

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3396/Del/2018 : Asstt. Year : 2009-10**

M/s Gorika Investment and Exports (P) Ltd., 531SG Complex, DC Chowk Market, Sector-9, Rohini, Delhi-110085	Vs	Income Tax Officer, Ward-10(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACG2462K</b>		

**Assessee by : Sh. Gautam Jain, Adv.,  
Sh. Piyush Kumar Kamal, Adv., &  
Sh. Lalit Mohan, CA  
Revenue by : Sh. B. R. Mishra, Sr. DR**

<b>Date of Hearing : 04.06.2018</b>	<b>Date of Pronouncement : 13.06.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 15.02.2018 of Id. CIT(A)-35, New Delhi.

2. Following grounds have been raised in this appeal:

*"1 That the learned Commissioner of Income Tax (Appeals)-35, New Delhi has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*

*1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof*

*the proceedings initiated are illegal, untenable and therefore unsustainable.*

*1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act.*

*2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an addition made by learned Income Tax Officer of Rs. 15,00,000/- representing sum received from M/s Shalini Holdings Ltd. as share capital and erroneously held as unexplained cash credit under section 68 of the Act.*

*2.1 That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has completely overlooked that there was no adverse material brought on record by the learned Assessing Officer to assume that credits by way of share capital represents unexplained cash credit and. burden which lay upon the assessee in terms of section 68 of the Act had not been discharged.*

*2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the aforesaid shareholder had duly confirmed the investment made, he could not have upheld the addition on arbitrary grounds and that too without bringing any evidence or even alleging that aforesaid credit by way of share capital emanated from the source of funds provided by the appellant company.*

*2.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the shareholder was a corporate entity, duly assessed to tax and, had subscribed to share-capital through banking channels and supported by necessary documents and therefore,*

*once such shareholder was identifiable company, share capital received could not in law or on fact be brought to tax u/s 68 of the Act.*

*2.4 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that appellant had placed on record voluminous evidences in the shape of audited financial statement, annual returns, order of assessment of the share applicant to discharge the burden with regard to both genuineness of the transactions and creditworthiness of the share applicant and therefore, there in absence of any whisper to rebut the said evidence, the credit could not arbitrarily be regarded as unexplained cash credit under section 68 of the Act.*

*2.5 That further more the learned Commissioner of Income Tax (Appeals) has proceeded to confirm the addition on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.*

*2.6 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that alleged evidence gathered in the course of search of one Shri S. K. Jain without confronting the same to the appellant and, without affording any opportunity of cross-examination could not be made a basis to make an addition; particularly when even no nexus is established with the share capital subscribed by the shareholder in the appellant company.*

*3 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 30,000/- on account of alleged commission paid to the entry provider in cash for obtaining accommodation entries and held as unexplained expenditure u/s 69C of the Act.*

*4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 38,861/- u/s 234A of the Act and. interest of Rs. 4,51,791/- u/s 234B of the Act which are not leviable on the facts and circumstances of the case of the appellant company.*

*It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held that additions made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.”*

3. The main grievance of the assessee vide ground nos. 1 to 1.2 relates to the validity of the proceedings initiated by the AO u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee filed the return of income on 27.09.2009 declaring an income of Rs.42,156/- which was processed u/s 143(1) of the Act. Subsequently, the AO issued notice u/s 148 of the Act on 21.03.2016 after recording the reasons. The AO framed the assessment u/s 143(3) r.w.s. 147 of the Act by making an addition of Rs.15,30,000/- and assessed the income at Rs.15,72,156/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the validity of the assessment completed u/s 147/143(3) of the Act and submitted that the AO did not have tangible material on record to form a reason to believe that the

income had escaped assessment and that the AO had initiated the proceedings mechanically without application of mind.

6. The Id. CIT(A), however, did not find merit in the submission of the assessee by observing that the Investigation Department is an integral part of the Income Tax Department and that in a systemic organization, the operations carried on by one limb of the organization are co-related to the functioning of the other limbs of the same organization. He further observed that the information given by the Investigation Department was forwarded to the assessment wings and that the AO decided to issue a notice after receiving such information lying before him. Accordingly, the action of the AO in initiating the proceedings u/s 148 of the Act was upheld.

7. Now the assessee is in appeal. The Id. Counsel for the assessee drew our attention towards page no. 27 of the assessee's paper book which is the copy of the proposal after the reasons recorded u/s 148 of the Act for reopening the assessment and noting for getting the approval from Pr. CIT. It was submitted that the said proposal revealed that the AO sought the approval from the Pr. CIT for initiating the proceedings. The Id. Counsel for the assessee submitted that the Pr. CIT did not apply his mind and only approved in mechanical manner. It was further submitted that while giving the approval for initiating the proceedings u/s 147 of the Act, there was no application of mind by the Pr. CIT. Therefore, the reopening was not valid. The reliance was placed on the following case laws:

- *Zurassic Properties (P) Ltd. Vs ITO in ITA No. 6398/Del/2016 order dated 28.04.2017*
- *M/s Layak Fabrics (P) Ltd. Vs ITO in ITA No. 491/Del/2014 order dated 15.07.2016*
- *Pragati Vanijya Ltd. Vs ACIT in ITA No. 5096/Del/2014 order dated 31.07.2017*
- *Rajiv Aggarwal Vs ACIT 395 ITR 255 (Del.)*
- *CIT Vs Batra Bhatta & CO. 321 ITR 526 (Del.)*
- *Ashok Kumar Sen Vs ITO 132 ITR 707 (Del.)*
- *Sabh Infrastructure Ltd. Vs ACIT 398 ITR 198 (Del.)*
- *CIT Vs G&G Pharma India Ltd. 384 ITR 147 (Del.)*
- *Unique Metal Industries Vs ITO in ITA No. 1372/Del/2015 order dated 28.10.2015*
- *Punjab Metal Store Vs ITO in ITA No. 512/Del/2015 order dated 02.12.2015*
- *Jiten Gurnani Vs ITO in ITA No. 4908/Del/2012 order dated 31.03.2015*
- *Banke Bihari Properties (P) Ltd. Vs ITO in ITA No. 5128/Del/2015 order dated 22.04.2016*
- *R.K. Garg Developers (P) Ltd. Vs ITO in ITA No. 6558/Del/2014 order dated 31.08.2016*
- *Amsa India (P) Ltd. Vs CIT 393 ITR 157 (Del.)*
- *Pr. CIT Vs Meenakshi Overseas (P) Ltd. Vs ITO 395 ITR 677 (Del.)*
- *CIT Vs RMG Plyvinyl (I) Ltd. 396 ITR 5 (Del.)*
- *R.P. Foam Home (P) Ltd. Vs ITO in WP(C) 7601/2017 dated 29.08.2017*
- *Sabh Infrastructure Ltd. Vs ACIT 398 ITR 198*
- *CIT Vs M/s Jet Speed Audio (P) Ltd. 372 ITR 762 (Bom.)*
- *M/s M. S. Software (P) Ltd. Vs ITO in ITA No. 2708/Del/2016*
- *Basesar Properties (P) Ltd. Vs ITO in ITA Nos. 5750 & 5751/Del/2016 order dated 18.08.2017*
- *Zikarpur Estate (P) Ltd. Vs ITO in ITA No. 6546/Del/2016*
- *Chuugmal Rajpal Vs S.P. Chaliha reporte in 79 ITR 603 (SC)*
- *Pr. CIT Vs N.C. Cables Ltd. in ITA No. 335/2015 order dated 11.01.2017*

- *M/s Meta Plast Engineering (P) Ltd. Vs ITO in ITA No. 5780/Del/2014 order dated 06.04.2018*
- *M/s Dhanuka Agritech Ltd. Vs ACIT in ITA No. 1003/Del/2014 order dated 11.05.2016*
- *Sunil Agarwal Vs ITO in ITA No. 988/Del/2018 order dated 24.05.2018*
- *Metro Decorative (P) Ltd. Vs ITO in ITA No. 450/Del/2014 order dated 24.10.2017*

8. In his rival submissions, the ld. Sr. DR strongly supported the orders of the authorities below.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the approval of Pr. CIT was sought before initiating the proceedings u/s 147 of the Act, copy of proposal is placed at page no. 27 of the assessee's paper book and read as under:

**“Proposal u/s 148 of IT Act, 1961 in the case of M/s Gorika Investments & Exports Pvt. Ltd., AY- 2009-10”**

*On the basis of information received from Investigation Wing, Assessing Officer has submitted that a search was conducted in S.K. Jain Group of cases (entry operator) and accommodation entries amounting Rs.15,00,000/- have been provided to the assessee company during FY 2008-09 relevant to AY 2009-10. It is further submitted that the transaction amount of Rs.15,00,000/- received as discussed above leads to a credible question on the genuineness of share capital/share application money received etc. during the year within the meaning of section 68 of the IT Act, 1961, on the basis of the facts discussed above relating to the so called subscribers. It is evident from the perusal of the return that assessee has not disclosed its income to the tune of Rs.15,00,000/-.*

*ITO, Ward-10(2) has sent the proposal with requisite Performa for initiating the proceedings u/s 147/148 through Addl. CIT, Range-10, Delhi. Reasons/satisfaction are properly recorded by ITO, Ward-10(2) and Addl. CIT, Range-10, Delhi on Performa citing that income of Rs.15,00,000/- has escaped assessment and it appears that it is a fit case for initiating proceedings u/s 148 of the IT Act, 1961. If approved, permission may be granted for initiating the proceedings.”*

10. It is noticed that on the aforesaid proposal, the Pr. CIT-4, New Delhi gave the approval on 21.03.2016 by writing the word “approved”. He has not mentioned how and in what manner he was satisfied. In other words, it cannot be said that the Pr. CIT applied his mind while giving the approval for reopening the assessment or he was satisfied that it is a proper case where the proceedings u/s 147 may be initiated.

11. On a similar issue, the Honøble Delhi High Court in the case of Pr. CIT Vs N.C. Cables Ltd. (supra) held as under:

*“11. Section 151 of the Act clearly stipulates that the CIT(A), who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression ‘approved’ says nothing. It is not as if the CIT(A) has to record elaborate reasons for agreeing with the nothing put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.”*

12. Similarly, the ITAT Delhi Bench -Eø, New Delhi in ITA No. 450/Del/2014 for the assessment year 2004-05 in the case of Metro Decorative Pvt. Ltd. Vs ITO, Ward-6(4), New Delhi (supra) vide order dated 24.10.2017 held as under:

*“6. We have carefully gone through the record, the documents and decisions relied upon by either side. In so far as the challenge of the assessee as to the legality and validity of the reopening is concerned, assessee is placing reliance on the decisions reported in G&G Pharma India Ltd. (Del. High Court) (supra), N.C. Cables Ltd. (supra) and Meenakshi Overseas Pvt. Ltd. (supra). He also placed reliance on the decisions reported in Signature Hotels Pvt. Ltd. vs. ITO 338 ITR 51 (Del), Sarthak Securities Co. Pvt. Ltd. vs. ITO (2010) 195 Taxman 262 (Del), CIT vs. Kamdhenu Steels & Alloys Ltd. (2012) 119 Taxmann.com 26 (Del.). As could be seen from these decisions, it is consistently held that the reopening based on the information furnished by the Directorate of Investigation and the AO without making any further investigation on his own, recording the reasons to believe that income escaped assessment are bad. In fact in Pr. CIT vs. M/s N.C. Cables Ltd. (supra) above vide paragraph no. 10 the Hon'ble High Court extracted the reasons which are as follows:*

*“10. As far as the first issue with respect to the approval granted to reopen the assessment under [Section 147/148](#) of the Act is concerned, the relevant noting is as follows:-*

*"Reasons for issuing notice u/s 148 of the Act in the case of M/s N. C. Cables Limited, for the A. Y. 2001-02-reg.*

*Information has been received from the Investigation Wing of the Income Tax Department that the above named assessee is a beneficiary of accommodation entries received from certain established entry operators identified by the Wing during the period laundering for the beneficiaries and on the basis of investigation carried out and evidences collected, a report has been forwarded. I have perused the information contained in the report and the evidences gathered. The report provides details of the modus operandi of the 'money laundering scam' and explain how the unaccounted money of the beneficiaries are ploughed back in its books of account in the form of bogus share capital/capital gains etc. after routing the same through the bank account (s) of the entry operators. Entry operators were identified after thorough investigation on the basis of definitive analysis of their identity,*

*creditworthiness and the source of the money ultimately received by the beneficiaries. These entry operators are found to be mostly absconding after the unearthing of the 'Money Laundering Scam' leaving the said money at the disposal of the beneficiaries without any associated cost or liability. In the instant case, the assessee is found to be the beneficiary of accommodation entry from such entry operators as per the following specific details of transaction:-*

Entry Operator	Beneficiary's Bank	Amount Rs.	Instrument No. by which entry taken and date	Entry giving bank	Account no. from which entry was given
Mahesh Garg	-	800480	30.11.2000	SBP-DG	4507
Performance Trading & Inv.	-	700420	13.11.2000	SBP-DG	4281
Chintpurni Credits	-	900540	22.11.2000	SBP-DG	50058
Subhash Chander Singhal	-	500300	23.11.2000	SBP-DG	4544
Kuldeep Textiles P. Ltd.	-	500500	21546 24.03.2001	Innovative Wazipur	239
Sweta Stone P. Ltd.	-	500500	23510 24.03.2001	-do-	1200259-CA
Division Trading P. Ltd.	-	500500	33612 24.3.2001	-do-	225

*During the course of the proceedings u/s 148 for the same assessment year, which was dropped on the technical ground that proper sanction was not obtained, it was noticed that there are other receipts also from the identified entry operators. Information about those entries was not available in the data received from the Investigation Wing.*

*Nevertheless they also fall within the ambit of [section 68](#) of the Act. The assessee has received unexplained sums from the entry operators as per the above details as per information available with the undersigned. As explained above the identity, creditworthiness and genuineness of transactions with the persons found to be entry operators cannot be established. I therefore have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above AY the income chargeable to tax to the extent of accommodation entry mentioned above, has escaped assessment within the meaning of S.147 of the Act.*

*Since four years has been expired from the end of the relevant year, and assessment u/s 143(3) of the Act was made in the case of the assessee for the said A ~ the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of the CIT, Delhi t1, New Delhi in terms of the Proviso to [Section 151](#) of the Act.*

*Sd/- (ITO) Ward 13(1).*

*The ACIT, Range 13, New Delhi For kind approval of CIT-V, New Delhi CIT-V, Delhi:*

*"Approved" Sd/-"*

7. *In the case on hand also the contention of the Revenue is that the assessee issued cash and received cheques from one Sh. Tarun Goyal, an entry operator. It is only on the basis of information furnished by the Directorate of Investigation Unit AO found the satisfaction that the income of Rs. 20,40,000/- had escaped the assessment due to the reason of failure on the part of the assessee to prove not only the identity of share applicants but also the capacity of such applicants and the genuineness of the transaction. The Hon'ble Jurisdictional High Court in Sarthak Securities Pvt. Ltd. vs. ITO (2010) 195 Taxman 262 (Del), Signature Hotels Pvt. Ltd. vs. ITO 338 ITR 51 (Del), CIT vs. SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), Pr. CIT vs. G&G Pharma India Ltd. (ITA No. 545/D/2015) (Delhi High Court), ITO vs. N.C. Cables Ltd. (Delhi ITAT) – Judgment dated 22.10.2014 and Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. (2017) (S) TMI 1428 held that the reopening of the assessment without the AO independently undertaking the exercise of examination of facts is bad under law.*

8. *The Jurisdiction Delhi High Court in the case of Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. (2017)(S) TMI 1428 has held that reopening u/s 147/148 was not justified where reasons were recorded merely on the basis of information received from investigation using and without independent application of mind by the AO. The Hon'ble Court held that it was indeed a "borrowed satisfaction" and reopening was not justified.*

9. *Now coming to the second limb of challenge made by the assessee to the effect that the reassessment proceedings initiated are bad in as much as the approval/sanction by Addl. CIT is without recording satisfaction and the same is not in accordance with the requirements of Section 151 of the Act, Ld. AR brought it to our notice that vide sl. no. 11 the Addl. CIT, Range 6, New Delhi recorded that "Yes, I am satisfied".*

*On this aspect Ld. AR placed reliance on the decisions reported in Chhugamal Rajpal vs. S.P. Chaliha (1971) 79 ITR 602 (SC), Central India Electric Supply Co. Ltd. vs. ITO (2011) 10 taxmann.com 169 (Delhi), ITO vs. N.C. Cables Ltd. (Delhi ITAT) – Judgment dated 22.10.2014, ITO vs. M.B. Jewellers (P) Ltd. (Delhi ITAT) judgment dated 14.11.2014, Amar Lal Bajaj vs. ACIT (2013) 37 Taxmann.com 7 (Mum) (Trib), CIT vs. M/s S. Goyanka Lime and Chemicals Ltd. 2015 (5) TMI 217 and Pr. Commissioner of Income Tax vs. N.C. Cables Ltd. (ITA No. 335/2015), for the principle that where the authority to grant/sanction merely recorded “Yes, I am satisfied”, such an approval/sanction is not sustainable.*

10. *We have gone through the decisions relied upon by the Ld. AR. In the decision reported in CIT vs. M/s S. Goyanka Lime and Chemicals Ltd. (supra) it is held by the Hon’ble Madhya Pradesh High Court as follows:*

*“7. We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so “Yes, I am satisfied”. In the case of Arjun Singh (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down” –*

*“The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format “Yes, I am satisfied” which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.”*

11. *This decision of the Madhya Pradesh High Court was challenged by the Revenue before the Hon’ble Supreme Court by way of the Special Leave Petition and the Hon’ble Supreme Court was pleased to dismiss the Special Leave Petition vide order reported in (2015) 64 taxmann.com 313 (SC).”*

13. In the present case also, it is not in dispute that the AO initiated the proceedings u/s 147 r.w.s. 148 of the Act on the basis of information furnished by the Directorate of Investigation Unit, which is evident from the aforesaid referred to nothings (copy of which is placed at page no. 27 of the assessee’s paper book) and

the Pr. CIT gave the approval without applying his mind in a slipshod manner. Therefore, by respectfully following the judicial pronouncements in the aforesaid referred to orders and by keeping in view that the approval/sanction given by the Pr. CIT without recording satisfaction, I am of the view that the reopening in the present case is not sustainable. Therefore, the reopening u/s 147 of the Act by issuing the notice u/s 148 of the Act on the basis of mechanical approval by the Pr. CIT without recording satisfaction on the objective material is quashed.

14. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 13/06/2018)

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 13/06/2018**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**