the assessing officer to make proper investigation and reach the shareholders. The assessing officer did nothing except issuing summons which was ultimately returned back with an endorsement 'not tenable'. In our considered view, the assessing officer ought to have found out their details through PAN Card, Bank Account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the assessing officer. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limini with no order as to costs."

Similar decision has also been taken by the Hon'ble Chhattisgarh High Court in ACIT v Venkateshwar Ispat Pvt. Ltd. (2009) 319 ITR 393.

- (vii) Further, the Hon'ble Delhi High Court relying on the judgment of the Apex Court in Lovely Exports Pvt. Ltd. (supra) has dismissed the department's appeals in limine vide its recent orders in the case of CIT v. Dwarkadhish Investment Pvt. Ltd. and Dwarkadhish Capital Pvt. Ltd (ITA nos. 911/2010 and 913/2010 order dated 02/08/2010, CIT Vs. Green Tech Tower Builders Pvt. Ltd. (ITA no. 1113/2010 order dated 12.08.2010) and CIT v. Ultratech Finance & Investment Ltd. (ITA no. 1122/2010 order dated 12.08.2010). In the case of Dwarkadhish Investment Pvt. Ltd. and Dwarkadhish Capital Pvt. Ltd. (supra) the Hon'ble Delhi High Court vide its common order dated 02.08.2010 has inter alia observed as under:

"7. Consequently, the doctrine of merger would apply and the judgment of the Supreme Court in Lovely Exports (P) Ltd. (supra) would cover the field with regard to interpretation of Section 68 of Act, 1961.

8. In any matter, the onus of proof is not a static one. Though in Section 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants, could not be found at the address given. It would not give the Revenue the right to invoke Section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source".

.....

10. We are also informed that a Special Leave Petition against the aforesaid Division Bench judgment in the case of the respondent- assessee has been dismissed by the Supreme Court. Accordingly, we are of the opinion that no question of law arises in the present cases as the matter is fully covered by the judgment of the Supreme Court in Lovely Exports (P)

Ltd. (supra) as well as the Division Bench judgment of this Court in the case of the respondent-assessee itself.

11. Consequently, we are of the view that the present appeals amount to relitigation. The Supreme Court in KK Modi Vs. KN. Modi and Ors., (1998) 3 SCC 573 has held, "It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re agitated, it also amounts to an abuse of the process of the court"

12. Though we were initially inclined to impose costs yet we are of the opinion that ends of justice would be met by giving a direction to the Revenue to be more careful before filing appeals in a routine manner. In our view, appeal should not be filed in matters where either no question of law arises or the issue of law is a settled one. We give this direction because the "judicial capital in terms of manpower and resources is extremely limited.

13. Registry is directed to communicate copies of this order to all the Chief Commissioners of Income Tax in Delhi for necessary action. With the aforesaid direction, the present appeals are dismissed in limine but without any order as to costs. "

(viii) In the case of CIT vs. Fair Finvest Ltd. ITA no. 232/2012 dated 22-11-2012, Hon'ble Delhi High Court has held as under:-

"6. This Court has considered the submissions of the parties. In this case the discussion by the CIT(Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the Directors, Form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the assessing officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the assessing officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility

the assessing officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of Section 68.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

8. The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the assessing officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators; such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material. No substantial question of law arises. The appeal is accordingly dismissed.”

- (ix) Recently, in the case of ITO Ward (2) New Delhi Vs. M/s Rakam Money Matters P Ltd ITA no. 2821/Del/2011 dated 16/10/2014, the Hon’ble ITAT Bench Delhi has deleted the entire addition made on account of share application money by the assessee u/s 68 of the Act, relevant extract of which are reproduced as under:-

“.....
16. In the present case, as noted above, the AO has not been able to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company. The only evidence which has been referred by the AO is statement of third parties recorded by the Investigation Wing. Admittedly these statements were not recorded by the AO but were recorded by the Investigation Wing at the back of the assessee. The AO has not even referred to the relevant portion of such statement so as to establish the collusive arrangement the assessee company had with these persons.

17. Accordingly we are of the view that the CIT(A) was justified in deleting the addition made by the Assessing Officer..... ”

18. In the result, the appeal of the revenue stands dismissed.....”

“3.3.5 Further, in view of the decisions of the Jurisdictional High Court in Barkha Synthetics Ltd. Vs Asstt. CIT (2005) 197 XTR (Raj) 432 & CIT Vs AKJ Granites P Ltd. 301 ITR 298, where the share applications are received from different places accompanies with share application money, no presumption can be drawn that the same belong to the assessee; and the application moneys cannot be assessed in assessee’s hands as its undisclosed income unless some nexus is established that share application money for augmenting the investment in business has flown from the assessee’s own money.

In view of the facts and circumstances as discussed and also ratio of the above decision in favour of the appellant as discussed in above paras, the addition of Rs. 50,00,000/- made U/s 68 of the Act cannot be justified, hence deleted. Assessee gets a relief of Rs. 50,00,000/-.”

4. Now the assessee is in appeal before the ITAT by taking following grounds of appeal:

On the facts and in the circumstances of the cases and in law the Id. CIT(Appeal)-I, Jaipur has erred in:-

- “1. “Whether on the facts and in the circumstances of the case and in law the Id.CIT(A) has erred in Deleting the addition of Rs. 50,00,000/- made u/s 68 on account of unexplained cash credits in the form of share capital issued by the assessee.”*
- 2. “Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in holding that assessee has discharged its onus of establishing the identity, creditworthiness and genuineness as regards the transactions concerning the allotment of shares ignoring the facts that contrary evidences in the form of cash paid and cheques received were found and seized during the course of search proceedings in the SKJ Group.”*
- 3. “Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in holding that the assessee was not*

confronted with the evidences collected and ignoring the fact that necessary evidences and details in the form of statements records during the course of search operation as well as copies of bank accounts and related documents were provided to the assessee.”

4. *The appellant craves the indulgence to modify, alter, add and amend any other ground of appeal.*

5. Thus, only issue involved in the revenue's appeal is against deleting the addition of Rs. 50.00 lacs made by the Assessing Officer U/s 68 of the Income Tax Act, 1961 (in short the Act) as unexplained cash credit in the form of share capital issued by the assessee. The Id. CIT(A) has allowed the appeal of the assessee by holding that the assessee has discharged its onus by establishing the identity, creditworthiness and genuineness with regard to the transactions for allotment of shares.

6. While pleading on behalf of the revenue with regard to the grounds raised in the revenue's appeal, the Id DR has relied on the orders of the Assessing Officer and submitted that the assessee has not discharged the onus, therefore, the Id. CIT(A) was not justified in deleting the addition. She submitted that the Assessing Officer has issued inquiry letters to the addresses provided by the assessee and these letters were returned unserved by the postal authorities in respect of four companies who has invested in the shares. Non-service of the letters was communicated to the assessee and asked to provide correct addresses. The assessee

provided addresses of three companies but not provided the address in respect of one company namely M/s Fashion Tech India Ltd.. Thereafter summons U/s 131 of the Act were issued to these companies for necessary verification and personal appearance of the Directors of the company. Summons in respect of one company M/s Suma Finance & Investment Ltd. were received back unserved from the post authorities with the remarks "No such firm at such address". Shri Aseem Kumar Gupta, C.A. has confessed in his statement dated 24/11/2011 and 25/11/2011 that he was engaged in providing accommodation entries through number of entities controlled/managed by him and M/s Suma Finance & Investment Ltd. was one of them. Ld DR also submitted that in the case of M/s Flare Finance (India) Ltd., there was no compliance of summons. In the case of M/s Sam Portfolio (P) Ltd., there was no response to the inquiry letter U/s 133(6) of the Act. In the case of M/s Fashion Tech India Ltd., summons were issued but no one was received. The Director of the company was not produced and the Assessing Officer has held that identity, creditworthiness and genuineness is not established in absence of satisfactory evidence. In the case of M/s Mehul Finvest Pvt. Ltd., the Id DR has submitted that the Auditor Shri Sudipto Mukherjee in the statement recorded U/s 131 of the Act has stated that balance sheet was not signed by him. In the case of M/s Smartest Corporate Services

Pvt. Ltd. and M/s Shushree Securities Pvt. Ltd., the explanation was not satisfactory and it lacks creditworthiness and genuineness. Hence the addition made u/s 68 of the Act made by the Assessing Officer may be confirmed and order of Id. CIT(A) may be quashed.

7. On the other hand, on this issue, the Id AR of the assessee has submitted as under:

1. During the year, assessee raised share capital of Rs.51,60,000/- (16000 Equity Shares of Rs.10 each and 50,000 Equity Shares of Rs.100 each) from various parties. In the course of reassessment proceedings, assessee vide letter dated 26.02.2013 (**PB 34**) filed the confirmation, copy of share application money and the bank statement of these parties. Again vide letter dated 05.03.2013 (**PB 35-36**) assessee produced register of shareholders, minute books and the date of allotment of shares and particulars of shares allotted.
2. The AO, thereafter, issued letter u/s 133(6) on 21.02.2013 to all the above seven parties seeking further information as mentioned at pg 9, para 17 of the assessment order. The fate of the summons issued and the reasons for which the AO considered the share capital received from these companies as unexplained is tabulated as under:-

| S.No | Name, address and PAN of the Company | Amount invested (Rs.) | Summons served | Reasons for making addition |
|------|---|-----------------------|----------------|---|
| 1. | M/s Suma Finance and Investments Ltd. DA-4 Vikas Marg, Shakarpur, Delhi-110092 PAN: AAACS03039P | 10,00,000 | No | Summons returned unserved with remark that "no such firm at such address". Sh. Aseem Kumar Gupta in his statement has stated that he was engaged in providing accommodation entries through this company. Assessee has not produced the director. |
| 2. | M/s Flare Finance (India) Ltd. 4346/4C, Anshari Road, | 5,00,000 | Yes | No compliance of summon issued. Assessee has not produced the director. |

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| | Darya Ganj, New Delhi-110002 PAN: AAACF2044G | | | |
| 3. | M/s Sam Portfolio Pvt. Ltd. WP-501,3 rd Floor, Shiv Market, Wazirpur, Ashok Vihar Delhi-110052 PAN: AAHCS6810N | 5,00,000 | Yes | - No compliance to enquiry letter. - Sh. Aseem Kumar Gupta in his statement has stated that he was engaged in providing accommodation entries through this company. - Assessee has not produced the director. |
| 4. | M/s Fashion Tech India Ltd. RZ-433, Gali No. 13A, Tuglakabad Extn., New Delhi PAN: AAACF0332R | 10,00,000 | Yes | - No compliance of summon issued. - Assessee has not produced the director. |
| 5. | M/s Smartest Corporate Services Pvt. Ltd. 117, Hans Bhawan, 1, Bahadurshah Zafar Marg, New Delhi-110002 PAN: AABCS6568B | 5,00,000 | Yes | - In response to summons copy of assessment order for AY 05-06 and some other documents submitted but this co is used by S.K. Jain for providing accommodation entries as per the facts on record. - Assessee has not produced the director. |
| 6. | M/s Shushree Securities Pvt. Ltd. 2D, DDA MIG Flats, Gulabi Bagh, Delhi-110007 PAN: AAHCS6808G | 5,00,000 | Yes | - In response to summons balance sheet filed but it did not furnish the schedule-4 of the Balance Sheet which shows investment of Rs.2,30,55,569/- to verify whether it has invested in share capital of the assessee or not. - Sh. Aseem Kumar Gupta, director in his statement dated 24.11.2011 has stated that he was engaged in providing accommodation entries through this company. - Assessee has not produced the director. |
| 7. | M/s Mehul Finvest (P) Ltd. 401, XV/3198, Gali No. 1, Sangatarshan, Pahar Ganj, New Delhi-110055 PAN: AAACM8175H | 10,00,000 | Yes | - In response to summons audited accounts signed by auditor Sh. Sudipto Mukherjee submitted but in his statement he stated that he has not examined or signed the financial statements of this co. for the FY 04-05 and these are forged documents. - Sh. Naresh Gupta, present director of the co. who appeared before AO on 25.03.2013 stated that he does not recognize the signature of the person who had signed the letter dated 27.02.2013 filed in |

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|--|--|--|--|---|
| | | | | response to notice u/s 133(6) and the said letter was issued without his knowledge. |
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3. The Ld. CIT(A) deleted the addition as per his findings given at Page 14-25 of the order.

Submission:-

1. The AO has treated the share capital amount received from parties at S. No. 1 to 4 above as unexplained only for the reason that assessee did not produced the directors of these companies and that in case of parties at S. No. 1 and 3, Sh. Aseem Kumar Gupta in his statement dated 24.11.2011 and 25.11.2011 has stated that he was engaged in providing accommodation entries through these companies. It may be noted that in respect of these companies assessee has filed the share application form, confirmation and the bank statement (PB 44-55). The summons on these companies has been served except in case of Suma Finance and Investment Ltd. It may be noted that this a limited company and address of the co is DA-4,Vikas Marg, Shakarpur, Delhi-92 as available on the site of Ministry of Corporate Affairs. Thus, assessee has discharged his primary burden of proving the identity of the share applicant, genuineness of the transaction and creditworthiness of the creditor. In respect of producing the directors of the co., assessee vide letter dated 25.03.2013 (PB 41) has specifically requested the AO to utilise his power under the Act to enforce the attendance of these directors. Further, the statement of Sh. Aseem Kumar Gupta who is alleged to have stated to provide accommodation entry through these companies was not provided nor an opportunity to cross examine him was given in spite of the specific request of the assessee vide letter dated 05.03.2013 (PB 35-36).In fact, the AO without providing any opportunity to cross examine Sh. Assem Gupta/S.K. Jain has made the addition which is against the principle of natural justice and illegal & bad in law. 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. Therefore, the addition made by the AO at the threshold is liable to be quashed. Reliance in this connection is placed on 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. Therefore, addition of Rs. 30 lacs made in respect of 4 parties above is rightly deleted by CIT(A).

2. In case of Smartest Corporative Services Pvt. Ltd., AO himself has mentioned that party has submitted the assessment order u/s 143(3) for AY 05-06 and some other documents. The AO inspite of the request of the assessee has not issued summon to the director of this company for his personal presence. The extract of the seized document from the premises of Sh. S.K Jain nowhere suggests that this company has given any accommodation entry to the assessee. No opportunity was given to cross examine Sh. S.K Jain. Thus, when this company has accepted of making investment in the share capital of the assessee in response to notice issued by the AO and copy of bank account, confirmation and the share application form is furnished by the assessee (PB 56-58), the addition of Rs.5 lacs made by Assessing Officer is rightly deleted by CIT(A).
3. In case of Sushree Securities Pvt. Ltd., the co has furnished the Balance Sheet which shows investment of Rs.2,30,55,569/-. Only because Schedule 4 to the Balance Sheet is not furnished by the company, the investment made by it in the share capital of the assessee cannot be considered as unexplained. The company vide letter dated 27.02.2013 (PB 65)has accepted that it had made investment of Rs.5 lacs in the share capital of the assessee in FY 04-05. In respect of producing the directors of the co., assessee vide letter dated 25.03.2013 (PB 41) has specifically requested the AO to utilise his power under

the Act to enforce the attendance of the director. Further, the assessee has also filed the share application form, confirmation and the bank statement of this company (PB 59-61). Thus, the addition of Rs.5 lacs made by Assessing Officer is rightly deleted by CIT(A).

4. In respect of Mehul Finvest Pvt. Ltd. assessee has submitted confirmation, bank statement and share application form (PB 62-64). In response to notice issued by the AO the audited accounts were furnished (PB 66-81). Further, Sh. Naresh Gupta present director appeared before the AO and his statement were recorded. Nothing adverse was found in such statement. Only on the basis of statement of Sh. Sudipto Mukherjee (PB 82-83) who stated that his signature on the balance sheet is forged cannot be a reason to treat the amount invested by the co. in the share capital of the assessee as unexplained particularly when such investment is verifiable from its bank account, no opportunity was given to cross examine Sh. Sudipto Mukherjee and assessee vide its letter dated 20.03.2013(PB37-40) has explained that how his statement is not worthy of reliance. Thus, the addition of Rs.10 lacs made by AO is rightly deleted by CIT(A).
5. Apart from the decisions already submitted before the CIT(A), reliance is further placed on **following cases:-**

CIT Vs. Vacmet Packaging (India) Pvt. Ltd. 367 ITR 0217 (All.) (HC) decision dated 11.02.2014

Facts of the case

A survey u/s 133A was carried out and it was alleged by the revenue that a Chartered Accountant by the name of Aseem Kumar Gupta was involved in providing accommodation entries to various beneficiaries under the guise of share application money. Summons was issued to Aseem Kumar Gupta and he was confronted with the notings contained in a black diary which had been impounded during the course of survey. AO in the assessment u/s 153A, made an addition of an amount which was received by assessee as share application money from M/s KMC Portfolio Pvt. Ltd. on the ground that amount was only a movement of money belonging to the assessee through various channels in a colourable manner. CIT(A) deleted the addition by holding that AO had erred in relying upon the contents of

the black diary, as it consisted of entries which related to AY 2005-06 and not to current AY 2007-08. Further, during the course of assessment proceedings, the AO had issued notice u/s 133(6) inter alia to M/s KMC Portfolio Pvt. Ltd. as well as to another company in response where to both the companies had confirmed investments made by them and filed share receipt confirmation, bank statements of the relevant period, acknowledgments of the income tax returns and balance sheet. Tribunal while sustaining the view of the CIT(A) observed that assessee had filed documentary evidence to prove genuineness of share application money consisting of (i) share application forms; (ii) copies of bank accounts of share applicants; (iii) copies of income tax returns of share allottees; (iv) balance sheets; and (v) copies of share allotment certificates and of Board's resolution of the share applicants. Identity of applicants was established by production of copies of PAN cards and registration certificate with the Registrar of Companies. Financial capacity was also proved by filing of copies of the bank accounts from where the share application money was transferred through banking channels to the assessee. The genuineness of the transaction had been established by filing of the documents and in view of the confirmation by both the companies of the respective transaction. On this basis, the Tribunal held that the assessee had discharged the onus placed upon him by sec. 68.

Findings of the case

The assessee undoubtedly had to discharge the onus of establishing the identity and credit worthiness of the applicant companies and the genuineness of the transaction. In this regard, both the CIT(A) and the Tribunal had noted that the assessee had established all the three aspects by producing, during the course of the assessment, necessary documentary material such as the share application forms, copies of bank accounts, income tax returns and balance sheets. The view which was taken by the CIT(A) and which was sustained by the Tribunal would thus have to be regarded as being, at least, a possible view to take in the circumstances of the case.

It may be noted that in assessee's case also, the addition is made with reference to the survey/search carried out in case of Sh. Assem Kumar Gupta and others. Therefore, in view of the above decision, which is directly applicable in the assessee's case, the Ld. CIT(A) has rightly deleted the addition.

ACIT Vs. VIP Growth Fund Pvt. Ltd. 46 CCH 0231 (Del.) (Trib.) decision dated 04.03.2016

Facts of the case

In this case, the assessee filed its return of income declaring certain income. Scrutiny assessment u/s 143(3) was made on 28.02.2006. In the course of the said proceedings, the details of share application money/share capital were furnished. The AO received information from the Investigation Wing of the Department, that the companies / persons which contributed towards share application money / share capital were involved in providing accommodation entries. In view of the specific information, the

AO initiated action u/s 148 and completed the assessment disbelieving a part of share application money/share capital of Rs. 40,00,000/-.

Findings of the case

The Hon'ble ITAT affirmed the findings of the Ld. CIT(A) who deleted the addition by holding that nothing adverse was found in the details of share application money/share capital furnished by the assessee in the course of assessment proceedings. The AO has not verified the details furnished by the assessee and I.T. records of the shareholders/investing companies. The assessee has discharged its burden of providing basic details which were required for verification to fulfill the conditions viz. identity of the creditor, credit worthiness of the creditor and genuineness of transaction. The assessee has provided necessary details including the ward/circle where the share applicants/ investing companies were assessed to income tax and discharged the onus cast on it. All the amounts were received, through banking channels by way of cheques issued in favour of the appellant company towards share application money. The shares were allotted as per the documents furnished before ROC. The assessee has produced possible/best evidence to support its claim. The AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee company and also not placing before the assessee the information and findings of the Investigation Wing violating the principles of natural justice. If there is any discrepancy in the books of accounts maintained by the investing companies, there is a case for reopening of the assessment of the respective shareholders/investing companies. The assessee cannot be penalized for the mistakes/faults committed by the share holders. The AO has not found any discrepancy in the books of account and bank accounts maintained by the assessee.

CIT Vs. Supertech Diamond Tools Pvt. Ltd. 229 Taxman 62 (Raj.) (HC)

AO made addition u/s 68 on account of amount received for share capital, its premium and amount paid as commission for arranging it on basis of statement made by third parties who were related to purchasing companies stating that these companies were engaged in providing accommodation entries in lieu of commission. It was held that the said third party statement was made behind back of assessee and no opportunity of being heard or cross-examining third parties was provided to assessee. Further, AO could not bring any material to disapprove genuineness of confirmation and affidavits filed by assessee. All transactions were through account payee cheques. All these companies had PAN numbers, were regularly assessed to tax, were registered under Companies Act and Form No.2 for allotment was also filed. Therefore, appellate authorities have rightly deleted the addition.

**ITO Vs. Rakam Money Matters P. Ltd. (2014) 41 CCH 0155 (Del.) (Trib.)
decision dated 16.10.2014**

In this case, return of income was submitted declaring certain income. The case was reopened u/s 148 of the IT Act, 1961 on the basis of information received from the investigation wing that assessee has received accommodation entries by way of share application money from certain companies. The AO required the assessee to prove the genuineness of the share application money received by it. In response to same, the assessee filed details in the form of share application form, PAN, affidavit of the directors of shareholder companies, confirmation, bank statement etc. The AO, however, held that as assessee has not produced the director of the companies from whom the share application money has been received, it has failed to discharge its onus to prove the genuineness of the share application and accordingly made addition u/s 68 of the IT Act, 1961. The Ld. CIT(A) observed that assessee company has filed all the necessary details which include copies of share application form, copies of bank statements, copies of income tax returns, copies of PAN cards, balance sheet, copy of Certificate of Incorporation and Memorandum of Articles of Association of the companies, that the status of these companies is 'active' on the ROC Website and that the opportunity of cross examination was not provided to the appellant in respect of the allegation of the Investigation Wing. Thus, on the basis of the above facts and by relying upon the various judgments, the Ld. CIT(A) held that assessee has discharged its onus and accordingly deleted the addition. The Hon'ble ITAT held as under:-

13. We have heard both the parties. The only issue here is the addition of Rs.60 lacs made by the Assessing Officer as unexplained credit on account of the share application money. On going through the facts of the case, we notice that assessee has filed the relevant details which it could have filed in support of its contention of having received the share application money from each of these shareholder companies.

14. The Assessing Officer has issued summons to the directors of these shareholder companies. In response there to, the directors have not attended. Assessing Officer has not conducted any further inquiry for non-attendance of the persons. Non-attendance on issuing summons itself cannot be a ground for rejecting all the relevant documents furnished by the assessee company. Summons issued by Assessing Officer have not been received back as unserved. Therefore, it cannot be said that these companies were not in existence at the given addresses. The documents filed with the Registrar of Companies show that these companies were active during the relevant period. Assessing Officer has not verified any of the relevant documents submitted by Assessing Officer for discharging onus u/s 68 of the Act. We also note that the Assessing Officer has not referred nor discussed about the so-called alleged statement of entry providers against the assessee company. It is also not known whether assessee's name figured in that statement. The contention of the assessee has been rejected without examination and verification of the documents submitted by the assessee. The information received by him from the Investigation department has been made the basis of addition without any further investigation in this regard. Even the process of examination of the directors by issue of summons has not been taken to the logical end as after the failure of the directors to attend in response to the summons issued to them no further steps were taken. The Assessing Officer could have done cross verification about the status of these companies with the respective Assessing Officer of these shareholder companies.

16. In the present case, as noted above, the AO has not been able to bring on record any valid material or evidence to discredit the evidences and the explanation given by

the assessee company. The only evidence which has been referred by the AO is statement of third parties recorded by the Investigation Wing. Admittedly these statements were not recorded by the AO but were recorded by the Investigation Wing at the back of the assessee. The AO has not even referred to the relevant portion of such statement so as to establish the collusive arrangement the assessee company had with these persons.

17. Accordingly we are of the view that the CIT(A) was justified in deleting the addition made by the AO.

Jadau Jewellers & Manufacturing (P) Ltd. Vs. ACIT 45 CCH 0442 (Jpr.) (Trib.) decision dated 14.12.2015

Assessee was engaged in business of trading and manufacturing of jewellery—Search and seizure operation was carried by department u/s 132 and survey u/s 133A was made on Members of 'X' of which Assessee was one of Members—AO issued notice u/s 153A and Assessee was asked to file true and correct return of income as prescribed under r 12 of the Income Tax Rules, 1962—In return of income filed in response to notice u/s 153A no disclosed income pertaining to relevant year was declared by Assessee—AO observed that during year under consideration, assessee showed total turnover of Rs. 2.05 crores on which assessee returned a net loss of Rs. 13,29,220—AO observed that assessee had obtained share capital and share application money from various companies—AO held that amount received from stated companies in form of share capital was only accommodation entries and genuineness of Share capital received by assessee company could not be accepted—AO passed Order u/s 153 and made addition of Rs. 60,00,000 on account of alleged unexplained share capital received by assessee company from following persons—CIT(A) upheld addition made by AO—Held, AO could issue notice u/s 143(2)—In assessee's case, search was conducted on 06/5/2010 and AO issued notice on 16/09/2011 u/s 153A read with s 143(2)—During course of search, no incriminating documents were found therefore, no notice could be issued u/s 153A read with s 143(3) because no proceeding was pending before AO which abated for issue of notice on date of initiation of search—Thus, on technical ground, order passed u/s 153A read with s 143(3) was held void ab initio—Further Assessee before AO had produced copy of share application, confirmation of cash creditors, copy of PAN, copy of Board resolution, copy of Director's report, auditor's report, copy of balance sheet, copy of P&L account, copy of bank account to prove the identity, genuineness and creditworthiness of cash creditors—AO made addition on basis of investigation conducted by ITO, but AO did not clarify what inquiry had been conducted and what evidences collected which had gone against assessee—Also although Notice u/s 131 was issued by ITO, Investigation were served in case of X and Y but compliance could not be made on given date because concerned officer was on leave—Copy of inquiry had not been provided by AO to assessee and Investigation Officer had not deputed Inspector to enquire whereabouts of company—Thus Order of CIT(A) was reversed—Assessee's Appeal allowed on technical ground as well as on merit.

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 (referred above)

Hon'ble ITAT, Jaipur Bench in the similar facts of the case involving the same companies have deleted the addition.

Anchal Fintrade Pvt. Ltd. Vs. ITO in ITA No. 131/JP/16 for A.Y. 05-06

In this case also, where addition of Rs. 5 lacs was made on the basis of the information received from investigation wing, New Delhi that assessee was one of the beneficiary of the accommodation entry provided by S.K. Jain Group, the Hon'ble ITAT after elaborate discussion on Page 12-17 of the order after considering the decision of jurisdictional High Court in case of CIT Vs. Supertech Diamond Tolls Pvt. Ltd. 229 Taxman 460 and the decision of Allahabad High Court in case of CIT Vs. Vacmet Packaging India Pvt. Ltd. 367 ITR 217 deleted the addition confirmed by CIT(A).

In view of above, the Ld. CIT(A) has rightly deleted the addition and thus the grounds of the department be dismissed.

The Id. AR has also relied on the recent decision of the Hon'ble ITAT, Jaipur Bench in the case of ITO Vs M/s Alok Fintrade (P) Ltd. in ITA No. 180/JP/2015 order dated 14/5/2018 and in the case of M/s Choice Buildstate Pvt. Ltd. Vs ITO in ITA No. 431/JP/2016 order dated 28/3/2018.

8. The Bench have heard both the sides on this issue and perused the material available on the record. The Assessing Officer has treated the share capital received from M/s Suma Finance and Investment Ltd. Rs. 10.00 lacs, M/s Flare Finance (India) Ltd. Rs. 5,00,000/-, M/s Sam Portfolio Pvt. Ltd. Rs. 5,00,000/-, and M/s Fashion Tech India Ltd. Rs. 10,00,000/- as unexplained for the reason that the assessee did not produce the Directors of these companies. Regarding the Directors of M/s Suma Finance and Investment Ltd. and M/s Sam Portfolio Pvt. Ltd., Shri Aseem Kumar Gupta gave statement wherein he has admitted for

providing accommodation entries. In respect of these companies, the assessee has filed share application form, confirmations and bank statements. These details are placed at page Nos. 45 to 55 of the paper book. Summons on these companies were served except M/s Suma Finance & Investment Ltd. M/s Suma Finance & Investment Ltd. address is DA-4, Vikas Marg, Shakarpur, Delhi-92 was available on the site of Ministry of Corporate Affairs but no enquiry was made from this address. By filing number of identity of these share applicants and the assessee has specifically requested the Assessing Officer to enforce the attendance of Director of these companies. The assessee has prima facie discharged the onus on it. Further the statement of Shri Aseem Kumar Gupta was not provided to the assessee and no opportunity to cross examine was also given in spite of the specific request of the assessee. Thus, not providing the opportunity to cross examine, there is a violation of principles of nature justice. The Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CCE (supra) has clearly 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. Similarly in the case of Smartest Corporate Services Pvt. Ltd., no opportunity to cross examine was provided to the assessee. The company has accepted the fact regarding making

investment in the share capital of the assessee and copy of bank account, confirmation and share application form were furnished by the assessee. In the case of Sushree Securities Pvt. Ltd., the company was furnished balance sheet, which shows investment of Rs. 2,30,55,569/-. Only Schedule-4 was not furnished. The company in its letter dated 27/2/2013 has accepted that it has made investment of Rs. 5.00 lacs in the shares of assessee company in the F.Y. 2004-05. The assessee requested the Assessing Officer to enforce the attendance of the Director of the company and compliance of the summons. The Assessing Officer has not carried investigation to its logical end. The assessee has submitted share application form, confirmation and bank statement of this company also. In the case of Mehul Finvest Pvt. Ltd., the assessee has submitted confirmation, bank statement and share application form. Audited accounts were furnished in response to the notice issued by the Assessing Officer. Shri Naresh Gupta, Director of the company appeared before the Assessing Officer and no adverse was found in his statement. Only on the basis of statement of Shri Sudipto Mukherjee, who stated that his signature is not on the balance sheet, cannot be a reason to treat the amount invested in the share of capital of assessee as unexplained particularly when such investment was verifiable from its bank account. Further, no opportunity was granted to cross examine Shri Sudipto

Mekherjee. The Hon'ble Allahabad High Court in the case of CIT Vs. Vacmet Packaging (India) Pvt. Ltd. (supra) has held as under:

"The assessee undoubtedly had to discharge the onus of establishing the identity and credit worthiness of the applicant companies and the genuineness of the transaction. In this regard, both the CIT(A) and the Tribunal had noted that the assessee had established all the three aspects by producing, during the course of the assessment, necessary documentary material such as the share application forms, copies of bank accounts, income tax returns and balance sheets. The view which was taken by the CIT(A) and which was sustained by the Tribunal would thus have to be regarded as being, at least, a possible view to take in the circumstances of the case."

Similarly in the case of ACIT Vs. VIP Growth Fund Pvt. Ltd. (supra), the ITAT, Delhi Bench has held as under:

Facts of the case

In this case, the assessee filed its return of income declaring certain income. Scrutiny assessment u/s 143(3) was made on 28.02.2006. In the course of the said proceedings, the details of share application money/share capital were furnished. The AO received information from the Investigation Wing of the Department, that the companies / persons which contributed towards share application money / share capital were involved in providing accommodation entries. In view of the specific information, the AO initiated action u/s 148 and completed the assessment disbelieving a part of share application money/share capital of Rs. 40,00,000/-.

Findings of the case

The Hon'ble ITAT affirmed the findings of the Ld. CIT(A) who deleted the addition by holding that nothing adverse was found in the details of share application money/share capital furnished by the assessee in the course of assessment proceedings. The AO has not verified the details furnished by the assessee and I.T. records of the shareholders/investing companies. The assessee has discharged its burden of providing basic details which were required for verification to fulfill the conditions viz. identity of the creditor, credit worthiness of the creditor and genuineness of transaction. The assessee has provided necessary details including the ward/circle where the share applicants/ investing companies were assessed to income tax and discharged the onus cast on it. All the amounts were received, through banking channels by way of cheques issued in favour of the appellant company towards share application money. The shares were allotted as per the documents furnished before ROC. The assessee has produced possible/best evidence to support its

claim. The AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee company and also not placing before the assessee the information and findings of the Investigation Wing violating the principles of natural justice. If there is any discrepancy in the books of accounts maintained by the investing companies, there is a case for reopening of the assessment of the respective shareholders/investing companies. The assessee cannot be penalized for the mistakes/faults committed by the share holders. The AO has not found any discrepancy in the books of account and bank accounts maintained by the assessee.

The Hon'ble Rajasthan High Court in the case of CIT Vs. Supertech Diamond Tools Pvt. Ltd. (supra) has held as under:

“AO made addition u/s 68 on account of amount received for share capital, its premium and amount paid as commission for arranging it on basis of statement made by third parties who were related to purchasing companies stating that these companies were engaged in providing accommodation entries in lieu of commission. It was held that the said third party statement was made behind back of assessee and no opportunity of being heard or cross-examining third parties was provided to assessee. Further, AO could not bring any material to disapprove genuineness of confirmation and affidavits filed by assessee. All transactions were through account payee cheques. All these companies had PAN numbers, were regularly assessed to tax, were registered under Companies Act and Form No.2 for allotment was also filed. Therefore, appellate authorities have rightly deleted the addition.

The ITAT, Delhi Bench in the case of ITO Vs. Rakam Money Matters P. Ltd. (supra) has held as under:

“In this case, return of income was submitted declaring certain income. The case was reopened u/s 148 of the IT Act, 1961 on the basis of information received from the investigation wing that assessee has received accommodation entries by way of share application money from certain companies. The AO required the assessee to prove the genuineness of the share application money received by it. In response to same, the assessee filed details in the form of share application form, PAN, affidavit of the directors of shareholder companies, confirmation, bank statement etc. The AO, however, held that as assessee has not produced the director of the companies from whom the share application money has been received, it has failed to discharge its onus to prove the genuineness of the share application and accordingly made addition u/s 68 of the IT Act, 1961. The Ld. CIT(A) observed that assessee company has filed all the necessary details which include copies of share application form, copies of bank statements, copies of income tax returns, copies of PAN cards, balance sheet, copy of Certificate of Incorporation and Memorandum of Articles of Association of the companies, that the status of these companies is 'active' on the ROC Website and that the opportunity of cross examination was not provided to the appellant in respect of the allegation of the Investigation Wing. Thus, on the basis of the above facts and by

relying upon the various judgments, the Ld. CIT(A) held that assessee has discharged its onus and accordingly deleted the addition. The Hon'ble ITAT held as under:-

13. We have heard both the parties. The only issue here is the addition of Rs.60 lacs made by the Assessing Officer as unexplained credit on account of the share application money. On going through the facts of the case, we notice that assessee has filed the relevant details which it could have filed in support of its contention of having received the share application money from each of these shareholder companies.

14. The Assessing Officer has issued summons to the directors of these shareholder companies. In response there to, the directors have not attended. Assessing Officer has not conducted any further inquiry for non-attendance of the persons. Non-attendance on issuing summons itself cannot be a ground for rejecting all the relevant documents furnished by the assessee company. Summons issued by Assessing Officer have not been received back as unserved. Therefore, it cannot be said that these companies were not in existence at the given addresses. The documents filed with the Registrar of Companies show that these companies were active during the relevant period. Assessing Officer has not verified any of the relevant documents submitted by Assessing Officer for discharging onus u/s 68 of the Act. We also note that the Assessing Officer has not referred nor discussed about the so-called alleged statement of entry providers against the assessee company. It is also not known whether assessee's name figured in that statement. The contention of the assessee has been rejected without examination and verification of the documents submitted by the assessee. The information received by him from the Investigation department has been made the basis of addition without any further investigation in this regard. Even the process of examination of the directors by issue of summons has not been taken to the logical end as after the failure of the directors to attend in response to the summons issued to them no further steps were taken. The Assessing Officer could have done cross verification about the status of these companies with the respective Assessing Officer of these shareholder companies.

16. In the present case, as noted above, the AO has not been able to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company. The only evidence which has been referred by the AO is statement of third parties recorded by the Investigation Wing. Admittedly these statements were not recorded by the AO but were recorded by the Investigation Wing at the back of the assessee. The AO has not even referred to the relevant portion of such statement so as to establish the collusive arrangement the assessee company had with these persons.

17. Accordingly we are of the view that the CIT(A) was justified in deleting the addition made by the AO.

The Coordinate Bench of ITAT, Jaipur Bench in the case of Jadau Jewellers & manufacturing (P) Ltd. Vs. ACIT (supra) has held as under:

“Assessee was engaged in business of trading and manufacturing of jewellery—Search and seizure operation was carried by department u/s 132 and survey u/s 133A was

made on Members of 'X' of which Assessee was one of Members—AO issued notice u/s 153A and Assessee was asked to file true and correct return of income as prescribed under r 12 of the Income Tax Rules, 1962—In return of income filed in response to notice u/s 153A no disclosed income pertaining to relevant year was declared by Assessee—AO observed that during year under consideration, assessee showed total turnover of Rs. 2.05 crores on which assessee returned a net loss of Rs. 13,29,220—AO observed that assessee had obtained share capital and share application money from various companies—AO held that amount received from stated companies in form of share capital was only accommodation entries and genuineness of Share capital received by assessee company could not be accepted—AO passed Order u/s 153 and made addition of Rs. 60,00,000 on account of alleged unexplained share capital received by assessee company from following persons—CIT(A) upheld addition made by AO—Held, AO could issue notice u/s 143(2)—In assessee's case, search was conducted on 06/5/2010 and AO issued notice on 16/09/2011 u/s 153A read with s 143(2)—During course of search, no incriminating documents were found therefore, no notice could be issued u/s 153A read with s 143(3) because no proceeding was pending before AO which abated for issue of notice on date of initiation of search—Thus, on technical ground, order passed u/s 153A read with s 143(3) was held void ab initio—Further Assessee before AO had produced copy of share application, confirmation of cash creditors, copy of PAN, copy of Board resolution, copy of Director's report, auditor's report, copy of balance sheet, copy of P&L account, copy of bank account to prove the identity, genuineness and creditworthiness of cash creditors—AO made addition on basis of investigation conducted by ITO, but AO did not clarify what inquiry had been conducted and what evidences collected which had gone against assessee—Also although Notice u/s 131 was issued by ITO, Investigation were served in case of X and Y but compliance could not be made on given date because concerned officer was on leave—Copy of inquiry had not been provided by AO to assessee and Investigation Officer had not deputed Inspector to enquire whereabouts of company—Thus Order of CIT(A) was reversed—Assessee's Appeal allowed on technical ground as well as on merit."

Similar view has also been affirmed by the ITAT, Jaipur Bench in its order dated 22/06/2016 in the case of Ganga Projects (P) Ltd. and B.S. Traders (P) Ltd. (supra) and Anchal Fintrade Pvt. Ltd. Vs ITO (supra). The Coordinate Bench of ITAT, Jaipur in the case of ITO Vs. M/s Alok Fintrae (P) Ltd. vide order dated 14/05/2018 has decided as under:

20. *We have heard the rival contentions of both the parties and perused the material available on the record. We find that a similar issue has come up before this Bench in the case of M/s Choice Buildstate Pvt. Ltd. Vs ITO (supra) wherein we have held 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."

21. *In the instant case, we find that the Assessing officer has relied solely on the information received from the Investigation Wing Delhi without carrying out any further examination of documents submitted during the course of reassessment proceedings and without carrying any independent investigation of these companies. The information so received from the Investigation Wing Delhi is sufficient to form a prima facie view and acquiring jurisdiction under section 147 of the Act. However, 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 documentation in respect of these companies from whom a total amount of Rs. 46 lakhs was received namely share application form, return of allotment filed with Registrar of Companies evidencing allotment of shares, copy of bank statements reflecting payment through cheque, confirmation of these companies of having invested in the assessee company and of the fact that there are assessed to tax and have been allotted PAN number. 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 for making the addition in the hands of the assessee company. Further, we note that in respect of three companies from whom Rs 20 lacs has been received as share capital, the addition has been made by the AO without even asking the assessee to submit the desired information during the reassessment proceedings which cannot be accepted at first place. It is thus a case where the AO was in receipt of material information from the Investigation Wing, Delhi that the assessee company has received accommodation entries in form of share application/investment from two companies as divulged during the course of search and seizure operations in case of S K 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 are therefore of the view that there is no infirmity in the findings of the Id CIT(A) 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. 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.

22. *Further, being the 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. Besides furnishing the reasons for reopening the assessment to the assessee company, there is nothing on record that such information/documentation was confronted to the assessee. Further, the AO has relied upon the statement of third parties namely, shri S.K. Jain, shri V.K. Jain, shri Assem Kumar Gupta and shri Rajesh Agarwal, the assessee again 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, Hon'ble Rajasthan High Court in case of AKJ Granites (P) (Ltd) (supra), in context of addition of share application money under section 68, has held as under:*

“So far as question No. 1 is concerned, it is stated by learned counsel for the appellant that the issue embedded in the said question has already been decided by this court and governed by the ratio laid down in Shree Barkha Synthetics Ltd. v. Asst. CIT [2005] 197 CTR 432 ; [2006] 283 ITR 377. It has been pointed out that share applications are made by a number of persons, may be in their own names or benami, but the fact that share applications received from different places accompanied by share application money, no presumption can be drawn that the same belongs to the assessee and cannot be assessed in his hands as his undisclosed income unless some nexus is established that the share application money for augmenting the investment in business has flowed from the assessee's own money. In coming to this conclusion, the court relied on CTT v. Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi) which has since been affirmed by the Supreme Court in CIT v. Steller Investment Ltd. [2001] 251 ITR 263 . In view thereof, this question need not be decided again.”

24. *In the instant case, no such nexus has been established by the Revenue and the suspicion however strong cannot be basis for making the addition. Therefore, no presumption can be drawn without establishing the necessary nexus that share application money received is assessee's own undisclosed money.*
25. *In light of above discussions and in the entirety of facts and circumstances of the case, we don't find any basis for making addition under section 68 of the Act and the findings of the Id CIT(A) are hereby confirmed. In the result, grounds taken by the Revenue are hereby dismissed. “*

The ITAT, Jaipur Bench in the case of M/s Choice Buildstate Pvt. Ltd. Vs.

ITO in ITA No. 431/JP/2016 order dated 28/03/2018 has held as under”

- “9. *We have heard the rival contentions and perused the material available on record including the legal authorities relied upon by both the parties. On perusal of the reasons recorded before issuance of notice under section 148, it is stated therein that on the basis of information brought on record, the assessee company has taken accommodation entries of Rs 35 lacs in the*

nature of bogus investments/share application from seven companies whose complete details in terms of name, address, date of payment, amount of investment, bank account and the branch through which the payment has been made were stated therein the reasons. It was further stated in the reasons that these companies are indulged in providing accommodation entries in lieu of cash obtained from the beneficiaries and not doing any genuine business activity as divulged during the course of search and seizure proceedings in case of Praveen Jain Group, Mumbai. It was further stated in the reasons so recorded that the assessee company is a beneficiary who has taken the accommodation entries in the nature of bogus investment/share application and the investor companies are not carrying on any genuine business activities and was providing accommodation entries in lieu of cash obtained from the beneficiaries. In view of the same, it was held by the AO that he has reasons to believe that income to the extent of Rs 35 lacs has escaped assessment within the meaning of section 147 of the Act. In our considered opinion, in the instant case where the return filed by the assessee was not subjected to scrutiny assessment and the entries are available in the case of the assessee from the companies which were named by Shri Praveen Jain to providing accommodation entries and the amounts recorded in the assessee's financial statements are also the same as disclosed by Shri Praveen Jain, the belief formed by the AO after due examination of the material on record that the income of the assessee chargeable to tax during the relevant assessment year has escaped assessment cannot be said to be arbitrary or irrational and it cannot be said that there exists no rational and intelligible nexus between the reasons and the belief. It is true that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the AO regarding the escapement of the income but then, while recording the reasons for belief formed, the AO is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the AO had cause or justification to know or suppose that income had escaped assessment. It is also well settled the sufficiency and adequacy of the reasons which have led to formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined for the purposes of determining the assumption of jurisdiction by the AO u/s 147 of the Act. The decision of the Hon'ble Delhi High Court in case of Singature Hotels (P) Ltd (supra) is distinguishable on facts as in that case, the Court observed that the information and the reasons are extremely scanty and vague and there is no reference to any document or statement except certain annexure which cannot be regarded as a material or evidence that prima facie shows or

establishes escapement of income. Similarly, other decisions quoted by the Id AR which are rendered by the Coordinate Benches in case of M/s TRN Energy Pvt Ltd and M/s Superline Construction P Ltd were rendered in peculiar facts and circumstances in those cases and are thus distinguishable on facts. The decision of Hon'ble Delhi High Court in case of Rajat Exports India (supra) among others relied upon by the Id DR supports the case of the Revenue. In view of the same, we are of the considered view that there is no illegality in action of the AO in assuming jurisdiction under section 147 in the instant case. In the result, ground no. 1 of the assessee's appeal is hereby dismissed.

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.

11. *In the result, the appeal of the assessee is partly allowed.*

Therefore, considering the totality of the facts and circumstances of the case, we dismiss the appeal of the revenue.

9. Since we have dismissed the appeal of the revenue on merit, therefore, the C.O. filed by the assessee becomes academic and the same is hereby dismissed.

10. In the result, both, appeal of the revenue and the C.O. of the assessee are dismissed.

Order pronounced in the open court on 08/06/2018.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08th June, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- The ITO, Ward-2(2), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Land Mark Dealers (P) Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 177/JP/2015 & C.O. 17/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar