

2. *The learned Commissioner of Income Tax (Appeals) - VI has erred in upholding that the AO has rightly initiated the proceedings under section 147 of the Act irrespective of the fact that "Reopening of case under income escapement assessment is bad in law and without merit. Further, the instant reopening suffers from basic defect of non-application of mind (reopening being made arbitrarily without looking case records) by the assessing officer.*

3. *The Commissioner of Income Tax (Appeals) - VI has erred in upholding that the Assessing Officer has rightly made addition of Rs.5,00,000/- on account of share application money under section 68 of the Income Tax Act "irrespective of the fact that conditions prescribed under the said section are duly fulfilled by the assessee and share application money received by the assessee is a genuine and bonafide transaction".*

4. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) - VI has erred in confirming the action of assessing officer in making of addition of Rs.10000/- u/s 69C of the Act by contended on its own assumption and presumption that assessee company would have paid the commission @2% for taking accommodation entry in the garb of share application money.*

5. *The learned Commissioner of Income-Tax (Appeals) - VI has further erred in law and on the facts of the case in confirming the levy of interest and initiation of penalty proceeding by Assessing Officer under section 271(1)(c) of the Income tax act 1961.*

6. *The learned Commissioner of Income-Tax (Appeals) - VI has further erred in law and on the facts of the case in confirming the levy of interest by Assessing Officer u/s 234B of the Act.*

7. *It is therefore prayed that the assessment framed u/s 143 (3) r.w.s. 147 of the Income Tax Act may kindly be quashed or alternatively the additions made by the Assessing Officer and confirmed by the Commissioner of Income-tax (Appeals)-VI may please be deleted."*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On receiving information from Director of Income-tax (Investigation)-II, New Delhi that the assessee

company had received an accommodation entry to the tune of Rs.5,00,000/- from M/s. KDG Properties and Construction Pvt. Ltd. on 22.02.2007, AO reopened the assessment by recording reasons that the assessee had not disclosed fully and truly all material facts necessary for its assessment after getting approval from Addl. Commissioner of Income-tax. Thereafter, a notice u/s 142 (1) of the Income-tax Act, 1961 (for short 'the Act') requiring the assessee to file necessary details. Assessee was called upon to produce Principal Officer of M/s. KDG Properties and Construction Pvt. Ltd. on 16.01.2015 but on its failure to produce, AO proceeded to hold that receipt of Rs.5,00,000/- on account of share capital is nothing but an accommodation entry and made addition thereof to the total income of the assessee. AO also made addition of Rs.10,000/- on account of estimated commission @ 2% for taking accommodation entry under the garb of share capital from accommodation entry provider.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Assessee by moving separate application sought to raise the additional ground of appeal to the effect that :

“That on the facts and circumstances of the case and provision of the law the initiation of proceeding u/s 147/148 is illegal and bad in law as there is no valid satisfaction of the approving authority as required u/s 151 of the Act.”

on the ground that due to omission, the legal ground not could be raised. Keeping in view the settled principle of law that the legal ground can be raised at any stage of proceedings, which is necessary to adjudicate the complete controversy at hand, the application for additional ground is allowed without prejudice to the merits of this case.

6. Since the assessee has raised aforesaid legal ground, we would adjudicate this first before going into the merits of this case.

7. The ld. AR for the assessee contended that AO, without applying his mind, has reopened the assessment merely on the basis of information received from the Investigation Wing of the Income-tax Department and drew our attention towards page 4 to 6 of the paper book which is a note put up by the ITO to Addl. Commissioner of Income-tax seeking necessary approval for

reopening the assessment. Approval accorded by Id. CIT (A) is extracted as under :-

“Approved in view of reasons given above.

Sd/-

26.03.2009”

8. When we examine the extract of the approval accorded by Addl. CIT for reopening the assessment, it shows that the same is not only on the basis of borrowed satisfaction but is a mechanical approval without applying independent mind. Moreover, there is not an iota of material on record as to which of the documents have been perused and what were the reasons for his (Addl. CIT) to be satisfied to initiate the reopening of assessment u/s 148 of the Act. Even otherwise, reasons recorded by the AO for reopening of the assessment shows that he has also not applied his mind rather based the entire case on the basis of information received from Investigation Wing.

9. Hon’ble Supreme Court in case cited as ***CIT vs. S. Goyanka Lime & Chemical Ltd. – (2015) 64 taxmann.com 313 (SC)*** examined the identical issue as to according the sanction for reopening the assessment u/s 148 of the Act by merely recording “Yes. I am satisfied.” And held that reopening on the basis of mechanical sanction is invalid by returning following findings :-

“ Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under. section 148, reopening of assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

Search and Seizure-Procedure for block Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and 147-CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording ‘I am Satisfied’-Action for sanction was alleged to be without application of mind and to be done in mechanical manner-Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"-Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly unsustainable-On such consideration, both Appellate authorities interfered into matter-No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed.”

10. The Hon’ble Delhi High Court has also decided this legal issue in case cited as *Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017* by returning following findings:-

“ Reassessment-Issuance of Notice-Sanction for issue of Notice-Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of reassessment notice but

allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits-Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment-Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre-condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Mere appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner-In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officer-Revenue's appeal dismissed."

11. Furthermore, perusal of the noting sheet dated 09.03.2010 to 30.12.2010 made available to the Bench for perusal shows that only AO has recorded that Addl.CIT has considered the reasons recorded before according the sanction, however even no prima facie material is there, if Addl.CIT has applied his mind by considering the reasons recorded before according the sanction. We are of the considered view that the AO who has recorded the reasons cannot enter into the mind of the sanctioning authority (Addl.CIT) discharging the quasi-judicial function for according valid sanction for reopening the assessment.

12. Moreover, according sanction is not a supervisory role rather it is a quasi-judicial function to be performed by the Addl.CIT as required u/s 151 of the Act. When the Revenue Department is manned by highly qualified officers they are to evolve legally

sustainable standard operating procedure for discharging quasi-judicial function.

13. Coordinate Bench of the Tribunal in the case of *Shri Amarlal Bajaj vs. ACIT in ITA No.611/Mum/2004 order dated 24.07.2013* while deciding the identical issue also proceeded to hold that merely recording word (approved) at the bottom of the Note Sheet prepared by the ITO is not approval for according the sanction after applying his mind rather it is a mechanical approval which is not sustainable in the eyes of law.

14. In view of what has been discussed above, without going into the merits of the case, we are of the considered view that initiation of reassessment proceedings u/s 147 of the Act, followed with notice u/s 148 of the Act, are not sustainable in the eyes of law for want of valid approval by the Addl.CIT, hence hereby quashed. Consequently, the appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 30th day of August, 2018.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 30th day of August, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-28, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.